PRAVDA PO MERI DETETA

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PRAVDA PO MERI DETETA

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PREDGOVOR

Koncept "pravde po meri deteta", pored ostalog, označava pravosudni sistem koji jemči poštovanje i delotvorno sprovođenje svih prava deteta na najvišem mogućem nivou, ... To je pre svega pravosuđe koje je dostupno, primereno uzrastu, efikasno, prilagođeno potrebama i pravima deteta i usredsređeno na te potrebe i prava, uz poštovanje prava deteta, uključujući pravo na postupak u skladu sa zakonom, pravo da učestvuje u postupku i da razume postupak, na poštovanje privatnog i porodičnog života i na integritet i dostojanstvo. Ostvarivanje "pravosuđa po meri deteta" podrazumeva pravosuđe prilagođeno na način da bude primerenije detetu i efikasne postupke dostupne deci uz obezbeđenje neophodne nezavisne pravne reprezentacije. Na ovaj način se omogućava deci da, kada dođu u kontakt sa pravosudnim i upravnim sistemom, bilo kao svedoci, žrtve (oštećeni) ili kao učinioci krivičnih dela, tužioci i podnosioci pritužbi u građanskim, upravnim postupcima i postupcima pred nezavisnim organima, da budu u mogućnosti da na adekvatan način zaštite svoja prava i interese.

Istoimena monografija *Pravda po meri deteta*, predstavlja zbornik radova autora iz osam zemalja (Slovenije, Hrvatske, Rumunije, Mađarske, Makedonije, Bosne i Hercegovine, Crne Gore i Srbije), koji će biti predstavljeni na XXX međunarodnom naučnom skupu Instituta za kriminološka i sociološka istraživanja koji se održava 6. i 7. juna 2018. godine na Paliću. Ovom monografijom želeli smo da ukažemo na značaj novoustanovljenog koncepta, razmenimo iskustva koje su pojedine države učinile u vidu njegove implementacije u svoja nacionalna zakonodavstva, ali prevashodno da ukažemo na značaj razumevanja ovog koncepta u najširem smislu i neophodnost njegove implementacije ne samo na nivou zakona već prevashodno u praksi kako pravosudnih organa, tako i svih onih koji se staraju da najbolji interesi deteta budu ostvareni u punoj meri.

U monografiji je zastupljen multidisciplinaran i holistički pristup, a uvodni rad kojim započinje publikacija koja je pred vama, rad prof. dr Nevene Vučković Šahović **"Međunarodni standardi pravde po meri deteta i mere za njihovo sprovođenje"**, upravo ima za cilj da se predstave najvažniji međunarodni pravni i drugi propisi koji su relevantni za pravosuđe po meri deteta, a koje propise su države u obavezi da implementiraju. Autorka posebno insistira da prava dece koja su u kontaktu sa pravosudnim sistemom, nisu prepoznata na adekvatan način, odnosno često im je uskraćen ili otežan pristup pravosuđu, izloženi su zlostavljanju kada učestvuju u sudskim i drugim postupcima. Ovakve okolnosti, dovele su do povećanja interesa za pravdu po meri deteta, na međunarodnom nivou, ali i u okvirima nacionalnih zakonodavstava. Suočen sa takvom realnošću, Savet Evrope (Komitet ministara) 2010. godine je usvojio „Smernice za

pravosuđe po meri deteta". Ove Smernice, nadovezuju se na obaveze koje su proistekle iz međunarodnih standarda zaštite prava deteta i uvode principe koji osnažuju mlade. Smernice imaju za cilj da pruže podršku državama da se minimizuju izazovi sa kojima se deca suočavaju na svakom koraku i u svim aspektima pravnog postupka. U radu su navedene i mere koje su predviđene Opštim komentarom Komiteta za prava deteta br. 5, koje bi države trebalo da preduzmu u cilju implementacije *Smernica za pravosuđe po meri deteta*. Autorka posebno ukazuje da bi države trebalo da budu svesne prednosti implementacije prava deteta i uvođenja pravosuđa po meri deteta. Koliko brzo ključni politički akteri mogu biti informisani i ubeđeni da preduzmu neophodne korake za postizanje međunarodnih standarda za pravdu po meri deteta, zavisi od mnogih faktora i od specifičnih političkih, ekonomskih i društvenih okolnosti u državi.

Nakon uvodnog teksta, sledeći multidisciplinarni pristup, nalazi se rad prof. dr Đurađa Stakića i prof. dr Zorana Ilića **"Pozitivnopravni model maloletničke pravde - pregled pravosudnih i socijalnih modela maloletničkog pravosudnog sistema**." Autori u svom kooautorskom radu ukazuju da savremeni modeli maloletničkog pravosuđa predstavljaju složenu i kontroverznu mešavinu dva modela: pravosudnih i socijalnih, pri čemu nedostaju ili nedovoljna zaštita zajednice (društva) ili neodgovarajuća socijalna zaštita maloletnika. Po njima, poslednjih nekoliko decenija, dva nova uticaja otvaraju nadu da će sporovi biti usaglašeni, odnosno da će se postići viši stepen koherentnosti sistema maloletničkog pravosuđa. Prvi je usvajanje Konvencije o pravima deteta, a drugi je primena najsavremenijih naučnih saznanja koja omogućavaju dubinsko razumevanje razvoja mladih i njihovih kapaciteta za promenu i razvoj. Sinergija zakona i razvojnih nauka, doprinela je nastanku novog modela maloletničke pravde. Ovaj model, prvenstveno se fokusira na zaštitne faktore, snagu i potencijale deteta, prorodice i lokalne zajednice, sa ciljem da se identifikuju, aktiviraju i unaprede veštine koje su neophodne za uspešnu tranziciju mladih iz adolescencije u odraslo doba. Svrha ovog rada je predstavljanje pomenutog novog modela maloletničke pravde, od njegovog nastanka, opisivanjem teorijske pozadine, uz naglašavanje osnovnih teorijskih principa, te temeljne analize konceptualno - metodološkog okvira, kao i predstavljanje programa prevencije i tretmana koji su zasnovani na tom modelu.

U radu **"Ideološki i politički kontekst reforme socijalne zaštite maloletnih prestupnika u Srbiji: eksperiment neoliberalne hegemonije"** prof. dr Aleksandar Jugović i MA Dragica Bogetić, ukazuju u kom pravcu treba da se kreće reforma sistema socijalne zaštite u tranzicijskim društvima, a koja sa odnosi na decu i maloletnike sa delinkventnim ponašanjem. Po njima institucije socijalne zaštite predstavljaju ključan segment organizovanog i formalnog sistema društvenog reagovanja na maloletničko prestupništvo. Posebno se insistira da najopštija uloga savremeno koncipiranog sistema socijalne zaštite jeste bavljenje zaštitom interesa dece i maloletnika, a da sa druge strane službe socijalne zaštite polaze od stanovišta da je kriminalitet dece i maloletnika manifestacija smetnji u socijalnom razvoju i zadovoljavanju njihovih socijalnih potreba. Imajući navedeno u vidu osnovni cilj ovog rada je kritička analiza reformskih ideja i ukazivanje na određene dileme i kontroverze koje se u ovoj oblasti javljaju. U radu se kritički ocenjuju iskustva u reformi sistema socijalne zaštite u Srbiji. Analiza ukazuje da je moguće identifikovati osnovu ideologije reforme sistema socijalne zaštite maloletnih prestupnika, kao što su koncept individualne odgovornosti za životne probleme, pluralizam servisa, decentralizacija, redefinisanje metoda i standarda institucija, vođenje slučaja i deinstitucionalizacija.

Kao što smo ukazali, i ovom monografijom, kao i istoimenim naučnim skupom, želeli smo da razmenimo iskustva koje su pojedine države učinile u vidu implementacije koncepta "pravde po meri deteta" u nacionalna zakonodavstva i praksu. Prof. dr Katja Filipčič u radu **"Deca kao žrtve u krivičnom zakonodavstvu Slovenije"** ukazuje da Slovenija od kraja devedesetih godina dvadesetog veka posebnu pažnju posvećuje deci žrtvama. Krivični zakonik Slovenije je promenjen, kako bi se osigurala bolja zaštita dece, podignuta je starosna granica u pogledu pristanka na seksualni odnos, produžen je rok zastarelosti u pogledu krivičnih dela kod kojih je pasivni subjekt dete, ali je uvedena i posebna evidencija presuda, u kojima se kao žrtva krivičnog dela pojavljuje dete. Nove odredbe Zakonika o krivičnom postupku usmerene su na: smanjenje negativnih efekata saslušanja (direktno ispitivanje osoba mlađih od petnaest godina na glavnom pretresu nije dozvoljeno) ostvarenje prava deteta u toku postupka (dete ima pravo na advokata koga plaća država) kao i na razumevanje procesa (dete može biti u pratnji osobe u koju ima poverenja). Autorka ukazuje da navedene promene i mere predstavljaju veliki korak ka stvaranju pravosuđa po meri deteta, a time i efikasnije zaštite dece, pri čemu ih dalje treba razvijati, ali i posvetiti više pažnje da se umanje problemi pri njihovoj primeni u praksi.

U radu doc. dr sc. Ivana Milas Klarić **"Pravosuđe prilagođeno deci - zakonodavstvo i praksa u Republici Hrvatskoj"** autorka svoj fokus usmerava na činjenicu da je u Republici Hrvatskoj, poslednjih petnaestak godina učinjen značajan pomak u području "kaznenog sudovanja za mladež", slično kao i u zemljama u okruženju, razvojem specijaliziranih sudova za mlade, posebnim zakonodavstvom, te treningom dela stručnjaka u ovom području. Sa druge strane, učešće dece u građanskim postupcima, primarno porodičnopravnim, po autorki, dugo je bilo zanemareno. To posebno iznenađuje jer deca, upravo u porodičnopravnim predmetima učestvuju kao stranke u postupku ili ih se odluke u tim postupcima neposredno tiču. Stoga je, uz sve druge aspekte pravosuđa prilagođenog deci, prema autorki, za potrebe ovog rada najzanimljivije pitanje prava deteta na izražavanje vlastitog mišljenja u građanskim, porodičnim postupcima, te njegov (procesnopravni) položaj stranke u postupku. Reformom hrvatskog porodičnog zakonodavstva iz 2014/2015. godine učinjen je ogroman normativni iskorak u pozicioniranju deteta kao stranke u porodičnopravnim postupcima ali ostaje da se vidi koliko će praksa slediti normativne zahteve, te koliko su sva ostala očekivanja o pripremi deteta pre i posle sudskih i upravnih postupaka, opremljenost sudova, edukacija stručnjaka samo želja iskazana međunarodnim dokumentima, a koliko (ne)realnost hrvatskog pravosuđa.

O tome koliki je značaj medija za izgradnju koncepta "pravde po meri deteta" s aspekta zaštite privatnosti i dostojanstva deteta, pogotovo dece kao aktera sudskih i upravnih postupaka, možemo čitati u radu prof. dr Zorana Pavlovića **"Zaštita privatnosti i dostojanstva deteta u medijskom prostoru".** Ovo iz razloga jer zaštita privatnosti i čovekovog dostojanstva u medijskom prostoru današnjice postaje sve veći izazov. Situacija je još osetljivija kada je u pitanju privatnost i dostojanstvo deteta. Priroda prava na privatnost dodatno otežava utvrđivanje povrede prava, pa je neophodna reakcija onoga ko smatra da mu je objavljivanjem sadržaja lične prirode privatnost povređena. Kada su pravo na privatnost i dostojanstvo deteta povređeni u medijima, u ime deteta reaguju prevashodno roditelji ili staratelji. Problem nastaje u situacijama kada upravo roditelji daju saglasnost za objavljivanje sadržaja koji ugrožavaju pravo na privatnost deteta. Prikazivanje dece i maloletnika u elektronskim medijima na način koji može dovesti u pitanje interes deteta, i pored pribavljene saglasnosti roditelja ili staratelja, ne isključuje odgovornost pružaoca medijske usluge za objavljeni sadržaj, u kontekstu medijske etike. Autor posebno

ukazuje na činjenicu da pravo na privatnost i dostojanstvo deteta, iako zaštićeno mnogim pozitivnopravnim propisima, dolazi u sukob sa pravom na slobodu izražavanja mišljenja. Kojem od ovih suprotstavljenih prava dati prednost, potrebno je proceniti u svakom konkretnom slučaju, imajući u vidu najbolji javni interes, a pre svega, najbolji interes deteta.

Prof. dr Gál István László svojim radom **"Dečja pornografija: krivična dela protiv seksualnih sloboda i seksualnog morala dece u Mađarskoj"** bavi se jednom izuzetno važnom oblašću krivičnopravne zaštite dece žrtava krivičnih dela protiv polnih sloboda. Autor je mišljenja da seksualne slobode i krivična dela protiv seksualnog morala predstavljaju ponašanja koja su osuđujuća u moralnim normamama većine društava i da je u većini slučajeva, seksualnost pod okrilje krivičnog prava dospela iz drugih društvenih i moralnih normi. U radu autor postavlja pitanje kakav je uticaj morala na krivičnopravno regulisanje seksualnih krivičnih dela, odnosno kakva je veza između moralnih i krivičnopravnih normi i daje prikaz novih rešenja regulative i prakse u pogledu zaštite dece od iskorišćavanja u dečjoj pornografiji kao zločina protiv seksualnih sloboda i seksualnog morala dece u Mađarskoj.

Akademik prof. dr Miodrag Simović i prof. dr Marina Simović u radu **"Pravni okvir za krivični postupak prema maloletnicima u Federaciji Bosne i Hercegovine"** analiziraju primenjivost pravnog okvira međunarodnih standarda o zaštiti prava maloletnika koji se izražavaju kroz načelo o zaštiti "najboljih interesa deteta i maloletnika" i to s obzirom na pitanje obavlja li Federacija BiH odgovarajuću delatnost i u kojem obimu prema tom okviru, odnosno postoje li tačke kontroverzi koje je potrebno posebno razrešiti. U radu se ističu nepoznanice koje praksa sudova u Federaciji BiH nije još do kraja razrešila, a tiču se primenjivosti novih pravila koje je doneo *Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Federacije BiH*. Takođe se predstavlja skup pravnih pravila koja unutar Federacije BiH regulišu krivični postupak prema maloletnicima, uz poseban naglasak na osnovne karakterisike tog postupka. Na kraju se predlažu moguća rešenja navedenih nejasnoća i dilema, saglasno načelu pravne sigurnosti kao izuzetno bitnom za adresate predmetnih pravnih normi.

Doc. dr Darko Radulović radom **"Alternativne mere i krivične sankcije za maloletnike u maloletničkom krivičnom zakonodavstvu Crne Gore"** ukazuje da je maloletničko krivično zakonodavstvo Crne Gore doživelo značajne izmene u poslednjih desetak godina. Donošenjem *Zakona o postupanju prema maloljetnicima u krivičnom postupku* 2011. godine dodatno je naglašen poseban krivičnopravni status maloletnika kao učinioca krivičnog dela počevši od materijalnopravnih odredbi ovoga zakona, preko njegovih procesnopravnih odredbi do odredbi izvršnopravnog karaktera. U ovom radu autor se osvrnuo na nekoliko pitanja. Najprije su iznesena neka opšta razmatranja o načelnoj potrebi da se maloletnici kao učinoci krivičnih dela različito tretiraju u odnosu na punoletna lica a zatim se autor fokusirao na sistem alternativnih mera i sankcija za maloletnike i njihove karakteristike u maloletničkom krivičnom zakonodavstvu Crne Gore.

U koautorskom radu prof. dr Laure Stanila i dr Dariana Rakitovana **"Sistem sankcionisanja maloletnih učinioca krivičnih dela: vizija rumunskog zakonodavstva po meri deteta"** navodi se da je u važećem krivičnom zakonodavstvu Rumunije, koje je izmenjeno 2009. godine, usvajanjem novog *Krivičnog zakonika*, koji je stupio na snagu 2014. godine, praktično došlo do povratka starijoj viziji zakonodavca, koja se primenjivala između 1977. i 1992. godine. Prema atorima zakonodavcu Rumunije je bilo potrebno sedamnaest godina da prizna neefikasnost sistema sankcionisanja, koji je

predviđao kažnjavanje zajedno sa vaspitnim merama, kako bi se obezbedilo rešenje koje, iako nije novo, predstavlja mnogo bolju opciju od prethodno korišćenih.

Krivičnopravnom zaštitom života i telesnog integriteta maloletnih lica u Srbiji bavi se prof. dr Đorđe Đorđević u radu **"Krivičnopravna zaštita života i telesnog integriteta maloletnih lica u našem krivičnom zakonodavstvu".** Profesor Đorđević ukazuje da krivično zakonodavstvo Srbije maloletnim licima pruža pojačanu krivičnopravnu zaštitu. Po njemu ona se ogleda u postojanju značajnog broja krivičnih dela koja se mogu učiniti samo protiv maloletnih lica, ali i postojanju krivičnih dela koja, iako mogu biti učinjena protiv svih lica, dobijaju teži vid ako su učinjena protiv maloletnih lica. I jednih i drugih ima u mnogim grupama krivičnih dela u našem *Krivičnom zakoniku*, ali svojom težinom i značajem posebnu pažnju zaslužuju krivična dela protiv života i tela. U ovoj grupi ima nekoliko krivičnih dela koja, ako su učinjena prema maloletniom licu, predstavljaju teži oblik tih dela. Iako se opravdanost takve pojačane zaštite života i telesnog integriteta maloletnih lica gotovo uopšte ne dovodi u pitanje, način na koji je ona realizovana u našem Krivičnom zakoniku ostavlja određene dileme. One se najvećim delom odnose na međusobnu usaglašenost ovih odredbi, kao i doslednost u zaštiti pojedinih kategorija maloletnih lica (deca, maloletnici, lica do 16 godina starosti). Stoga bi, po istom autoru, *de lege ferenda*, a u cilju dosledne i što sveobuhvatnije krivičnopravne zaštite ovih lica, trebalo razmisliti o mogućnostima njihovog usklađivanja i unapređivanja.

Sa druge strane, dr Milica Kolaković-Bojović, insistira na drugom važnom aspektu zaštite maloletnih lica žrtava, a to su posledice sekundarne vikrimizacije krivičnog postupka i neophodnost njenog umanjena po maloletna lica, s aspekta njihove krivično-procesne zaštite. U radu **"Deca žrtve u Republici Srbiji - normativni okvir, reformski koraci i EU standardi"** autorka ukazuje da je uprkos činjenici da je *Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica* u vreme donošenja predstavljao značajan korak u pravcu uvođenja i oživotvorenja principa pravde po meri deteta u pravni sistem Republike Srbije, u normativnom okviru i praksi Republike Srbije zastalo na pola puta. Imajući ovo u vidu, autorka u radu analizira izazove s kojima se suočava srpski zakonodavac i pravosuđe, u kontekstu unapređenja položaja dece žrtava u krivičnom postupku, a u kontekstu usaglašavanja sa relevantnim međunarodnim standardima i merilima napretka u procesu pristupnih pregovora sa EU.

U radu "**Bipolarni odgovor Republike Srbije na krivična dela i prekršaje maloletnika"** autorke prof. dr Slađana Jovanović i sudija Vera Sofrenović analiziraju aktuelni krivičnopravni odgovor na kriminalitet maloletnika i potrebe za njegovom izmenom u segmentima koji ga čine polarizovanim u smislu popuštanja na jednoj strani, kada su u pitanju lakša krivična dela i zaoštravanja u pogledu težih oblika kriminaliteta koje vrše maloletnici. Navedeni predlozi su proistekli prvenstveno iz potreba prakse. Iako je u fokusu rada krivičnopravni odgovor, autorke daju osvrt i na reakciju Republike Srbije na prekršaje maloletnika, imajući u vidu potrebu za jedinstvenim, usklađenim odgovorom na maloletničku delinkvenciju koja ima oblike kažnjivih dela, kao i okolnost da je činjenje prekršaja, naročito sa elementima nasilja, neretko uvod u kriminalnu karijeru, te je neophodno i njima posvetiti pažnju. Na kraju je dat osvrt i na položaj maloletnih lica mlađih od četrnaest godina, imajući u vidu da je prema istraživanjima, njihova aktivnost koja ima obeležja kažnjivih dela u porastu.

Rad **"Izvršenje zavodskih vaspitnih mera i kazne maloletničkog zatvora u Bosni i Hercegovini"** autora prof. dr Ljubinka Mitrovića za svoj predmet ima analizu izvršenja krivičnih sankcija institucionalnog karaktera u Bosni i Hercegovini a koje su

predviđene za izricanje maloletnim učiniocima krivičnih dela. Predmet analize predstavljaju vaspitne mere zavodskog karaktera (i to upućivanje u vaspitnu ustanovu, upućivanje u vaspitno-popravni dom ili upućivanje u posebnu ustanovu za lečenje i osposobljavanje), kao i kazna maloletničkog zatvora.

Problematikom izvršenja kazne prema maloletnicima bavi se i rad prof. dr Dragana Jovaševića **"Primena kazni prema maloletnicima u uporednom krivičnom pravu"**. Autor insistira da su se još od najstarijih vremena, pa do 20. veka prema maloletnicima primenjivale iste vrste i mere kazni koje su zakonom bile propisane za punoletne učinioce krivičnih dela. Pri tome su uzrast maloletnika, stepen njihove zrelosti i psihološke karakteristike njihove ličnosti uzimani u obzir jedino kao olakšavajuća ili ublažavajuća okolnost prilikom odmeravanja kazne. Pod uticajem međunarodnih standarda univerzalnog i regionalnog karaktera, u drugoj polovini 20. veka, se razvija posebno maloletničko krivično pravo koje propisuje specifične vrste krivičnih sankcija za maloletnike. Ovo pravo se javlja u dva oblika : a) u okviru posebnih "maloletničkih" krivičnih zakona i b) kao deo "klasičnih" krivičnih zakona (zakonika) koji se primenjuju prema svim učiniocima krivičnih dela – punoletnim i maloletnim fizičkim i pravnim licima. U okviru sistema maloletničkog krivičnog prava osnovnu vrstu krivičnih sankcija čine vaspitne mere. No, sva zakonodavstva, izuzetno propisuju mogućnost primene kazni (jedne ili više) prema maloletnim učiniocima krivičnih dela. Tu se razlikuju dva sistema : a) specifične kazne maloletničkog zatvora i b) kazne zatvora, novčane kazne, rad u javnom interesu i druge vrste kazni (koje se izriču punoletnim učiniocima krivičnih dela), s tim što pojedina zakonodavstva poznaju i različite forme uslovne osude za maloletnike.

Dr Dragan Obradović posebno insistira na povezanosti sistema maloletničkog pravosuđa sa sistemom socijalne zaštite u svim kaznenim postupcima prema maloletnicima u sukobu sa zakonom. U radu **"Uloga organa starateljstva u izvršenju vaspitnih mera"** iz ugla sudije za maloletnike autor predstavlja ulogu organa starateljstva u izvršenju vaspitnih mera i analizira probleme sa kojima se susreću sudije za maloletnike kako bi se u toku ograničenog trajanja izvršenja vaspitne mere mogli postići što bolji rezultati. U radu su predstavljeni i pojedini podaci zvanične statistike maloletničkog pravosuđa sa posebnim akcentom na vaspitne mere, kao i određeni podaci koji se odnose na postupanje organa starateljstva na području nadležnosti Višeg suda u Valjevu.

Značajem postinstitucionalnog prihvata bavi se rad **"Postinstitucionalni prihvat maloletnih učinilaca krivičnih dela u Srbiji - ključni problemi u zakonodavstvu i praksi"**, autorki dr Ane Batrićević, MA Jelene Srnić Nerac i Ljiljane Marković. Autorke posebno ukazuju da nedostatak adekvatnog, blagovremenog i sveobuhvatnog postinstitucionalnog prihvata maloletnih učinilaca krivičnih dela nakon izvršenja zavodskih vaspitnih mera ili kazne maloletničkog zatvora predstavlja ozbiljnu prepreku za realizaciju njihovog osnovnog cilja - vaspitavanja maloletnika i sprečavanja njihovog recidivizma. U radu su analizirane zakonske odredbe kojima je regulisano izricanje i izvršenje zavodskih vaspitnih mera i kazne maloletničkog zatvora, kao i one koje su relevantne za sprovođenje postinstitucionalnog prihvata u Republici Srbiji. Iz ugla stručnjaka koji rade sa maloletnicima koji su napustili ustanove za izvršenje zavodskih sankcija predstavljeno je aktuelno stanje u Srbiji u toj oblasti. Navedeni su primeri uspešne socijalne reintegracije maloletnika koji su bili uključeni u postinstitucionalni prihvat, ali i brojni praktični problemi u vezi sa postinstitucionalnim prihvatom maloletnika. Konačno, ukazano je na korake koje je neophondno napraviti na normativnom i praktičnom planu kako bi se omogućila primena ustanove postinstitucionalnog prihvata maloletnika.

Ines Cerović se, za razliku od gore pomenutih autorki, bavila drugim važnim institutom maloletničkog pravosuđa u Srbiji kojim je omogućeno skretanje sa klasičnog krivičnog postupka, odnosno njegovo obustavljanje - vaspitni nalozi. Primena inovativnih i efikasnih mera u lokalnoj zajednici, kao što su vaspitni nalozi, treba da bude u središtu politike maloletničkog pravosuđa stav je autorke. Republika Srbija je uložila značajne napore da razvije svoje zakonodavstvo, politiku i praksu u skladu sa relevantnim međunarodnim standardima o pravima deteta, ali najveći izazov koji ostaje u ovoj oblasti je pravilna primena progresivnih zakonodavnih rešenja od strane relevantnih tela koja se bave decom u sukobu sa zakonom u praksi, naročito kada je u pitanju primena vaspitnih naloga. Imajući u vidu ove izazove, Ministarstvo pravde Republike Srbije, pokrenulo je 2010. godine reformu sistema maloletničkog pravosuđa kroz dva srodna projekta. Cilj rada **"Primena vaspitnih naloga u kontekstu reforme sistema pravosuđa po meri deteta u Republici Srbiji"** je da istraži u kojoj meri su implementirane projektne inicijative doprinele unapređenju sistema pravosuđa po meri deteta u skladu sa međunarodnim standardima, fokusirajući se posebno na primenu vaspitnih naloga, kao i da ponudi preporuke za buduće reforme u ovoj oblasti.

Doc. dr Elena Tilovska-Kechedji u radu **"Zaštita prava dece u imigracionim pokretima"** posebno ukazuje da deca koja su deo imigracionih pokreta, u čitavom svetu spadaju u veoma ranjivu kategoriju, jer se bez obzira da li su odvojeni od svojih roditelja ili su i dalje sa njima, nalaze se u veoma teškim okolnostima. U posebno teškoj situaciji su ona koja završe u administrativnom pritvoru, odnosno nalaze se i na gorim mestima ili u lošijim situacijama, budući da zbog imigracionih propisa i politika ne mogu ostvariti svoja prava. Vlade bi, po mišljenju autorke, trebalo da zaštite ovu decu, odnosno da u tom smislu donesu posebne propise. Njih bi trebalo kategorizovati kao ranjivu kategoriju, odnosno procedura u vezi sa njihovim statusom ilegalnih imigranata bi trebalo da bude promenjena. Ova deca traže i bore se za preživljavanje, bezbednost, bolji život, edukaciju i osnovne potrebe.

U delu monografske publikacije *Pravda po meri deteta* potom slede radovi koji daju kriminološki i viktimološki pogled na koncept koji razmatramo u vezi njegove pune implementacije, odnosno razumevanja, kako naučne tako i najšire stručne javnosti. Autorke dr Sanja Ćopić i mr Ljiljana Stevković, daju prikaz istraživanja koje je sprovedeno tokom 2013. i 2014. godine u Srbiji. Srbija je tada po prvi put uzela učešće u Međunarodnoj anketi samoprijavljivanjem delinkvencije (ISRD3). Autorke su imale za cilj da prikažu deo nalaza istraživanja koji se odnose na obim, strukturu i korelacije različitih oblika delinkventnog i rizičnog ponašanja koji su ispitivani, kao i na roditeljski nadzor i kontrolu kao faktor maloletničke delinkvencije. Podaci do kojih se došlo pokazuju visok stepen rasprostranjenosti ispitivanih delinkventnih ponašanja, uključujući rizična ponašanja, posebno konzumiranje alkohola, u populaciji maloletnih lica u gradovima u kojima je istraživanje sprovedeno. Maloletna lica češće ispoljavaju delinkventna ponašanja manje društvene opasnosti, a među njima preovlađuju dela imovinske prirode. Nasilna dela su manje zastupljena i najčešće se ispoljavaju u učestvovanju u grupnoj tuči na javnom mestu i u zlostavljanju životinja. Dečaci vrše više delinkventnih ponašanja od devojčica, pri čemu su ponašanja dečaka teža i češće uključuju nasilje. Takođe, što su ispitanici strariji to više vrše delinkventna ponašanja. Većina maloletnih lica iz uzorka je konzumirala alkohol, a oko četvrtine njih je konzumiralo drogu u nekom momentu tokom života. Nalazi istraživanja pokazuju i visoku korelaciju između svih ispitivanih oblika delinkventnog ponašanja, uključujući konzumiranje alkohola i droge. Sve tri ispitivane dimenzije roditeljskog nadzora i

kontrole (roditelji znaju gde, kako i sa kim dete provodi slobodno vreme, roditeljski nadzor i informisanje roditelja od strane deteta o tome kako, gde i sa kim provodi slobodno vreme van kuće) negativno koreliraju sa delinkventim i rizičnim ponašanjem. Takođe, sve tri dimenzije roditeljskog nadzora i kontrole predstavljaju prediktore delinkventnog i rizičnog ponašanja maloletnih lica. Ukupno gledano, odsustvo roditeljskog nadzora i kontrole povezano je sa ispoljavanjem delinkventnog ponašanja i predstavlja prediktor maloletničke delinkvencije. Polazeći od toga, važnim se čini rad na razvijanju različitih preventivnih programa, uključujući programe usmerene na razvijanje i jačanje roditeljskih kompetencija i veština, kao i unapređenje komunikacije i odnosa na relaciji roditelji-dete kako bi se delovalo u pravcu prevencije i suzbijanja maloletničke delinkvencije u Srbiji. O svemu navedenom može se pročitati u radu "**Roditeljski nadzor i kontrola kao faktor maloletničke delinkvencije: Rezultati Međunarodne ankete samoprijavljivanjem delinkvencije".**

Dr Olivera Pavićević i dr Ljeposava Ilijić navode da u novijoj kriminološkoj teoriji, kao i u istraživačkoj praksi postoji pojačan interes za doprinos koji humani, kulturni i socijalni kapital imaju u odustajanju maloletnika od kriminala. Njihov odnos se posmatra u kontekstu podsticanja socijalne kohezije, socijalne pravde i eliminisanja negativnih efekata nedostajućeg društvenog i kulturnog kapitala. Posredni odnos između humanog, socijalnog i kulturnog kapitala utiče na proces povratka maloletnika u kriminal. Kulturni kapital ima različite nivoe povezanosti sa socijalnom isključenošću, a istraživanje ove relacije ima za cilj promociju pristupa koji kulturu vide kao sredstvo za suzbijanje ili nadoknadu efekata socijalne isključenosti dece i mladih. U radu **"Dobrobit dece i različitih oblika kapitala: socijalni, humani i kulturni kapital"** se uspostavlja veza između različitih formacija ljudskog i društvenog kapitala u cilju osmišljavanja javnih politika zasnovanih na strategiji koja poziva na interakciju između države i društva u ostvarivanju socijalne pravde na svim nivoima, a posebno kada su u pitanju deca i mladi.

Sa druge strane u radu **"Strateška perspektiva u prevenciji učešća maloletnika u aktivnostima organizovanih kriminalnih grupa",** dr Aleksandre Bulatović i prof. dr Jasne Hrnčić, ukazuje se da su brojne studije potvrdile da su kriminalne organizacije u modusu svog delovanja uglavnom lokalne što određuje kontekst ekspanzije i diversifikacije njihovih kriminalnih aktivnosti kao i menadžment rizika kriminalnog preduzetništva. Imajući navedeno u vidu, maloletnici postaju objekti kriminalne eksploatacije od strane organizovanih kriminalnih grupa. Kontinuirani porast dece koja su izvršioci krivičnih dela koja se vrše na organizovan način ukazuju na pojavu novog trenda u delovanju organizovanih kriminalnih grupa. U tom smislu se uočava uključivanje maloletnika u kriminalno "preduzetništvo" u brojnim modalitetima — od distribucije narkotika, dela protiv imovine, pa do integrisanja profita u legalne tokove. Uvažavajući da kauzalitet kriminala, uopšteno uzev, sam po sebi nije proces na koji se odnosi krivičnopravno reagovanje, već je po mišljenju autorki reč uglavnom o socijalnim procesima koji dovode do krivičnopravnih fenomena i posledica. Ovo je osnov argumentacije da politika prevencije kriminala mora uključivati i mere socijalne politike, ravnopravno sa represivnim i kontrolnim merama krivičnopravnog karaktera. Razmatrajući aspekte delovanja dece u organizovanim kriminalnim aktivnostima autorke u tekstu polemišu o strateškim perspektivama savremenog društvenog odgovora na ovaj vid kriminaliteta.

U radu "**Mračne crte i mračne porodice: Porodične disfunkcije, psihopatija i sadizam kao facilitatiori kriminalnog ponašanja kod adolescenata**" dr Janka Međedovića, MA Meri Nešić i prof. dr Miroslava Krstića, predstavljeni su rezultati

istraživanja gde su autori merili porodične disfunkcije (prisustvo jednog ili oba roditelja, kvalitet odnosa i prisustvo faktora rizika u porodici), psihopatiju (Interpersonalne, Afektivne i karakteristike Životnog stila) i sadizam u malom uzorku institucionalizovanih adolescenata (N=100). Takođe, prikupljene su i mere kriminalnog ponašanja: uzrast prvog počinjenog krivičnog dela, broj vaspitnih mera, krivičnih dela i pravnosnažnih osuda. Nalazi su pokazali da porodične disfunkcije, psihopatija i kriminalno ponašanje sistematski pozitivno asociraju između sebe. Sadizam je negativno korelirao sa uzrastom prvog učinjenog krivičnog dela. U regresionom modelu predikcije kriminalnog recidiva (ekstrahovanog kao prva glavna komponenta mera kriminalnog ponašanja) samo su nizak kvalitet porodičnih odnosa i visoko izražena karakteristika životnog stila nezavisno predviđali kriterijumsku meru. Nisu pronađane interakcije između mračnih crta i disfunkcionalnih porodičnih karakteristika pri ovoj predikciji. Nalazi istraživanja proširuju postojeće znanje o ulozi mračnih crta i porodičnih karakteristika u kriminalnom ponašanju kod adolescenata.

"Pravda po meri deteta - obrazovna perspektiva" ukazuje na rezultate onih empirijskih istraživanja koja ukazuju na značajnu povezanost između školskog neuspeha i maloletničke delinkvencije. Istraživanjima je potvrđeno da napuštanje školovanja doprinosi intenziviranju delinkventne aktivnosti maloletnika i da pohađanje škole može imati zaštitnički učinak na maloletnike. Utvrđeno je da rano napuštanje školovanja predstavlja dugoročno najveći rizični faktor za delinkventno ponašanje jer ima kumulativno nepovoljan učinak na životni put maloletnika (nezaposlenost, korišćenje usluga socijalnih službi, slabije zdravlje itd.). Iz toga razloga smanjenje obrazovnog i školskog neuspeha mora imati visok prioritet u obrazovnim strategijama i politikama u svetu. I u našim uslovima, kako to navode Marija Maljković i MA Jasmina Igrački, se usvajanjem i implementacijom različitih strategija i zakonskih rešenja nastoji poboljšati obrazovni status. Autorke su mišljenja da napori uloženi u prevenciju školskog neuspeha, mogu imati značajan doprinos u prevazilaženju i prevenciji maloletničke delinkvencije.

Poštovane koleginice i kolege, nadamo se da će razumevanje svega navedenog predstavljati bar jedan korak napretka unapređenju i preuzimanju pune odgovornosti za usvajanje "modela pravde po meri deteta", kako od strane onih koji kreiraju javne politike, tako i od strane naučne i stručne javnosti u najširem smislu.

Urednica
Dr Ivana Stevanović

INTERNATIONAL STANDARDS ON CHILD FRIENDLY JUSTICE AND MEASURES OF THEIR IMPLEMENTATION

Nevena VUČKOVIĆ ŠAHOVIĆ, PhD*

The aim of this article at the outset is to present the most important international legal and other documents relevant for child friendly justice that States are obliged or encouraged to implement. It also aims at providing additional guidelines for the implementation of measures that States need to undertake in order to make child friendly justice a reality. Rights of children in contact with the justice systems are not recognized in an adequate way. Children are often denied access to justice, that access is made difficult, or they are exposed to abuse when participating in court and other proceedings. Such circumstances generated increased interest in child friendly justice in international and national laws. Faced with such realities in its member State, the Council of Europe (Committee of Ministers of the Council of Europe) adopted in 2010 "The Guidelines on Child Friendly Justice" The Guidelines build on obligations emanating from international children's rights and introduces principles that empower children. The Guidelines aim at supporting the States to minimize challenges that children face at each step and in each aspect of a legal proceeding. The article offers an overview of the measures, as per the Committee on the Rights of the Child's General Comment no. 5, that the States should undertake in order to implement the Guidelines on Child Friendly Justice. States should be aware of the benefits of the implementation of the child rights and introduction of child friendly justice systems. How quickly can key political stakeholders be informed and persuaded to carry out the adjustment necessary to achieve international standards in CFJ, depends on many factors and on the specific political, economic and social circumstances within States.

KEYWORDS: Child Friendly Justice / International Standards / Guidelines / Measures / Implementation

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INTRODUCTION

Every day, millions of children in the world come in contact with the law. Nevertheless, the rights of these children are not recognized in an adequate way. Children are often denied access to justice, that access is made difficult, or they are exposed to abuse when participating in court and other proceedings. Such circumstances generated increased interest in child friendly justice in international and national laws.

Children who are in conflict with the law are particularly vulnerable at all stages of the proceedings. The fact that the goal of every state policy in this area is rehabilitation, reintegration and further prevention, is often overlooked. Most often, child offenders had previously been exposed to violence or neglect and the absence of a proper approach to justice often leads to their committing further offences.

Children that are in contact with the law are those that are, *inter alia*, victims of violence and neglect, children refugees and children in need of medical or social placement or children in certain circumstances in which they traditionally have no influence (for example, in divorce cases). Due to the lack of proper child friendly justice mechanisms, many children, including their parents or guardians, would rather stay away from proceedings than expose themselves to conditions and actions that will further traumatize them. That particularly applies to children victims of violence and exploitation. Children who are victims or witnesses of sexual offences, for example, are particularly vulnerable and need adequate protection, assistance and support in order to be protected from further traumas emanating from traditional court proceedings. Effective and efficient judicial proceedings are those in which the rights of offenders and victims' rights are respected. If there is no adequate protection in such judicial proceedings, the child who is a victim or a witness will not report an offense, or will be in danger of becoming a victim of criminal proceedings, and will even be at risk of additional violence, or revenge of a perpetrator. State systems of support to children who are perpetrators, victims or witnesses of criminal offenses, or for some other reason have contact with justice, should ensure that children and their families are safer and that confidence in administrative and judicial proceedings is raised to the highest level.

The aim of this paper at the outset is to present the most important international legal and other documents relevant for child friendly justice that States are obliged or encouraged to implement. It also aims at providing additional guidelines for the implementation of measures that States need to undertake in order to make child friendly justice a reality.

1. CHILD FRIENDLY JUSTICE: DEFINITIONS, SPIRIT AND CONTENTS

Child friendly justice is grounded in the holistic approach to child rights. It fills the gap that exists in States due to separation of competences among governmental departmets, as well as the one emanating from a democratic and traditional division of powers, i.e. the judiciary, executive and legislative branches. Since the adoption Convention on the Rights of the Child[1] and in the course of its implementation of the in

[1] Please visit http://www.ohchr.org/EN/pages/home.aspx for all human rights treaties mentioned in this text

the 196 States parties to this treaty, it has become apparent that child rights issues require a unified approach on the part of all three branches of power. Even though children in conflict with the law are treated within the context of the justice system, treatment of child offenders and their rehabilitation and reintegration ought to concern education, health, welfare, finance and other state departments. Their circumstances affect and require the involvement of not only the State, but also of their families, the local community, civil society, media and independent human rights institutions. Whether children come into contact with the law as victims, witnesses or offenders it is important that they are met with a system that understands and respects their rights. That system is called: justice for children.

The Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice (hereinafter: Guidelines) provide a basic definition: "*"Child-friendly justice" refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity."*[2]

The Child Friendly Justice (hereinafter: CFJ) builds on obligations emanating from international children's rights and introduces principles that empower children. It is now well established that children should be empowered to play a role in enforcement of their rights and encouragement of governments, courts, and law enforcement officials to develop policies and practices that address their situation in the justice system.

One of the aims of the CFJ is to minimize challenges that children face at each step and in each aspect of a legal proceeding: "*Respecting child- friendly justice principles will not only eliminate many of the traumatic experiences children face in the legal system, it will foster greater respect for their rights by providing children the full access to justice they need to bring violations of these rights forward*".[3]

[2] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies – edited version 31 May 2011, section II (c).
[3] https://www.crin.org/en/guides/legal/child-friendly-justice

1.1. International law and child friendly justice[4]

International documents, such as conventions, declarations, decisions, guidelines and other acts, provide a more specific context for the realization of the rights of the child. The rights of the child in contact with the law should not be viewed outside the general context of human rights and child rights. As international law on the rights of the child progressed gradually, the corpus of international documents, which in some parts or in whole, relates to the rights of the child in conflict or in contact with the law, has expanded. In addition to the 1989 Convention on the Rights of the Child (hereinafter: CRC), a number of other human rights treaties have been adopted, as well as a large number of documents inviting states to introduce and implement measures to protect children from circumstances that could bring them into conflict with the law or subject them to violence. The rights of the child are normatively formed and universally recognized due to the universal ratification of the CRC, but also other international human rights documents. The CRC, adopted in 1989, was created as a result of the recognition of the child as the subject (bearer) of the law. This legally binding instrument, which was ratified by 196 countries, has become the basis for discussions on child rights issues around the world. The CRC has shifted the habits of states, communities, adults, experts and children themselves. Our perception of children will never be as it was before 1989. A child is today a dignified, capable and autonomous being that has the opportunity to demand respect for his/her rights. Through the adoption of the CRC all rights of the child have been recognized, ranging from civil and political to economic, social and cultural. Some rights incorporated in the CRC have been raised to the level of general principles: prohibition of discrimination, respect for the best interests of the child, the right to life, survival and development, and the right of children to have their views respected (right to participation). The rights within the CRC should be viewed holistically, and any right under this international treaty is also relevant to children who are witnesses or victims of violence.

1.2. Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice

The most important document, in addition to the Convention on the Rights of the Child, is the Council of Europe's Guidelines on Child Friendly Justice. Based on existing international and European standards, in particular the CRC and the European Convention on Human Rights[5], in 2010 the Council of Europe adopted the Guidelines of the Committee

[4] The CoE Guidelines lists binding documents, in particular:
- the 1951 United Nations Convention Relating to the Status of Refugees;
- the 1966 International Covenant on Civil and Political Rights;
- the 1966 International Covenant on Economic, Social and Cultural Rights;
- the 1989 United Nations Convention on the Rights of the Child;
- the 2006 United Nations Convention on the Rights of Persons with Disabilities;
- the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5)
- the European Convention on the Exercise of Children's Rights (1996, ETS No. 160);
- the revised European Social Charter (1996, ETS No. 163);
- the Council of Europe Convention on Contact concerning Children (2003, ETS No. 192);
- the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007, CETS No. 201);
- the European Convention on the Adoption of Children (Revised) (2008, CETS No. 202);

[5] The Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5)

of Ministers of the Council of Europe on Child Friendly Justice and provided accompanying explanations. These Guidelines guarantee children effective access and adequate treatment in the justice system. They relate to all circumstances in which children are on any grounds and in any capacity in contact with criminal, civil or administrative proceedings. This document is based on the principles of best interests of the child, child care and respect for the dignity of the child, active participation in all procedures, equal treatment and the rule of law. The Guidelines deal with issues such as the right to information, the right to be represented and to participate, the right to protection of privacy, the right to security, issues of multidisciplinary approach and training, protection measures at all stages of the proceedings and in situations of deprivation of liberty.

The Council of Europe recommends that Member States adjust their legal systems to the specific needs of children and bridge the gap between internationally accepted principles and reality. To this end, the accompanying explanations offer examples of good practice and propose solutions for solving and removing legal and practical gaps in the justice system for children.These guidelines form an integral part of the Council of Europe's Strategy on the Rights of the Child and the Building of Europe for Children and with Children

The Guidelines contain *six sections*: Scope and purpose, Definitions, Fundamental principles, Child friendly justice before, during and after judicial proceedings, Promoting other child friendly actions and Monitoring and assessment:

- The Scope and purpose section specifically highlights the issue of application of the Guidelines: "...all ways in which children are likely to be, for whatever reason and in whatever capacity, brought into contact with competent bodies and services involved in implementing civil, criminal and administrative law.[6]"
- The definition of child friendly justice was quoted earlier in this text. Apart from that, the Guidelines define the child as "any person under the age of 18." [7]
- The Fundamental principles of child friendly justice are: child participation, best interests of the child, dignity, protection from discrimination and the rule of law.

Child participation is in the core of child friendly justice. The States should, therefore, review the implementation of Article 12 of the CRC, the GC 12, and make sure that children are informed of their rights, that they are herd in all proceedings and that their views taken into account. Children must be treated as full bearers of rights.

As already prescribed by the Article 3 of the CRC, States should guarantee the effective implementation of the right of children to have their best interests be a primary consideration in all matters involving or affecting them. GC 14 contains detailed instructions of how to apply this principle.[8]

Child dignity is a principle and a right and is recognized as such in international law. It is especially important to respect the child's dignity when the physical, emotional and/or spiritual integrity of the child is threatened, such as in cases where corporal punishment, deprivation of liberty or torture is inflicted.

[6] The Guidelines: Section I (2)
[7] The Guidelines: Section I (1)
[8] General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14

The Guidelines contain a more elaborate list of grounds of discrimination than Article 2 of the CRC. Those include gender, race, color or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parent(s), association with a national minority, property, birth, sexual orientation, gender identity or other status.[9]

The rights of the child should be viewed in a context of a democratically organized state, in which the rule of law is a basic premise. The Guidelines underline that: "*The rule of law principle should apply fully to children as it does to adults*."[10]The wider context for exercising the rights of the child is also a system in which a rights-based approach is part of the general policy and of the goals of a state. The approach to addressing matter of the position of the child must be based on human rights. Therefore, the child has the right to be treated in a special way and to be protected in all proceedings, which includes court proceedings as well as the actions of other competent bodies, such as police, immigration and educational services, social and health services. Due process involving the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children, and children's access to appropriate independent and effective complaints mechanisms must be guaranteed.[11]

- Child friendly justice is a system that requires the application of all general principles of the rights of the child in all stages of civil, criminal and administrative proceedings, from the initial contact with the justice system or other competent authorities (such as the police, immigration, educational, social or health care services) and throughout proceedings. The Guidelines identify General elements of child friendly justice as: Information and advice, Protection of family and private life, Safety (special preventive measures), Training of professionals, Multidisciplinary approach and special attention to Deprivation of liberty. These General elements apply to all stages of all proceedings. The Guidelines provide a detailed description of the ways in which the contact with the police, access to the court and other proceedings, legal counsel and representation, avoidance of delay, organization of the proceedings in a child friendly environment and provision of evidence by children should be exercised/practiced/exerted. The States should also pay special attention to post-judicial child-friendly justice, which includes a series of measures such as the provision of appropriate information to children regarding decisions, assistance in rehabilitation and reintegration, and provision of compensation.[12]
- Apart from exercising child friendly justice through the implementation of the previously described guidelines, States must pursue international cooperation in the promotion, research and exchange of practices. That includes a range of activities, such as trainings, awareness raising campaigns and advocacy efforts.[13]

[9] The Guidelines: Section III (D)
[10] Guidelines, Section III (E)
[11] The Guidelines, Section III(E (2,3)
[12] The Guidelines, Section IV (B,C,D,E)
[13] The Guidelines, Section V(a. – l.)

- Finally, the Guidelines encourage States to undertake a series of measures towards their implementation. These measures will be described below in more detail.[14]

2. MEASURES TO IMPLEMENT CHILD FRIENDLY JUSTICE

Having in mind that the CRC as one of the most important sources of States' obligations regarding child rights, it is useful to review its links with the Guidelines. One of the most important aspect of the implementation of child rights is prescribed in Article 4 of the CRC: *"States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."*

For the purpose of interpreting this provision, the CRC Committee (hereinafter: Committee), monitoring body of the Convention, has adopted in 2005 General Comment No. 5: "*General Measures of Implementation of the Convention on the Rights of the Child*," (hereinafter: GC 5) with an aim to underline State Parties obligations to develop measures to implement rights of the child. This section will offer an overview of the measures, as per the GC 5, that the States should undertake in order to implement international provisions on CFJ, in particular the CoE Guidelines. The CoE Guidelines cover some of those measures, but not as extensively as the GC5. However, the Guidelines in its Preamble recall the CRC as one of the most important binding and universal documents; hence the application of the CRC's Article 4, as well as the respective GC 5, is expected.

2.1. Access to justice and justiciability of rights (right to remedies)

Access to justice is a procedural, but also fundamental human right. The concept of access to justice has over time developed from the right to initiate legal proceedings to a substantive right that includes equal and just legal protection for everyone. The UN Development Program (UNDP) defines access to justice as "*the ability of people to seek and receive legal protection in formal or informal justice institutions, in accordance with human rights standards.*[15]" Access to justice is not just a fundamental right but a basic presupposition for protection and improvement of civil, political, economic, social and cultural rights.

Access to justice is a centerpiece of the rule of law and is thus recognized as the cornerstone of international peace and security and as a fundamental means of enforcing human rights. The Committee and the Council of Europe recognized the importance of the rule of law for the protection of the rights of the child, including legal protection against discrimination, violence, abuse and exploitation. Today, states have recognized and agreed that there is an essential link between the rule of law, access to justice and the enjoyment of human rights. Namely, access to justice implies the development of legal mechanisms that allow, inter alia, that every child, without distinction, has the right to legal protection. This

[14] The Guidelines, Section VI

[15] http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/access-to-justice-practice-note.html

also applies to children who are victims of violence, as well as children who as victims or witnesses participate in judicial and administrative proceedings.

Equality is a key concept and fundamental notion in child rights. Namely, children who are in particularly vulnerable situations are very often exposed to discriminatory laws and /or proceedings. Even when laws contain all the provisions on the protection of children in such circumstances, in practice they have been neglected in various ways. Whether they have been deprived of information about their rights in proceedings, or whether their privacy has been violated or their opinion is not respected, implementation remains the biggest challenge.

Article 2(3) of the ICCPR[16] provides a concrete elaboration of the right to an effective remedy, as recognized in article 8 of the UDHR[17]. This right to a remedy is recognized, explicitly or implicitly, in other human rights treaties,[18] but not in the CRC. Nonetheless, the Committee is of the opinion that children should be enjoy the right to an effective remedy in case of violation of their rights. In this regard the Committee asserts the following in its General Comment No. 5: "*Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaint procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by Article 39.*"[19] It is therefore necessary for States to enable children's access to justice and their right to a remedy.

2.2. Harmonization of legislation

States are obliged to have established an appropriate legal framework for the protection of children who are in contact or in conflict with the law, but also a system in which they can effectively enforce relevant laws and other appropriate measures. States need to ensure, by all means, that the provisions of the Guidelines are given legal effect within their domestic systems. This implies full incorporation of the provisions of international law, in this case the CRC and the Guidelines[20]. Even when basic principles are incorporated in domestic law many details are often missing. As a result,

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[16] International Covenant on Civil and Political Rights, 1966: *"Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted"*

[17] Universal declaration of Human Rights, 1948: *"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."*

[18] See e.g CERD, Art 6, CEDAW, Art 2(C), CAT, Art 13 and CRPD, Art 13.

[19] GC 5, Para 24.

[20] The Gudelines: section 6 (a)

States must undertake a thorough review of existing laws and bylaws to make sure there are no gaps when it comes to the CFJ.

2.3. National plan of action – a comprehensive strategy

States are requested to develop national plans of action for the implementation of rights of the child in contact with the law. Many States already have general or specific strategies, such as for the administration of criminal justice for children, for protection from violence, etc. Similarly, States are advised to develop plans for the implementation of principles and rules of the CFJ.

2.4. State coordination

All State departments should be involved if the implementation of the Guidelines is to be effective. If a child rights coordinating body already exists in a State, a specific program or section of that body should be in charge of coordinating activities within CFJ.[21] Coordination between, for example, social, labor, justice, education, health or youth departments is too often missing. It is also important that State departments coordinate activities with the judiciary, notwithstanding its independence.

2.5. Data collection and analysis, and development of indicators

As stated in the GC 5, collection of sufficient data is key to achieving/securing implementation (of child rights). All other measures of implementation fail if there is no reliable, disaggregated data on children who are in contact with the law. Such data collection should follow the Guidelines to the letter, so as to avoid gaps in the identification of issues of importance for children in contact with the law. A broad sample and variety of data secures superior inferences and consequently higher quality information, so collection of statistical data, analysis, research and the likes, should be budgeted and encouraged by States. If there is no data on children in contact with the law, there are no grounds to build upon and organize coordination and monitoring, or to develop a national strategy.

2.6. Budget allocations

Much attention has been dedicated in the recent decade to the identification and analysis of resources dedicated to children in national and other budgets. Fulfilling economic, social and cultural rights "*to the maximum extent of … available resources*", as required under article 4, is possible only if States identify the proportion of national and other budgets allocated to the respective sectors, for the purpose of implementing children's rights, both directly and indirectly. In some States it is dune with the assistance of the civil society organizations, which publish annual "*children's budgets*"[22]. It is important for States to identify which steps are taken at all levels of government to ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in

[21] For example, The Council for the Rights of the Child a coordination mechanism established in Serbia, should ensure a unit for CFJ.
[22] http://haqcrc.org/our-work/governance/budget-for-children/

particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.[23]

The exercise of the rights of children in contact with the law requires separate budget allocations, direct or indirect. It is also desirable that such allocations are transparent and identified individually, specifically within dedicated budget lines. Even though international cooperation is encouraged, it is too often the case that States excessively rely on external assistance, without budgeting to take over responsibilities thereafter. Therefore, States should be able to present some budgetary strategies as well.

2.7. Monitoring child friendly justice: State, independent institutions, civil society

Implementation of the rights of children in contact with the law demands a continuous process of child impact assessment and child impact evaluation. All levels of government need to be involved in monitoring. A distinction has already been clearly established between State monitoring and independent monitoring.

Self-monitoring and evaluation is an obligation of Governments. The CoE Guidelines devote Section VI to monitoring and assessment. In both GC5 and the CoE Guidelines contain a request for government monitoring, but also, as indicated in the GC5: "*the Committee also regards as essential the independent monitoring of progress towards implementation by, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and independent human rights institutions.*"[24] Similarly, the CoE Guidelines encourage Member States to: "*...maintain or establish a framework, including one or more independent mechanisms, as appropriate, to promote and monitor implementation of the present guidelines, in accordance with their judicial and administrative systems;"* and *"ensure that civil society, in particular organizations, institutions and bodies which aim to promote and to protect the rights of the child, participate fully in the monitoring process."*[25]

State monitoring of all child rights remains the week point. The States often understand monitoring as the mare collection of statistical data. Fortunately, civil society organizations have elaborate programs for monitoring child rights and in an increasing number of countries those organizations devote specific attention to child friendly justice standards. In terms of independent institutions (sometimes called "ombudsman"), all States in Europe have one or another model of this sort of institution, while many have an institution dedicated exclusively to monitoring/implementing/securing child rights. The European Network of Ombudsman for Children (ENOC)[26] has members that evidently devote attention to the CFJ: "*Council of Europe authorities confirmed the critical role played by ENOC and individual ENOC members in the drafting and implementation of the CoE Strategy for the Rights of the Child and other legal and standard-setting activities such as the CoE Guidelines on child-friendly justice, on child friendly health services or on child participation."*[27]

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[23] GC 5: Paragraphs 51, 52
[24] GC 5: Paragraph 46
[25] CoE Guidelines: Section VI, points d. and e.
[26] http://enoc.eu
[27] http://enoc.eu/?p=1913

2.8. Training and dissemination of information

Training and capacity building are necessary measures for enabling a well-functioning child friendly justice system. Training on CFJ is often organized for government officials, parliamentarians and members of the judiciary - and for all those working with and for children (such as, for example, *"community and religious leaders, teachers, social workers and other professionals, including those working with children in institutions and places of detention, the police and armed forces, including peacekeeping forces, those working in the media and many others"*[28]). Training needs to be systematic and on-going - initial training and re-training. The purpose of training is to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions. The Committee expects to see the Convention reflected in professional training curricula, codes of conduct and educational curricula at all levels. Understanding and knowledge of human rights must, of course, be promoted among children themselves, through the school curriculum and in other ways (see also paragraph 69 below and the Committee's General Comment No. 1 (2001) on the aims of education).

Individuals need to know what their rights are. Traditionally, in most, if not all, societies, children have not been regarded as rights holders. Therefore, CRC article 42 on dissemination of information is of particular importance. The CoE Guidelines highlight the importance of training and dissemination. The States are asked to "*make human rights, including children's rights, a mandatory component in the school curricula and for professionals working with children*."[29] The CoE Guidelines request the States to *"ensure that all concerned professionals working in contact with children in justice systems receive appropriate support and training, and practical guidance in order to guarantee and implement adequately the rights of children, in particular while assessing children's best interests in all types of procedures involving or affecting them."*[30]

States should develop a comprehensive strategy for dissemination of knowledge about the CFJ. This should include information on those bodies - governmental and independent - involved in implementation and monitoring, and on how to contact them. International standards relevant for CFJ need to be made widely available, disseminated in all languages, in formats appropriate for illiterate people, and in child-friendly versions.

2.9. International cooperation

Article 4 of the CRC emphasizes that the implementation of this treaty is a cooperative exercise for all States. This article and others in the Convention highlight the need for international cooperation. The GC5 communicates to/advises States parties that the CRC should "*form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based*".[31] The States parties to the CRC that receive international aid and assistance are requested to allocate a substantive part of that aid specifically to children.

[28] GC 5: Paragraph 53
[29] CoE Guidelines: Section V, point *h.*
[30] Ibid: Section V, point *l.*
[31] GC 5: Paragraph 61

The CoE Gudelines are adopted as a joint effort of all its member States and they are remainded of the aim of the CoE, which is "*to acheve a greater unity between the member states, in particular by promoting and adoption of common rules in legal matters.*"[32]

CONCLUSIONS

The international law clearly oblidges States to reform their legal systems so as to enable full implementation of the CFJ standards. It also defines minimum measures that the States should undertake in order to implement a reformed legal system, so that rights of children in contact with the law can become reality. Even States that pride themselves as champions in the exercise of human rights under their jurisdiction often identify gaps in their laws and practices. It is therefore even harder for States who are new to the CFJ to review and reform their systems so that every child in contact with the law can rely on it and can feel confortable, safe and dignified in such circumstances.

Implementation of child rights requires time, specially for economic, social and cultural rights. With regards to civil and political rights there is a general requirement for swift reforms. But rights of the child are to be viewed holistically. All human rights are essential for CFJ, so the States should undertake urgent measures to implement them.

If prevailing attitudes and the lack of human, organizational or financial resources/capacities generate obstacles along the way, States should be aware of those constraints, as well as of the fact that there is no turning back: CFJ is reality in international law and in practices of many countries. Therefore, the sooner there is awareness of the need to accelerate full application of all measures to implement CFJ - the more benefits there will be for children and society. This leads to the final conclusion which highlightes the importance of political will to make CFJ reality. How quickly can key political stakeholders be informed and persuaded to carry out the adjustment necessary to achieve international standards in CFJ? That depends on many factors and on the specific political, economic and social circumstances within States. It also depends on the strength and willingness of all sectors of society to engage in advocacy so as to make rights of children in contact with the law reality.

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[32] The Guidelines: the Preamble

Prof. dr Nevena Vučković Šahović

MEĐUNARODNI STANDARDI PRAVDE PO MERI DETETA I MERE ZA NJIHOVO SPROVOĐENJE

Cilj ovog rada je da se predstave najvažniji međunarodni pravni i drugi propisi koji su relevantni za pravosuđe po meri deteta, a koje propise su države u obavezi da implementiraju. Takođe, ideja je da se pruže dodatne smernice za primenu ovih mera u praksi, a koje države moraju preduzeti kako bi pravda po meri deteta postala stvarnost. Prava dece koja su u kontaktu sa pravosudnim sistemom, nisu prepoznata na adekvatan način, često im je uskraćen ili otežan pristup pravosuđu, odnosno izloženi su zlostavljanju kada učestvuju u sudskim i drugim postupcima. Ovakve okolnosti, dovele su do povećanja interesa za pravdu po meri deteta, na međunaronom nivou, ali i u okvirima nacionalnih zakonodavstava. Suočen sa takvom realnošću, Savet Evrope (Komitet ministara) 2010. godine je usvojio "Smernice za pravosuđe po meri deteta". Ove Smernice, nadovezuju se na obaveze koje su proistekle iz međunarodnih standarda zaštite prava deteta i uvode principe koji osnažuju mlade. Smernice imaju za cilj da pruže podršku državama da se minimizuju izazovi sa kojima se deca suočavaju na svakom koraku i u svim aspektima pravnog postupka. U radu su navedene mere koje su predviđene Opštim komentarom Komiteta za prava deteta br. 5, koje bi države trebalo da preduzmu u cilju implementacije Smernica za pravosuđe po meri deteta. Države bi trebalo da budu svesne prednosti implementacije prava deteta i uvođenja pravosuđa po meri deteta. Koliko brzo ključni politički akteri mogu biti informisani i ubeđeni da preduzmu neophodne korake za postizanje međunarodnih standarda za pravosuđe po meri deteta, zavisi od mnogih faktora i od specifičnih političkih, ekonomskih i društvenih okolnosti u državi.

KLJUČNE REČI: Pravda po meri deteta / Međunarodni standardi / Smernice / Mere / Implementacija

POSITIVE YOUTH JUSTICE MODEL – OVERARCHING JUSTICE AND WELFARE MODELS OF JUVENILE JUSTICE

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Ever since establishment of first juvenile courts, some 100 years ago, the juvenile justice (JJ) systems around the globe are continually in transition and flux moving back and forth from "welfare" to "justice" model of juvenile justice. Contemporary JJ systems present complex and controversial mixture of both of those models often missing either to protect society or to provide appropriate social protection to juveniles. During last couple of decades two new influences promise to reconcile disputes and to achieve higher level of coherence of JJ systems. The first is adoption of the Convention of the Right of the Child and the second is infusion of cutting edge knowledge from the field of developmental sciences providing in depth understanding of youth development and their capacities for change and growth. The synergy of law and developmental science approaches has contributed to development of new Positive Youth Justice (PYJ) model. PYJ model primarily focuses on protective factors, strengths and assets of child, family and local community aiming to identify, activate and enhance competencies and skills necessarily for successful transition of youth from adolescence to adulthood.

The purpose of this paper is to introduce PYJ model by outlining its origination, describing its theoretical background, highlighting its core principles and thoroughly analyzing its conceptual-methodical framework, and prevention and treatment programs based on PYJ principles. Strong empirical evidence, supporting efficiency of PYJ model, based on findings of most recent international evaluative studies will also be presented and discussed. Typical challenges, ambivalences and obstacles for implementation of this promising model as well as directions for further enhancement of research, conceptualization and implementation of this JJ model will be covered in concluding part of this paper.

KEYWORDS: Juvenile Justice System / Positive Youth Development / Positive Youth Justice / Healthy Youth Development / Juvenile Justice Models

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1. ORIGINS AND DEVELOPMENT OF JUVENILE JUSTICE SYSTEMS

1.1. Establishment of first juvenile courts

Positive youth justice paradigm refers to somewhat controversial but clearly progressive ideological, conceptual, and practical shifts in the perception and understanding of the role, needs, rights, capacities and developmental pathways of children and adolescents in modern society bringing quite new perspective in terms of how society as a whole, including juvenile justice system, should support their transition to adulthood.

First juvenile courts started to emerge with the end of 19 century,[1] and during first few decades of twentieth century majority of country around the globe have established juvenile courts of their own (BalaN., at all., 2002)

The welfare model. These early JJ systems were referred to as "*welfare model"* based on two premises: (a) youth are not as culpable for their conduct as adults; and (b) youth are more capable of change and need room to grow. (Zimring, 2001). The welfare model focuses on child not on offence, or, on juvenile's *"needs*" not on his/her *"deeds."* JJ professionals have acted as a *"wise but stern parents"* taking care about the best interest of the child with full discretion tochoose measures that the best fits need of juveniles.After long period of romance and enthusiasm, around 1980s, the welfare model has been challenged from three main reasons: (a) that juvenile justice has become too soft since it purpose should be control rather than care for juvenile offenders; (b) that exclusive focus on wide range of treatment modalities may produce "more harm than good" for children, and (c) that wide-ranging discretionary judgments in respect of welfare greatly undermined the child's right to "justice" (Muncie J. and B. Goldson, ed., 2006). All in all the welfare model of JJ have been labeled as week, paternalistic, in violation of rights and even potentially discriminatory treatment of children.

The justice model. As a result of this by the late 20th century, in the place of welfare model, has emerged "justice model" of juvenile justice which is more concerned with responding to juveniles "deeds" or offences, legal rights of juvenile offenders and in many ways reinventing policies, procedures and practices characteristic for adult offenders.

Some countries (Canada and United States) moved away form welfare towards justice model, while some other (Scotland) continue with original welfare model of JJ. Other countries have entered into some sort of mixture of those two models usually declaring fearfulness to welfare model, the best interest of child and rehabilitation while introducing quite controversial adult alike, depenalization strategies and procedures.

1.2. JJ pendulum

Ever since that time until know many controversies around the globe have entered in ever ending quite confusing and controversial process of reconceptualization and reforming of JJ systems. Aiming to develop an effective jet less costly JJ system to better respond to new features of juvenile delinquency, to follow international standards, to be more sensitive to local communities needs and capacities as well as to be in accordance with cutting edge

[1] The first juvenile court was established in the United States by the State of Illinois in 1999.

developmental scienceconcepts and findings. In most countries one could see tendencies to move away from welfare JJ system towards more justice based one, and thenmoving back towards welfare model. That kind of confusion and moving back and forward from one to other practice model is known in the field of JJ as "juvenile justice pendulum," expressing both need for and confusion in terms of directions of substantial reform of JJ systems. As a result of that wide varieties of solutions have been re – introduced. Some of those "innovations," include but are not limited to: (a) concern with legal rights for adolescents, especially juveniles' due process rights, (b) introduction of sets of international standards for juvenile justice with aim to establish minimal rules to be followed; (c) adoption of UN Convention of the Right of the Child with central principle that "all actions concerning children ... the best interests of the child shall be a primary consideration" (Article 3); (d) adulteration – reintroducing treating children as adults with primary concern for public safety; (f) re-penalization, parental sanctions, mandatory sentencing, naming and shaming etc.; (g) de-circulation and de-institutionalization; (h) restorative justice and victim-offender mediation; (k) radical non-intervention movement with diversion measures, (i) risk management etc. (Winterdyk, J.,(2014).

1.3. Current state of affairs in JJ systems on international scene

Trying to make sense of current state in the field of international JJ we agree with statement that "it appears as ever more hybrid: attempting to deliver neither welfare of justice but a come and contradictory amalgam of the punitive, the resосiblisng, the inclusionary, the exclusionary and the protective" (Muncie and Goldson, page 214, 2005).

At the same time, besides those mostly legal and justice system originated movements, and reforming programs, significantinflux has come from developmental sciences, longitudinal research on etiological, risk and protective factors as well as lessons learned from evidence based evaluative studies of policies, programs and practices in the field of juvenile justice. One of the most substantial and powerfulconceptualizations is known as positive youth development perspective, which we are going to explore in more details.

2. POSITIVE YOUTH DEVELOPMENT

2.1. What is positive youth development?

PYD presents a new paradigm, approach or conceptual framework for improvement of well-being of children and adolescent. Child welfare, mental health, special education, and JJ system are created to address specific youth problems. Even though each of those systems have different goals they all usequite similar methodological framework known as a *medical model*, also known as a "clinical," or "deficit" model. Medical model agenda include(a) assessment of symptoms and signs of aberrations, deviations, problems, or disorders; (b) establishment of diagnosis; (c) creation oftreatment plan and (d) implementing treatmentprograms for minimizing symptoms and fixing problems. The outcome expected is quite modest - absence of problem, disorder.As a rule, the problem is seen to be individual, the person is at least temporarily isolated or removed from family and social environment and labeled, stigmatized.

This classicalapproach tends to see adolescence as a turbulent and problematic developmental period, as well as adolescents as challenging, disturbed, problematic and

potentially dangerous calling for their control, treatment, eventually isolation and punishment. The underlying philosophy of this approach could best be described as "the rotten apple in the basket."

During last two or so decades however sharp shift in terms of public presentation of youth has happened. Adolescents are now recognized as core resource or social capital, future world leaders, and therefore attention has moved towards providing them with opportunities and resources necessary to develop competences to assume those responsibilities. Attentions has sharply shifted away from risks, problems and disorders towards potentials and competences, from punishment and suppression of bad antisocial towards reinforcement and facilitation of prosocial behavior and attitudes. That allowed for conceptualization of PYD which focuses on identification, articulation, activation and enhancement of unique interests, talents, strengths and overall potentials of youth for change, growth and development. Those potentials, or assets may be individual – internal as well as social – external and could be located in any area of complex, multilayer and ever changing social environment in which young person lives, grows and develops. By putting together individual-psychological, family, peers and broader social-environmental risk and protective factors PYD is acting as a truly holistic approach aiming to activate all assets available for prosocial, healthy, "positive" youth development 9see more in: Barton, H. W. 2013, Bensn P. L. & R. N. Saito, 2000 and Frabutt at all., 2008).

2.2. Theoretical background

PYD presents interdisciplinary synergy of heterogenous body of knowledge including but not limited to developmental sciences, developmental epidemiology, prevention science, humanistic psychology, health education, but also concepts and principles streaming from UN CRC, restorative justice, evidence-based movement etc.

2.3. Core characteristics of PYD

2.3.1. Definition

PYD refers to as a new policy, new philosophy or simple new approach to child and adolescents' development and functioning,characterizing with mutual effort of youth, family, other adults, peers, local communities, governmental and nongovernmental organizations etc. to provide optimal opportunities for fostering interests, acquiring knowledge, skills, attitudes and other capacities that are necessary to youth's smooth transition from adolescence to adulthood.In other words, it aims to engages youth within their multilayer socio-ecological context in a productive and constructive manner; recognizes, utilizes, and enhances youths' strengths; and promotes positive outcomes for young people by providing opportunities, fostering positive relationships, and furnishing the support needed to build on their leadership strengths.

2.3.2. Core PYD premise

PYD streams fromhumanistic orientation in psychology which maintains that all children possess inherent developmental capacitiesfor growth but that they also need support, guidance and ample of opportunities in order to fully develop - actualize their human potentials.More specifically core premises of PYD could be summarized as: (a)

all children have capacity to overcome their developmental challenges and continue to grow and develop; (b) appropriate and sustained external support is important aspect of development of young person's resilience; (c) individual-psychological and environmental-social assets are in dynamic reciprocal relationships; and (d) it is important to activate and cultivate as many as possible relevant developmental assets for young people in order to secure their positive development 9 Learner, R. M.., 2005)

2.3.3. Strategic goal

Main goal of PYD is establishment of wraparound formal and informal services for systematic identification, activation, empowerment and appropriate and responsible usage of individual, family and societal potentials and resources so that most positive outcomes for youth could be achieved. The goal in not to minimize negatives, problems or disorders but rather to empower and develop all human potentials of young person.

2.3.4. Balanced approach

PYD is not exclusively oriented on positives, protective factors. PYD is giving equal attention to both protective and risk factors, and prevention and treatment programs are created to maintain balanced approach aiming to enhance protective and minimize risk factors in youth development and functioning. Key feature of PYD is ambitious, positive goal: fostering and achieving healthy youth development by promoting and using individual capacities and strengths of young persons in accordance with activating and managing available and needed resources in all levels of social ambience of young persons.

2.4. Concretization and operationalization of PYD

PYD aims, concepts and principles have been easily and enthusiastically embraced by developmental and prevention sciences scholars and practitioners but wider implementation have bene hampered by some luck of precise operationalization of its model. Several conceptual and methodological improvements helped with concretization of goals and objectives as well as operationalization of procedures of PYD, including definition of core assets, competences and criteria for developing and evaluating prevention na treatment programs that are based on PYD.

PYD has been nicely operationalized by Lerner and colleagues (2005) concept of key components that include *"five Cs,"*(1) competence, (2) confidence, (3) connection, (4) character and (5) caring. Later one more "C" – (6) contribution, has been added to this list of desirable, positive outcomes for youth. According to research the more of those six components prevention or treatment program consists of the more efficient the program will be, and further – the more of those six features youth successfully developed the more he or she would be resilient and health.

Butts, Bazemore and Meroe (2010), proposed two main PYD programs avenues: Learning/Doing and Attaching/Belonging. *Learning/Doing* goes beyond teaching a set of new skills, rather it offers opportunities for youth to take on new roles and provides tangible opportunities to perform and gain mastery within their role. *Attaching/Belonging*

allows youths to become part of something larger than themselves and fosters a sense of contribution. It can also be a source of feeling valued by a community.

Finally, the Search Institute of Minnesota (Stakic, D., 2013.) has created most needed and extremely useful list of 40 external and internal developmental assets that form the building blocks for healthy youth development. Those 40 assets are used for both planning and evaluation of PYD programs. Research findings confirmed that the more those developmental assets are present and in full operation the more opportunity young person will have to thrive and succeed even under presence of risk factors.

Those and other contributions provided policy makers, program developer and practitioners with meaningful and operationalized PYD conceptual and methodological framework. For example it is commonly agreed that in order to be considered as a PYD any prevention or treatment program needs attempt to achieve as many as possible of the following 15 objectives (Barton H. W., 2003):*1. Promoting bonding,* developing the child's relationship with a healthy adult, positive peers, school, community, or culture; 2. *Fostering resilience*, emphasizing using strategies for adaptive coping responses to change and promote psychological flexibility and capacity; 3. *Overall competence*, acquiring knowledge and building specific skills in areas of five basic youth functioning or competences including social, emotional, cognitive, behavioral, and moral competencies; 4. *Promoting social competence,* providing training in developmentally appropriate interpersonal skills, and rehearsal strategies for practicing these skills; 5. P*romoting emotional competence*, sought to develop youth skills for identifying feelings in self or others, skills for managing emotional reactions or impulses, or skills for building the youth's self-management strategies, empathy, self-soothing, or frustration tolerance; 6. *Promoting cognitive competence, enhancing* a child's cognitive abilities, processes, or outcomes, including academic performance, logical and analytic thinking, problem-solving, decision-making, planning, goal-setting, and self-talk skills; 7. P*romoting behavioral competence*, teaching skills and providing reinforcement for effective behavior choices and action patterns; 8. *Promoting moral competence,* promoting empathy, respect for cultural or societal values, rules and standards, a sense of right and wrong, or a sense of moral or social justice; 9. *Promoting self-determination,* increasing youths' capacity for empowerment, autonomy, independent thinking, or self-advocacy, or their ability to live and grow by self-determined internal standards and values; 10. *Fostering spirituality,* promoting the development internal reflection or meditation, or supporting youth in exploring a spiritual belief system, or sense of spiritual identity; 11. *Fostering clear and positive identity* developing healthy identity formation and achievement in youth; and supporting their healthy development of sense of self; 12. *Influencing child's belief in his or her future* potential, goals, options, choices, or long range hopes and plans, influencing youth's optimism about a healthy and productive adult life; 13. *Recognition of positive behaviors, introducing* system for rewording*,* recognizing, or reinforcing children's prosocial behaviors; 14. *Providing opportunities for prosocial involvement*, offering activities and events in which youths could actively participate, make a positive contribution, and experience positive social exchanges; and 15. *Fostering prosocial norms* employing strategies for encouraging youths to develop clear and explicit standards for behavior that minimized health risks and supported prosocial involvement.

Well conceptualized and operationalized the PYD is ready to be applied in different areas of child, adolescent and family care including juvenile justice field.

3. POSITIVE YOUTH JUSTICE: THE THIRD FORCE IN JUVENILE JUSTICE

Positive youth justice (PJY) refers to conceptual-methodological framework for implementation of core concepts, principles, methodologies and practices of positive youth development perspective in JJ system. During last couple of decades, following establishment of PYD perspective, increased implementation of those concepts and methodologies in the filed of JJ have been noted. It first come through prevention programs and treatment of status offenders but soon after has become overwhelmingly pervasive to the point that could be considered as a new model of JJ in the making. Positive experiences and results of evaluative studies accelerated wider implementation of PYJ making it to be "third force" in JJ field. This new mode tends not to substitute but rather to overarch two existing models that are much in an oppositional relationship.

While welfare model was criticized for its protectionist, paternalistic and intention to protect children, justice model was criticized for its adulteration and obsession with protection of safety community, positive youth justice model is offering quite new perspective aiming to support healthy but responsible youth development by engaging youth, family and community to create opportunities for successful youth transition from adolescence to adulthood. While welfare modelasks "how we can better protect juvenile delinquents?" justice model asks "how we ca better protect community from juvenile delinquents," positive justice model asks simple question "what we should do to provide opportunities and support healthy but responsible, prosocial development of juveniles, so that they can assume full responsibility for their behavior, growth and development?" In other words, overarching nature of PYD could be described through notion that the best protection of society from juvenile delinquency could be achieved through social protection of juvenile delinquents by providing them with opportunities for development of their strengths, resilience and self-reliance.

PYJ model is in the making and has long way to go to become powerful enough to substantially change JJ system texture, to overarch both social welfare and justice approaches, but it is obviously that PYJ is expending scope of its implementation, is receiving more than positive evaluation reports and is gradually gaining more and more support.

3.1. Theoretical and programmatic background of PYJ

PYJ model has emerged from or has close and has congruent conceptual ties with number of major concepts, movements and programs in contemporary field of JJ. First, and foremost,PYJ has originated from PYD movement, and it can even be defined as implementation of PYD perspective in the JJ field. Secondly, UN CRC and PYJ share similar core value, concepts and aims, with both advocating and being fully devoted to creating rights based, developmentally appropriate, child centered, family focused and community-based JJ system that empowers and facilitate positive development of all children. Third, PYJ is absolutely in accordance with established international expectations, principles and standards for JJ, setting up even more advanced goals and expectations for all parts involved. Fourth, PYJ shares core concepts, policies and practice solutions with balanced and restorative justice approach, its holistic and participatory

approach (including offender, victim and community), and focus on mediation, community and alternative measures rather than judicial procedures. Five, PYJ has come from science/research field and continue to lean on rigorous, empirical evaluation research and evidence-based policies, programs and practices, maintaining that our children deserve no less than well conceptualized practices that are proven to be effective with no harmful effects.

3.2. PYJ overall organizational and programmatic condition

Benson and Saito (2000) describe *four settings* that provide opportunities for healthy youth development in JJ system as: (a) *programs*, processes designed to address specific goals and youth outcomes that incorporates experiences and learnings to address and advance the positive youth development; (b) *organizations*, that provide youth development opportunities in which a wide variety of activities and relationships occur that are designed to improve the well-being of children and youth; (c) *socializing systems,* are an array of complex and omnipresent systems intended to enhance processes and outcomes consonant with youth development principles, and (d) community includes geographic place within which programs, organizations, and systems intersect as well as social norms, resources, relationships, and informal settings that dramatically inform human development – both directly and indirectly.

Five principles for good PYJ practice include strong commitment to: (1) promotion of feelings of physical safety, unconditional emotional acceptance, positive regard, and support and guidance; (2) promotion and facilitation of establishment and maintaining healthy interpersonal relationships with, at least, one close relationship with pro-social and caring adult person; (3) promotion and creating opportunities for meaningful engagement of youth on its own reorganization, recovery, development and self-reliance; (4) creating opportunities for meaningful and age appropriate engagement in local community programs and activities; (5) creating opportunities for youth engagement in ample of diverse, well-organized programs and activities for development of youth life, social, employment, cognitive and other skills and competences.

3.3. Evaluation of PYD programs implementation

Small but growing body of systematic, scientific, empirical evaluative studies on PYJ efficiency have indicated that PYJ based programs produce positive outcomes. Scales and Leffert (1999) found that participation in PYD activities produced several positive outcomes including: (a) increased safety, (b) increased academic achievement, (c)greater communication in the family, (d) fewer psychosocial problems, such as loneliness, shyness, and hopelessness, (e) decreased involvement in risky behavers, such as drug use and juvenile delinquency, (f) increased self-esteem, increased popularity, increased sense of personal control, and enhanced identity development.

Contalano and colleagues (2004) conducted analysis of 25 PYD programs to find that some of the programs have improved many positive behaviors (self-control, assertiveness, problem solving, interpersonal skills, social acceptance, social achievement, competition of schoolwork, graduation rates, parental trust, self-efficacy, and self-esteem), while decreased negative behaviors (hitting, carrying weapons, vehicle theft, school failure,

negative family events, teen pregnancy, skipping classes, school suspensions, and alcohol, tobacco, and another drug use).

Durlak and colleagues (2007) reviewed 526 studies that included universal competence-promotion outcomes have found statistically sufficient positive effect sizes ranging from modest to large in magnitude. Durlak, Weissberg, and Pachman (2010) in a meta-analysis of afterschool programs that promoted personal and social skills in children, confirmed that participants of the programs experienced significant reduction in their problem behaviors and significant increases in their perceptions and bonding to school, positive social behaviors, school grades, and levels of academic achievement.

All those, and many other, evaluative studies (Elias, M. J. at all., 1991, Greenberg, M. T. &Kusche, D.A. 1997, O'Donnel, J. at all., 1997, Orr, M. T. at all, 1997, Pittman, K.J. 1991) provided strong empirical evidence that youth development programs are promising tool in the arsenal of programs designated to decrease problem behaviors. (OJJDP).

4. KEY CHALLENGES FOR PROMOTION OF PYJ MODEL

Despite the fact that PYJ offers coherent conceptual and methodological framework which is fully in accordance with progressive trends in JJ system reform, and is proven to be effective, it is facing many challenges and obstacles for its wider implementation in JJ field. Some of most common challenges include the following:(1) *Ignorance.* Many juvenile justice policy makers and practitioners are still ignoring the fact that PYJ exist as a concept, policy and practice as well as that PJJ projects and practice have already bean empirically proven to be effective; (2) *Resistance.*Institutional, cultural and political resistance to accept quite new policy and embrace new concept with goal to fully engage and empower youth, families and communities is still present and firm; (3) *Operationalization.* Problems related to translating theoretical concepts of PYD into applicable policies, programs and practices and adhering faithfully to its core principles and methodologies; (4) *Corpus alineum.* PYJ is still in sharp conflict with traditional, law based, concept of juvenile justice, so there are difficulties in accepting and incorporating significantly different approach into existing organizational model of practice; (5) PYJ presents challenge for professionals in juvenile justice field in terms of need for change and improvement of knowledge, skills and attitudes; (6) Sustainability. Tendency to temporarily experiment with PYJ and then to regret to "old good system."

CONCLUSION

Establishment of juvenile courts some 120 years ago have been accepted as a great accomplishment towards creating a truly child friendly juvenile justice systems. Ongoing effort of scientist, policy and lawmakersand practitioners during more than one century unfortunately failed to produce coherent, efficient JJ system that would protect and promote the best interest of children while protect safety of communities. Two main JJ models: welfare model and justice model did not collaborate well but rather entered in everlasting power straggle creating great deal of confusion and controversies.

Braking-through, cutting edge evidence-based knowledge from developmental science field has offered better understanding of children and youth development in contemporary

society as well as conceptual and methodological framework for fostering positive youth development, even, or especially in, juvenile justice field.

Those concepts, methodologies and practices have already been recognized as "third model of JJ" in the making, known as a Positive Youth Justice. The PYJ initiative is offering wholistic, synergetic approach aiming to protect safety of community through protection, promotion and facilitation of positive youth development.

Even though PYJ has receiving favorable evaluative results its implementation in JJ field is facing many obstacles and ambivalences ranging from ignorance to lip implementation.There is however strong agreement among developmental science and law scholars that PYD should be more seriously considered, more fatefully applied and evaluated, as it offers to achieve both JJ and child protection ideal – to protect safety of community while protecting rights, promoting well-being and facilitating positive youth development.

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POZITIVNOPRAVNI MODEL MALOLETNIČKE PRAVDE - PREGLED PRAVOSUDNIH I SOCIJALNIH MODELA MALOLETNIČKOG PRAVOSUDNOG SISTEMA

Od osnivanja prvih sudova za maloletnike, pre nekih sto godina, sistemi maloletničkog pravosuđa širom sveta su u stalnoj tranziciji, a tok razvoja se kreće u dvosmernom pravcu - od modela "blagostanja" do "pravosuđa po meri deteta". Savremeni modeli maloletničkog pravosuđa predstavljaju složenu i kontroverznu mešavinu oba modela, pri čemu nedostaju ili nedovoljna zaštita zajednice (društva) ili neodgovarajuća socijalna zaštita maloletnika. Tokom poslednjih nekoliko decenija, dva nova uticaja otvaraju nadu da će sporovi biti usaglašeni, odnosno da će se postići viši stepen koherentnosti sistema maloletničkog pravosuđa. Prvi je usvajanje Konvencije o pravima deteta, a drugi je primena najsavremenijih naučnih saznanja koja omogućavaju dubinsko razumevanje razvoja mladih i njihovih kapaciteta za promenu i razvoj. Sinergija zakona i razvojnih nauka, doprinela je nastanku novog modela maloletničke pravde. Ovaj model, prvenstveno se fokusira na zaštitne faktore, snagu i potencijale deteta, porodice i lokalne zajednice, sa ciljem da se identifikuju, aktiviraju i unaprede veštine koje su neophodne za uspešnu tranziciju mladih iz adolescencije u odraslo doba.
Svrha ovog rada je predstavljanje pomenutog novog modela maloletničke pravde, od njegovog nastanka, opisivanjem teorijske pozadine, uz naglašavanje osnovnih teorijskih prinicipa, te temeljne analize konceptualno - metodološkog okvira, kao i predstavljanje programa prevencije i tretmana koji su zasnovani na tom modelu. Najnovije međunarodne evaluacione studije, predstavljaju snažan dokaz njegove efikasnosti, te će i ovi empirijski dokazi biti predstavljeni i razmotreni u radu. Tipični izazovi, ambivalencije i prepreke za implementaciju ovog obećavajućeg modela, kao i uputstva za dalji razvoj istraživanja, konceptualizaciju i implementaciju novog modela, navedeni su u zaključnom delu rada.

KLJUČNE REČI: sistem maloletničke pravde / pozitivan razvoj mladih / novi model pravde za mlade / zdrav razvoj mladih / modeli maloletničke pravde.

THE IDEOLOGICAL AND POLITICAL CONTEXT OF THE JUVENILE OFFENDERS SOCIAL PROTECTION REFORM IN SERBIA: AN EXPERIMENT OF NEOLIBERAL HEGEMONY[*]

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The subject of this work is a synthesis of recent ideas of scientific, professional and political community concerning what directions should reform of social protection system – the part relating to children and juveniles with delinquent behavior follow. Social protection institutions are the key segment of organized and formal systems of social reaction to juvenile delinquency. The most general role of the modern social protection system that was developed is dealing with the protection of the interests of children and juveniles. Social services start from the premise that the crime of children and juveniles in the manifestation of social development and meeting their social needs. The main purpose of the article is to give a critical analysis of reform ideas and point out certain dilemmas and controversies which are brought about in this field in respect of reform procedures. The paper critically evaluate national experiences in the reform social protection system. The analysis method used in the present article is the document analysis one. The analysis done indicates the possibility of identification of the basic ideological of reform of social protection system related to juvenile delinquency, as the concept of individual responsibility for life trouble, pluralism of services, decentralization, redefinition of methods and standards of institutions, case management and deinstitutionalization.

KEY WORDS: social protection / ideology / reform / juvenile offenders / Serbia

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INTRODUCTION

Since the political changes in 2000, the scientific and professional public has shared the opinion that changes in the system of (juvenile offenders) social protection are necessary considering it is accompanied by numerous weaknesses: systemic, methodological, organizational, personnel, normative, etc. However, the context of the social protection reform is the period when the state creates a market system of the economy hindered by numerous social problems and when social protection is expected to be at the same time as efficient and cost-effective for the state as possible! In the situation of the "chronically" limited budget and the constant pressure put on it by dissatisfied social and professional groups (but also the pressure of international financial institutions to reduce social transfers), the post-socialist transition countries are constantly searching for a compromise between these two basic concepts of social protection: the liberal-individualist and collectivist-egalitarian and their interforms: social-democratic and neo-conservative concept.

Hence the politicians who are guided by the "natural logic" of utilitarianism intervening where the pressure on the government is greatest. In such a "logic" it is easy to forget many marginal social groups characterized by both disorganization and social impotence. This also refers to the population of juvenile offenders, especially those who are housed in institutions. However, not only the "wards" but also the professionals employed in social protection are marginalized due to poor working conditions, low salaries, low social recognition which affects professional dissatisfaction and the tendency towards non-innovation and "encapsulation" in existing ways and models of work.

The aim of this paper is to retrospectively analyze the ideological course and outcome of the (juvenile offenders) social protection system reform, with the hypothesis that this reform was part of a neoliberal project, yielding confusing and largely unsuccessful practical outcomes.

1. IDEOLOGICAL AND PHILOSOPHICAL BASES OF (NEO) LIBERALISM AND SOCIAL POLICY

The actuality of the revived interest in liberal thought and practice arose after the crisis of the "state of well-being" and the disappearance of socialist systems in Europe. This interest has two faces: on the one hand, it is a demand for the advantages of a market economy in relation to an economically intervening state, and on the other hand, it is a demand for human rights against any new form of despotism (Bobio, 1990).

Both classic and contemporary (neo)liberalism should be primarily seen as a reaction to the systems of authority and arbitrary rule. Its basic ideological pretension is the "building" of such a system in which individual and civil freedoms are established as the main dam against the possible tyranny of the state. The liberal strategy establishes such a system in three ways: by minimizing the state (the so-called "minimal state"), by the autonomy of society ("civil society order") and by procedural legitimacy (Podunavac, 1990). The minimal state is the "widest" state that can be justified. A state more extensive than minimal could only violate human rights (Nozick, 1974).

The central notion of the entire liberal ideology is the idea of individual freedom as the source of the natural law of every human being. The core of the key natural rights is (according to the founder of English liberalism, John Locke) the right to life, to freedom, and to property. These rights are original and inalienable properties of every human being. In the liberal tradition, freedom is the good that must be distributed in the most righteous way. Every individual needs to be ensured the same sphere of individual freedom which cannot be hampered by the holders of political power. The historically shaped form of private property is the condition of human existence and the natural basis of individual freedom in general. It is the deduction of freedom from private property and the free market (Tadić, 1996).

Anthropological positions of (neo)liberalism state that people are distinguished, above all, by self-love, own interests and the limitation of the power of knowledge, far more than altruism, goodness and mind's omnipotence. People are imperfect and sometimes irrational, but still, they succeed in creating, often without any conscious or deliberate intent, complex social institutions that form the basis of individuals' rational behaviour. The social life of a man rests on tradition, customs and institutions (rights, money, markets, etc.).

(Neo)liberal ideology and state favour individual private property rights, privatization, the rule of law, strong judicial power, political pluralism, free functioning of markets and trade (deregulation), capital mobility and competition fostering. These values are considered to reduce the bureaucratic state and encourage the efficiency, productivity, quality improvement of services and reduction of the economic costs of the state and individuals (Harvey, 2012).

In terms of social policy, the key ideological problem for (neo)liberals is the "place" where it should "stop". Not only because of budget constraints or encroachments on freedom, but also because of the fact that happiness (as an ideal) is not possible if people are not left to put effort into important things in life on their own. Each individual is responsible for his/her own life decisions and progress. The point of the (neo)liberal view is that people spontaneously try to improve their lives, and by taking over individual care from the state, individuals and communities lose pleasure and responsibility that can be achieved through voluntary activities. The fact the government thinks it can do the work is not a sufficient justification for its intervention (Murray, 1990). The existence of a state that is responsible for us and our families deprives us of many of our responsibilities that determine the meaning of man's life (Poper, 1993).

Social policy in the "minimal state" and neoliberal model is based on three key principles (Milosavljević, 1996: 69):

- the principle of subsidiarity: implies that social services can be developed only as subsidiaries in cases where neither the market nor the reciprocity, personal relations and engagement through the family and free associations of citizens succeed in protecting individuals who are powerless to create and acquire;
- the principle of selectivity: implies that social services only act when the primary and natural mechanisms fail, in cases of the absolute impotence of individuals to alleviate their troubles;
- the principle of charity and family solidarity: material inequality is one of the inevitable conditions under which people's lives take place. The role of the family is not only protective (in the case of social need), but above all, it should

interiorize the values of self-discipline, responsibility, mastering knowledge and skills needed for life in the market and "competitive society."

2. PROBLEMS OF NEOLIBERAL IDEOLOGY IN PRACTICE

The historical significance of (neo)liberalism is reflected in the fact of emphasizing the issues of ensuring the development of individual freedoms. The central field of (neo)liberalism is contained in the standpoint of the individualistic conception of society and history and the emphasis on the individual as the starting point for every program of human emancipation (Podunavac, 1990). The popularity of liberal ideas arises for reasons of the propensity for political compromises and openness to other ideas provided they reduce social tensions. That is why liberal perceptions in practice are very often combined with neoconservative as well as labourist and social-democratic ideas.

However, in (neo)liberal political practice and state there are numerous contradictions that can be clearly seen today, after the multi-decade domination of this ideology in Western capitalist and post-socialist transitions to states and societies.

First of all, it seems that the view of the conflict of the principle of freedom and the principle of distributive justice/state intervention in the social sphere easily leads to great social stratification and inequality. The question of the "ultimate measure" of justification of inequality arises, even if we take into account the (neo)liberal view of inequality as a natural state. In this way, "freedom for all" is turned into "freedom only for some".

Although they believe in pluralism in the context of political freedoms, neoliberals are "suspicious" of democracy as the order of majority rule, as it may pose a threat to individual rights and constitutional freedoms. According to Harvey (2012), neoliberals see democracy as a luxury that can only be achieved in situations of material wealth and a strong middle class, which would guarantee social stability. That is why, in practice, neoliberals easily cross the Rubicon of democracy by state governance through elites, experts, executive orders of the government and judicial decisions, and less by democratic and parliamentary decision-making. This transforms the state into an authoritarian and anti-democratic organization, which, due to fears of populism and non-democratic movements, enforces the brutal force of power, fosters uniform globalization and strong propaganda directed towards inadequate internal movements or other states.

According to Harvey, the theory of neo-liberalism and the practice of a neoliberal state foster particularly controversial and "foggy" fields (Harvey, 2012):

- competition often ends with the creation of monopoly or oligopoly;
- there are moments when a state should (must!) intervene in the market, for example when human health is endangered (the example of environmental pollution and epidemics);
- although competition in an equal market game is promoted as a key social principle, it is obvious that some in the society are better informed, more influential, more powerful than others, which leads to concentration of wealth and renewal of class power in the hands of a small number of people;
- a neoliberal state considers its task is the "backward" stimulation of the market and a positive business climate as the basic regulator of social relations, but on the

other hand such a state must also provide "civil loyalty" for mass acceptance of its values. In many cases this has turned into the use of nationalism and (or) military interventionism as a cohesive force of social legitimacy;

- individualism as a value principle that is at the heart of neoliberal ideology can yield speculation, corruption, financial scandals and ultimately a "loss of citizens" confidence in the state, decrease in social solidarity, increase in crime and antisocial phenomena, and a chronic instability of society.

3. SOCIAL PROTECTION AS PART OF A SOCIAL RESPONSE TO JUVENILE DELINQUENCY

Social protection system and institutions are a key link within an organized and formal system of social response to the crimes of children and minors. The most general social role of social protection is the protection of children's and minor's interests. The social welfare services are based on the view that the crimes committed by children and minors are a manifestation of disorders in social development and meeting of their social needs. The most general social and political goal of social service participation in social response is the humanization of social relations and humane treatment of the part of population that, due to the age, developmental, and psychological characteristics (or total bio-psycho-social maturity), does not share the same attitude towards a committed criminal act with adult offenders.

When talking about social protection institutions, the greatest attention should justifiably be paid to the guardianship authority or centre for social work. This institution has an irreplaceable importance in the social response to juvenile crime and, in general, to all forms of juvenile delinquency. In the criminal and procedural terms, the guardianship authority has a dual role: on the one hand, an auxiliary body to whom the court orders or entrusts the performance of certain tasks, and on the other hand, a body with independent competence during the proceedings against minors which can influence the very course of the proceedings by its decisions.

In addition to participating in criminal proceedings and giving opinions to the court with regard to the imposition of an adequate criminal sanction, the guardianship authority has other normatively defined roles which fall within the domain of the execution of criminal sanctions: from the implementation of courtly imposed corrective measures, the monitoring of institutional measures and the execution of the sentence of juvenile imprisonment, to the post-penalty acceptance of minors and the application of a variety of family and social protection measures on the minor and its family. Having in mind all these roles, the guardianship authority is an institution through which this social deviation completely "refracts."

4. WHY TO REFORM THE SOCIAL PROTECTION OF JUVENILE OFFENDERS?

The following has most often been presented to the public as important problems of the social protection system of juvenile offenders that should have been (must!) the subject of the reform (Jugović, 2006):

- the problem of the normative powers of the guardianship authority: the merger of legal and social protection,
- the overemphasis on the administrative at the expense of the expert functions of the guardianship authority,
- the overload by the assessment process affecting the lack of time for the implementation of corrective or supervisory measures;
- excessive orientation, in assessing the type of corrective measure, towards the severity of the criminal offense and less towards the needs and potentials of the minors (acting as a judge): among the experts of the guardianship authority, the decisive influence on the formulation of the opinion on the most appropriate corrective measure belongs to: first the severity of crime, second the attitude towards the committed crime and finally the degree of mental development;
- the dominance of the clinical model in the work and the medicalization of the categorical apparatus, which creates excessive "orientation towards the negative" in the assessment phase (looking for omissions, shortcomings, weaknesses) and less towards the healthy and positive potentials of the minor),
- the lack of a concept of theoretical foundations of action which is expressed also through the problem of basic definitions of "diagnostic categories" and their degree;
- weakness in monitoring minors housed in institutions due to temporal, financial and technical constraints
- (in)efficiency and methodological one-dimensionality;
- the lack of systematically elaborated standardization of the values, structure, processes, services and outcomes of the work of social protection services,
- the absence of several modalities and programs of housing different and heterogeneous subgroups of juvenile offenders,
- problems of establishing living environment as little restrictive as possible in the institutional protection of juvenile offenders,
- financial problems in ensuring adequate post-penalty protection.

According to some experts, the Convention on the Rights of the Child has been violated in Serbia in relation to (Bošnjak, 2003): the child's right to a family; accommodation in institutions as the last resort; violation of the principle of proximity of alternative accommodation; violation of the right to the maximum development of individual potentials and self-esteem by accommodation in large institutions of collectivist orientation; violation of the right to express opinion and freedom of choice, the activity due to the restriction of institutions; the classification of Roma children as developmentally disabled and their placement in special schools and institutions to a far greater degree compared to the average population.

5. CHARACTERISTICS OF THE SOCIAL PROTECTION REFORM

In the last 18 years, the main features of the social protection reform in Serbia have been the momentum of (domestic and foreign) investments/donations to the social structure, the involvement of international partners in reform processes, the tendency towards the development of community services, the multiplication of service providers, the strengthening of the NGO sector importance, the involvement of expert workers in numerous educations and licensing, the creation of a professional association – Chamber of Social Protection, etc. Following the changes in 2000, thanks to international donations, the system of material benefits, previously collapsed due to large delays in payments and insufficient budgetary allocations, has been revitalized. The goal of the changes was to improve the social assistance system in order to reach as many citizens as possible, to improve the quality of services, to shift the focus from institutional accommodation to services in the local community and to implement partial decentralization (Babić, 2010).

The "spirit of change" in the social protection of Serbia clearly reflects the 2005 Social Protection Development Strategy, which sets out the directions of action as the starting points: system efficiency; strengthening of social cohesion; fostering independence and the ability of people to help themselves; improving the social status of citizens at the personal, family and wider social level; ensuring the protection of the most vulnerable social groups that are not able to participate in the economic activity to ensure their existence.

Key reformers have emphasized that the state should retain in its hands only the part of the social sector that should meet the principle of solidarity. Also, the state does not have to be the only organizer, financier and "producer" of social services (Matković, 2003). The neoliberal model of social policy, therefore, supports the view that, for example, the engagement of the non-governmental sector by the state for the state itself is both cheaper and morally more justified than when the money from the budget is spent through investing in the state apparatus. As Vuković (2017) points out, the ideological climate of creating a new social policy after the changes in 2000 is well illustrated by the program text of B. Mijatović from the influential NGO, Center for Liberal-Democratic Studies. In this text, Mijatović starts from the fact that modern social policy must rely on ideas: greater responsibility of individuals for their own decisions, social assistance is granted only to the impotent, social solidarity is an expression of individual moral feelings, rather than the state decision, the role of the state is reduced to the regulation of relations whereby the state should withdraw from the sphere of decision-making, financing and provision of services, etc. (Vukovic, 2017).

In this way we can distinguish two main objectives of the social protection reform in Serbia: 1) system marketization through the multiplication of service providers and managerization in the governance of institutions, and 2) the individualization of the (potential) users' responsibilities. Completely in the spirit of neoliberal ideology.

The new Social Welfare Law was adopted in 2011 ("Official Gazette of the Republic of Serbia" No. 24/2011), and already in the very definition of social protection, we can notice its reform orientation, although predominantly towards the neoliberal concept. Thus, Article 2 states that social protection is "organized social activity of public interest aimed at providing assistance and empowerment for an independent and productive life in the society of individuals and families, as well as preventing the emergence and elimination of the consequences of social exclusion." In this definition, the emphasis is on providing

assistance and empowerment of endangered individuals and families for independent living, which highly correlates with the residual model of social policy and social protection, that is, the individual is responsible for his/her own life and the life of his/her family.

The starting point is the premise that there are two "natural" or socially determined channels or ways by which the individual needs of people can be met: market and family. When this does not work, the state interferes through its social welfare institutions that encourage people to train and include themselves in the work process to the minimum extent. Other people who want to help the vulnerable can do it voluntarily, by engaging in philanthropic organizations and providing help through them. Social protection goals only elaborate on and specify predominantly conceptual neoliberal premises, with an emphasis on the role and responsibility of the individual and the family in meeting their needs.

As a key challenge, the problem arose as to how to shift from the concept of institutionalization to deinstitutionalization, from centralization to decentralization, from the basis of "state care for man" into value and practical principles based on individualistic starting points in a relatively short time when there is no sufficiently developed market economy that opens more significant opportunities for employment and thus the assuming of individual responsibility for one's own life.

In relation to juvenile delinquency, this ideological discourse in criminal law insists that the minor himself/herself is responsible for the expressed behaviour. Here the delinquency of children and minors is interpreted predominantly through individual-psychic factors and the freedom of choice and will of the individual, in terms of whether he/she will behave asocially or prosocially. This has the ultimate goal implying that all the responsibility for the consequences of behaviour should be borne by the minor himself/herself. The neoliberal model of social policy strongly corresponds to the criminal-procedural model of justice (as opposed to the protective model). The central focus of this procedural model is the autonomy of the minor's will, as well as insisting on respect for universal human (liberal) rights (Jugović, Žunić, 2004).

In declarative terms, the minor offenders' social protection system reform in Serbia is based on contemporary scientific and democratic principles such as (Jugović, Žunić, 2004): the rights and best interests of the child and minor; the plurality (alternativity) of services and programs; participation / partnership of beneficiaries, social services and other local community institutions; support to parenthood and family preservation; early detection of children at risk; raising quality and continuous improvement of professional work; reducing the scope of institutional forms of protection and reducing the pressure on institutional accommodation. Likewise, the professional and political holders of the minor offenders' social protection reform have begun from the fact that this system should be reformed in the direction of: decentralization; redefining and restructuring the functions and standards of institutions; changes in the work methodology; establishing a continuum of protection and program diversity; and deinstitutionalization.

In terms of defining standards, the reform involved the following changes: a) defining the general values and principles of the Center for Social Work; b) labor standards and structural standards (material and human resources); c) process standards (services: type, co-operation inside and outside the service, case management, education, supervision; e) standards for professional practice (competence, code of conduct, confidentiality, publications, public relations and media, etc.); f) outcome standards (Džamonja-Ignjatović, Žegarac, 2002).

One of the biggest methodical changes in the functioning of the Centers for Social Work is the introduction of a professional procedure by the method of the case manager, in contrast to the previously used teamwork model. Ideologically, it was considered to be one of the ways to transform the Centers for Social Work and thereby overcome the limitations arising from medical and traditionally paternalistic approaches. Case management is defined as: "the method of social work in which the needs of the users and the family are assessed, a network of services that adequately responds to the user's multiple needs is organized, the process is coordinated, monitoring is performed, and the interests of users are evaluated and represented" (Milosavljević, Brkić, 2005: 260).

In relation to the existing working method, the case manager method introduces several important novelties (Brkić, 2008): a) commitment to a specific case. b) more efficient teamwork (emphasis on knowledge and skills, rather than professional profiles); c) shared responsibility in professional-user relation (instead of a collective, professional and personal responsibility is emphasized); d) orientation to strengths, rather than weaknesses of users (users are required to use their own potentials to overcome problems and establish control over their own lives). A new categorical apparatus is established - assessment and plan of services, replacing the terms of social diagnosis & history and treatment plan, which is not only of terminological but also of vital importance.

Reform ideas developed over the past 18 years also had normative sources in terms of international and legal documents and standards. Above all, it is the UN Convention on the Rights of the Child. In addition to this act, other UN documents such as the Beijing Rules on the treatment of children and young people in conflict with law (or the Standard Minimum Rules for the Administration of Juvenile Justice), the Riyadh Guidelines (the United Nations Guidelines on the Prevention of Juvenile Delinquency), the Tokyo Rules (United Nations Standard Minimum Rules for Non-custodial Measures). And finally, the normative source of the reform are the European standards for social services.

Although the strategy for the development of social protection in Serbia was adopted in 2005, six years passed until the adoption of a new Social Welfare Law (2011), as a normative framework for the implementation of changes. In the meantime, the changes were carried out partially and without sufficient insight into the whole and the consistency of the system. The conceptualization and implementation of changes came under the significant influence of foreign experts, international organizations (in particular the Open Society Foundation, Save the Children, UNICEF, DFID, UNDP / EU) as well as small, relatively closed monopolistic and political circles of domestic experts in economic and social politics, who created and introduced changes in the system or in its individual parts through project activities. According to Vuković (2017), a small group of 20 individuals was designed and implemented the service system reform in the period from 2001 to 2012, which was closed, basically coherent, connected in terms of interest (materially!), ideologically homogeneous and without alternative approaches and public critical reviews of the course and ideology of the reform.

6. NEOLIBERAL IMPACTS ON JUVENILE JUSTICE

One of the most important novelties introduced by the Juvenile Crime Law and the Law on Criminal and Legal Protection of Juveniles from 2005 is the introduction of corrective orders aimed at juveniles not entering criminal proceedings (the so-called diversion procedure) or suspending the proceedings and thus requiring extra-judicial social

intervention for individual cases. For the purposes of corrective orders, this Law emphasizes two interrelated objectives. The first objective is not to initiate criminal proceedings against a juvenile or to suspend it. The second objective is the concretization of the first goal: to affect the proper development of the minor and the strengthening of his/her personal responsibility so as not to commit crimes in the future through the application of a corrective order (Jugović, 2006).

To define the purpose of the corrective order aimed at "proper development of a minor" is relatively problematic given the question of scientific and professional consensus as to what the "proper development of a minor" is. In the Law, this term is related to future non-committing of offences as an indicator of proper development. It is quite certain that the term "proper development" of a minor cannot be related only to the non-committing of criminal offences; it is much wider than that. An even greater problem of this term is its moralizing character: as it follows that the cause of offending behaviour is "improper development". In contemporary humanities, such terms are not used in the description of the juvenile behaviour and its overall development. Through the formulation of the purpose of the corrective order in terms of the influence on the overall social and psycho-physical development and the best interests of the minor, it was possible to overcome this weakness in terminology in a legal-formalistic-general manner (required by the "language of legal provisions") (Jugović, 2006).

Article 10 of the Law defines the purpose of criminal sanctions, namely corrective measures and the juvenile imprisonment sentence. The ascertainments on the purpose of sanctions reappear here through the strengthening of the personal responsibility of the minor and the development of his/her personality (in this article, the concept of personality is used, unlike in Article 6 of the Law which defines the purposes of correctional orders), but through more precise prerequisites such as: supervision, providing protection and assistance to minors, upbringing and vocational training. The inclusion of juveniles in the community is recognized as the ultimate purpose of criminal sanctions, which is a good wording of the essential and social and individual goal of re-socialization in relation to juvenile offenders.

In the second paragraph of this article, it is stated that the purpose of the juvenile imprisonment is also the exercising of an increased influence on the juvenile perpetrator not to commit crimes in future, as well as on other juveniles not to commit crimes. It is not clear why the legislator thinks that the only the purpose of the juvenile imprisonment sentence should have a general-preventive significance in terms of the effect of this punishment on other minors not to commit crimes?! General-preventive significance should be the general purpose of all criminal sanctions, not only the most repressive one (Jugović, 2006).

In some way, the definition of the purpose of the corrective order aimed at strengthening personal responsibility so as not to commit criminal acts in the future is also problematic. It is important, but not enough, and not in itself. It is true that a minor needs to face the consequences of his/her behaviour and take responsibility for his/her own actions (Conragan, 2002). However, the question is to what extent he is realistically capable of assuming such responsibility on his own. It follows from that the delinquent act is only a consequence of the free will of the minor.

Ethiological studies and practice convincingly show that the family and wider social environment, along with personality traits, are key milieu for the emergence of juvenile

delinquency. Personal responsibility cannot be strengthened in threatening living and, in particular, family conditions. Therefore, the purpose of the corrective order could be defined not only through the strengthening of the personal responsibility of the minor, but also through strengthening of his family, social, cultural, educational, working and individual-psychic capacities (Jugović, 2006). The mistake is to interpret the entire problem only through the responsibility of minors: the success of all levels of prevention, even the prevention of recidivism, is the educational and counselling-therapeutic treatment of parents. Evaluation studies point to the significant success of the family system therapy program, parental competences training, as well as cognitive behavioural programs and programs of learning and modifying social skills that target both minors and their parents (Jugović, 2014).

A well-established and modernly conceived system of institutions and services for the treatment of young people in conflict with the law should be based on principles such as (Stakić, 2003): a) centeredness on the child - individualization of treatment in accordance with the best interests of the child / juvenile and his/her needs; b) focus on the family - directing the treatment towards preserving and improving the functioning of the family and the child it takes care of; c) integration into the local community - stimulating the capacity of the local community; d) the functionality of the institutions and the cultural-ethical sensitivity of their actions.

7. SOME OUTCOMES OF THE SOCIAL PROTECTION REFORM IN PRACTICE

First of all, social protection today faces many negative indicators of social development in Serbia. The rate of poverty or social exclusion risk (AROPE) as the most important indicator for monitoring the Europe 2020 strategy amounts to 42.1% in Serbia, which is after Bulgaria and Romania, higher than in any country in the EU. In recent years, data have shown the increase in the number of reported cases of domestic violence, the number of children without parental care, single-parent families, elderly who need help at home, children and adults with disabilities who cannot be included in the society without support service (World bank, 2011; Matković, Mijatović, Stanić, 2014).

By analyzing the current social protection system in Serbia, Babović (2010) estimates it is characterized by:

- a relatively small amount of material benefits (coupled with rigorous checks and low threshold);
- a modest network of local social protection services: local self-government units are responsible for opening services, but they rarely do so;
- the facilities for the accommodation of users have not been transformed, and the long-announced systematic involvement of the private sector has not happened;
- the state has not given up its principle commitment to switch from the system based on the dominance of the public sector and large institutions for the accommodation of users to a system of open community services that would equally be implemented by the private and public sector and which would prepare the user for independent living,

- the new social protection system will expect the beneficiaries - the poorest, most marginalized, the least active, educated and networked members of the society - to participate in decision-making, take responsibility for themselves and their families, represent their own rights and exert pressure on state authorities to fulfil their rights.

According to the analysis of the Social Inclusion and Poverty Reduction Team of the Government of the Republic Serbia (Matković, Stranjaković, 2016), the key features of the state of social protection in Serbia today look like this:

- social protection services are not provided continuously during the year;
- shelters, day care centres for children in conflict with the law, shelters for children and rest are poorly distributed in only 10 local self-government units;
- dependence on donor programs and poor sustainability of services
- the persuasive dominance of users from urban areas: the problem of accessibility of services;
- service providers are predominantly state-owned, with the exception of support for independent living services where the ratio is 50-50%;
- very low expenditures for social protection services within local self-government competence - about 0.065% of GDP
- average expenditures for local social protection services per capita as low as RSD 280 a year;
- most funds are "withdrawn" by daily community services with a share of 80%;
- the inclusion of children and young people with developmental disorders and disability is narrow;
- coverage of the elderly by home assistance service (1.1% of the total 65+ population) is low (e.g. Germany 2.6%)
- service quality problems and the need to review minimum standards of social protection services.
- Past experience from the beginning of the application of the case managing method to the centres for social work in Serbia points to numerous dilemmas and difficulties (which are both objective and subjective), such as[1]:
- equalizing different professions according to the requirements of a defined job "case manager": "everyone does everything" where work individualization to professional profiles is lost;
- high case manager burden and the risk of him/her not devoting sufficient time to the user due to the processes of the professional procedure itself and the large number of documents accompanying his/her work;
- the lack of necessary knowledge and competencies for quality case management and qualitatively uneven reports;

[1] According to the internal publication of the Standing Conference of Towns and Municipalities of Serbia: A report from the workshop "*The current state of social protection in towns*", held on 27/02/2015 in Arandjelovac and attended by 22 directors or representatives of the town Centers for Social Work in Serbia.

- undefined supervisor's work: supervisors receive the most difficult cases as their "undefined status" creates resistance in other employees;
- dilemma: how to organize supervision, as internal or external;
- case management is not accompanied by norms that take into account the number of inhabitants, the level of development and the characteristics of the community;
- the organization, number of employees and financing of the centres' work do not follow changes in the number of users, complication of problems and living situations of users, which negatively affects the quality of work,
- insufficient connectivity, communication and coordination with other systems in order to exchange data and perform tasks within the competence of the social system protection, healthcare, justice, education, and police.

INSTEAD OF A CONCLUSION

Since 2008, the global and local economic and social crisis has been putting social protection under multiple pressures arising from the spread of social issues, narrowing of material resources for action and focusing on philanthropic & supporting roles. Previously marginalized users are more affected by the social consequences of the crisis. The workload of social workers is growing due to the increase in the number of users and the complexity of their social troubles, which can result in the reduction of the importance of international standards of practice and the reduction in the quality of social work. Investments in the social protection system have been reduced, especially in preventive programs and early intervention programs. Governments pay more attention to economic indicators and assessments of the financial crisis than on the values of social cohesion, social justice and social welfare. A notable feature of the current state is also the relatively low material position of the employees in the social protection system.

The neoliberal experiment in the social protection reform in Serbia has turned into a policy of encapsulation and inconsistency of the ideological stronghold that mostly corresponds a neoconservative model: the key element of the reform - the development of social services failed, the social services market has not developed, an elitist minority of project beneficiaries of transition in social protection was created, which is into a change in the ideological or political matrix (this means that neoliberalism was only a means of personal gain at the given moment), and the situation is cemented by the tendency towards minority control of public resources and control of the conditions of the reproduction of professions in this system (Vuković, 2017). Although important changes are announced in the Social Welfare Law and working groups are being formed, there are no significant changes.

In an ideological sense, the current state seems more like a turn to ideological neoconservativism with the confusion elements "what to do next?". The idea of "earn for social assistance" and the importance of morals and working value for the social position of individuals and families are emphasized, increased security is being introduced in social services after family murders within the centers for social work, and professional workers are controlled in terms of respect for working hours (card system), etc. It is also evident that a part of the social protection system is increasingly being transferred, as part of the

pluralisation of services, into the private sector for wealthier individuals and families, the best examples for which are old people's homes and counselling-therapy services.

Social response to juvenile delinquency in Serbia is characterized by the absence of a clear strategy and a comprehensive system, the sporadicity of implementation of individual programs, the lack of a continuous operation and the connection of programs and low financial investment in the prevention system. Therefore, the question of "what to do" in social interventions towards juvenile crime in the transitional society of Serbia cannot be offered only an expert answer, before that we need a political answer to the question of what the real project of social and value development of this society is (Jugović, 2014).

The authors of this paper believe that (juvenile offenders) social protection in Serbia, in times of rapid social changes and crises, should pay special attention to humanistic ideas belonging to anti-discriminatory and anti-subjective perspectives. These perspectives must be integrated into the understanding of the real material reality of users, the ways of distributing social resources and the global social structures within which social protection works (Jugović, Brkić, 2013). Representation, empowerment and emancipatory approach, therefore, are the key ways to achieve humanistic values and the well-being of children in times of social turmoil.

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IDEOLOŠKI I POLITIČKI KONTEKST REFORME SOCIJALNE ZAŠTITE MALOLETNIH PRESTUPNIKA U SRBIJI: EKSPERIMENT NEOLIBERALNE HEGEMONIJE

Predmet ovog rada jeste sinteza dosadašnjih ideja naučne, stručne i političke javnosti o tome u kom pravcu treba da se kreće reforma sistema socijalne zaštite u tranzicijskim društvima koja sa odnosi na decu i maloletnike sa delinkventnim ponašanjem. Institucije socijalne zaštite predstavljaju ključan segment organizovanog i formalnog sistema društvenog reagovanja na maloletničko prestupništvo. Najopštija uloga savremeno koncipiranog sistema socijalne zaštite jeste bavljenje zaštitom interesa dece i maloletnika. Službe socijalne zaštite polaze od stanovišta da je kriminalitet dece i maloletnika manifestacija smetnji u socijalnom razvoju i zadovoljavanju njihovih socijalnih potreba. Osnovni cilj rada je kritička analiza reformskih ideja i ukazivanje na određene dileme i kontroverze koje su pogledu reformskih zahvata u ovoj oblasti javljaju. U radu se kritički ocenjuju domaća iskustva u reformi sistema socijalne zaštite. U radu se koristi metoda analize dokumenata. Analiza ukazuje da je moguće identifikovati osnovu ideologije reforme sistema socijalne zaštite maloletnih prestupnika, kao što su koncept individualne odgovornosti za životne probleme, pluralizam servisa, decentralizacija, redefinisanje metoda i standarda institucija, vođenje slučaja i deinstitucionalizacija.

KLJUČNE REČI: socijalna zaštita / ideologija / reforma / maloletni prestupnici / Srbija

CHILD VICTIMS IN SLOVENIAN CRIMINAL LAW

Katja FILIPČIČ, PhD*

In Slovenia, child victims have been receiving special attention since the end of the 90's. The Criminal Code has been changed to ensure better protection of children; the age of sexual consent has been raised, the time limit for statute of limitations in criminal offences against children has been prolonged, the special criminal record of the convictions for criminal offences against children has been introduced. New provisions in the Criminal Procedure Code are focused on reducing the negative effects of hearing (direct questioning of children under the age of 15 is not permitted in the main hearing), to assist the child in the exercise of their rights in the proceedings (the child has a right to a lawyer paid by the state), and in understanding the process (the child may be accompanied by a support person). These changes and measures represent a major step towards creating a more effective protection of children and a child-friendly justice, but they should be further developed and more attention should be drawn to problems in their implementation.

KEY WORDS: child victims / age of consent / statute of limitation / hearing / Slovenia

1. INTRODUCTION ON THE CORE CHARACTERISTICS OF OFFENCES AGAINST CHILDREN IN SLOVENIA

Every year there are about 2500 child victims of criminal offences in Slovenia (Table 1), but in the last ten years that number has been falling. Almost 60 % of offences against children are offences against marriage, family and children, next are offences against property (about 20%), offences against sexual inviolability (about 7%), offences against life and the body (about 4%), other groups of offences represent a minor part of the victimization of children (Brvar, 2015).

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Tabel 1: Child victims of criminal offences
(police data for years 2008 – 2017)

age	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
0-7 years	250	475	473	493	526	491	504	454	475	499	**4.640**
7-14 years	651	844	834	760	869	734	770	679	762	765	**7.668**
14-16 years	619	712	640	622	627	528	461	396	415	377	**5.397**
16-18 years	1.002	1.037	1.019	945	959	833	739	619	590	578	**8.321**
Total	**2.522**	**3.068**	**2.966**	**2.820**	**2.981**	**2.586**	**2.474**	**2.148**	**2.242**	**2.219**	**26.026**

Source: General police directorate

Children up to 14 years of age are most frequently victims of the offence of Non-payment of alimony (about 40% of all offences) and the offence of Neglect and maltreatment of a child (about 27% of all offences). The most frequently committed offence against children ages 14 to 18 is Theft (about 30% of all offences against this age group), the second spot taken by Non-payment of alimony (about 20% of all offences) (Brvar, 2015).

2. CHANGES OF THE SUBSTANTIAL CRIMINAL LAW

Above listed statistical data covers the period of the last ten years (2008 - 2017). Changes in legislation will be listed for a longer period, from year 1999 onward. Because of the influence of international documents and the professional and general public, changes with the purpose of better protecting children were added to the Criminal Code. Whether all changes were well thought out and have achieved (or will achieve) their goals will be explored in this presentation of Slovenian law.

2.1. Raising the age of consent

Criminal law protects children from sexual abuse with different offences. It bases itself on the assumption, that a child up to a certain age doesn't understand the consequences of agreeing to sexual relations and can therefore be an easy target of abuse. A person who has sexual relations with a child under a certain age, is for that reason an offender, even if the child agrees with the sexual activity. And viewed from the perspective of a child: due to the law trying to protect the child against sexual abuse, the child (up to a certain age) is not granted consenting rights to sexual relations (more on ability to consent in Bošnjak, 1998; Korošec, 1998; Korošec, 2008).

Slovenia raised the age of consent from 14 to 15 years of age in 1999.[1] The raise was affected by the resolution of the Parliamentary assembly of the Council of Europe in 1996,[2] which advises countries to set the age of consent to (at least) 15 years of age. Other international documents concerning protecting children from sexual abuse were

[1] Criminal Code, Official Gazette of the Republic of Slovenia, No. 63/1994, 23/1999.
[2] Resolution 1099 (1996) on the sexual exploitation of children, Art. 12: "The Assembly encourages the member states to reinforce punitive measures at national level and adopt criminal legislation on child prostitution without the delay. It underlines especially the need: ... vi. to incorporate into their legislation the principle that a minor under the age of 15 years cannot give her or his consent to sexual relations with an adult."

not as specific about what age is appropriate for consent. That is one of reason why this age varies worldwide, depending on tradition, culture, values. [3]

In Slovenia, the raise of the age of consent led to a gap between the age of criminal responsibility and the age of consent; children are mature enough for criminal responsibility at 14 years of age, while they're only mature enough to consent at 15 years of age. This raises two questions: (1) has the law in this way incriminated adolescent sexuality and (2) why does the child's maturity depend on whether the child has to be protected or punished.

In answering the first question, it has to be pointed out that upon raising the age of consent from 14 to 15 years of age, the legislators also decided that such an act is not "illegal if it is committed with a person of comparable age and if it corresponds to the mental and physical maturity of this person" (Criminal Code, Article 173), and with doing that denied the allegations of incriminating adolescent sexuality.

Instead of answering the second question, the paradox of comprehension of the maturity of children has to be pointed out: the state, by raising the age of consent, protects the child longer (until 15 years of age) from endangering itself with its immaturity and irresponsible behaviour (it therefore protects it because of its own immaturity), while if the same "immature" child (at age 14) performs an offence and with it threatens society, the child is comprehended as a mature and responsible person and is considered a criminally responsible. The comprehension of maturity and responsibility of a minor are apparently opposing.

2.2. Statute of limitation

Slovenia has raised the length of statutes of limitations twice for offences against sexual inviolability and offences against marriage, family and youth, if committed against children. Both changes present a resignation from the traditional principle of the length of statutes of limitations, which can be summed up with: the limitation period begins with the committing of the offence, the length of the statutes of limitations reflects the seriousness of the offence (in prosecution of more serious offences, the statute of limitations takes longer to expire).

The change in 1999[4] has kept the rule, that the limitation period begins with the committing of the offence, but it moved the date of expiration; criminal prosecution of these offences could not expire for five years after the victim reaching the age of majority (until 23 years of age). In 2008, the new Criminal Code[5] changed the statutes of limitations even further for the previously listed offences; the limitation period no longer begins with the committing of the offence, but instead with the victim reaching the age of majority. The statute of limitations traditionally reflects the seriousness of the criminal offence, and after a certain period of time, the punishment of the offender would no longer be legitimate. Is it appropriate to tie the legitimacy of punishment to a characteristic of the victim?

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[3] The age of consent differs around the world. More on that in Filipčič, 2005 and on https://www.ageofconsent.net/world. The comparison between the age of consent in Europe and in USA is interesting; in USA it is higher on average (Schaffner, 2002).

[4] Criminal Code, Official Gazette of the Republic of Slovenia, No. 63/1994, 23/1999.

[5] Criminal Code, Official Gazette of the Republic of Slovenia, No. 55/2008.

This regulation complies with the recommendation by the Council of Europe Rec (2001)16 on the protection of children against sexual exploitation, which among measures towards offender lists (article 37): "Seek to ensure that the limitation period for bringing criminal proceedings in the field of sexual exploitation only starts to run when the victim has ceased to be a child." In the Explanatory Reports of this recommendation, it's explained that this measure is intended to prevent short periods of limitations disallowing prosecution after the child reaching adulthood. In Slovenian legislation, this could not happen due to long periods of limitation for serious offences against sexual inviolability.[6] This is why questioning whether the change from 2008 was necessary and justified.

2.3. Sex offender registry

In 2008 Slovenia adopted the present Criminal Code, which introduced a special record of sex offenders against children, known to the public as "pedophile register". After a period of time designated by law, after which convictions for these offences are removed from the criminal record, these convictions are transferred into a special record. It is, in fact, a record of "erased convictions".

Registries of sex offenders first began to appear in the USA as a response to individual cruel cases. The most resounding case was that of a seven year old Megan, who was sexually abused and killed by a neighbour, previously convicted for sexual offence. Megan's parents claimed that their daughter would still be alive if they know who the neighbour was and were able to warn her not to trust him. As a result of public demands, a law was passed in New Jersey in 1994 (Megan's Law), and in 1996 the U.S. Congress demanded all states to create registries of sex offenders and some form of notification making the information publicly available. Some states even limited where those sex offenders may live; a certain distance from bus stations, schools and kindergartens, churches, parks, pools (Walker, 2011).

The idea behind creating special registries is that most offenders convicted for crimes against children's sexual inviolability continue their abuse even after serving their sentence. There has been no research conducted in Slovenia that would analyze recidivism of offenders of such offences. Yet there is a lot of foreign research that shows that the amount of recidivism rate is much lower than expected; in a period of three years after conviction 5,3% of offenders commit the same offences again (Harris, Hanson, 2004), after four years the recidivism rate is 6,7% (Hood et al., 2002), after five years 5,6% are arrested for committing sexual offences again (Kruttschnitt, Uggen, Shelton, 2000). Research also shows, that special records and informing the public of convicted sexual offenders are ineffective, they are even counterproductive, since the stigmatization and elimination of convicts from the community presents a factor for reoffending (Levenson, Cotter, 2005). Beside that, this regulation ignores the fact that friends and family members commit at least 90 % of child sexual abuse (Walker, 2011). Based on the presented data, the question whether registries are the correct way of ensuring children's safety is justified.

The Slovenian registry of sex offenders against children is different from the US ones in that it is not available to the public. The Criminal Sanctions Act[7] states that the

[6] Criminal prosecution is barred from taking place 30 years from the committing the rape of a child under the age of 15 years and 20 years from the committing less serious offences against sexual inviolability.
[7] Criminal Sanctions Act, Official Gazette of the Republic of Slovenia, No. 22/2000, 76/2008.

data from the registry can only be obtained by institutions, organizations or groups, which are responsible for educating, protecting or caring for children. This means that the purpose of the registry is to prevent people convicted for sexual offences against children from working in areas of education where they could establish contact with children. This purpose of creating registries follows the Framework Decision of the EU 2004/68/JHA from 22.12.2003,[8] although it has to be pointed out that the referenced document allows countries to decide, whether this prohibition would be temporary or permanent. Slovenia has chosen for it to be permanent.

The Slovenian sex offender registry raises some more concerns (Filipčič, 2007):

- Data from the registry cannot be accessed by courts, which leads to an absurd situation; an erased conviction, transferred to a special record, must be taken into account by a school when employing a new teacher, but it cannot be taken into account by a court if a person reoffends because the conviction is removed from the criminal record.
- The Slovenian arrangement is also unsuitable due to how widely accessible the data from the registry is. It can be accessed by "groups in charge of educating, protecting and caring for children and minors" (Criminal Sanctions Act, Article 250a). The term "group" is not defined by law and this means that the principle of legality is not respected enough.

3. CHILD VICTIM IN CRIMINAL PROCEEDINGS

In a criminal proceeding the child victims become an important source of evidence, which causes additional stress for children (secondary victimisation). To them, the police station and courthouse present an environment, which "was created by adults and is adapted to adults, an environment which they do not understand and where they are not understood, and one that most likely seems hostile or at least unpleasant to them" (Šugman, 2000: 207). Hearings in criminal proceedings are unpleasant to them, they cause fear, which makes it seem that "victims, by revealing crimes that were committed against them, jump out of the frying pan into the fire" (Božič, 2006: 28).

The basic purpose of criminal proceedings is to find out who committed the offence and impose an appropriate punishment. One of the purposes is also to discourage the offender from reoffending, and with that ensure the victim's safety. But the purpose of criminal proceedings is not to help the victims. The state is obligated to ensure such help outside of criminal proceedings, and also take measures to reduce the secondary victimisation in the criminal procedure itself. For this purpose, several new measures were introduced into the Slovenian Criminal Procedure Code (CPC)[9] after 1999. Though all those measures only apply to children, who are victims of certain offences: criminal offences against sexual inviolability, criminal offence Neglect and maltreatment of a child and criminal offence Trafficking in human beings.

[8] Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography, Article 5: "(3) Each Member State shall take the necessary measures to ensure that a natural person, who has been convicted of one of the offences referred to in Articles 2, 3 or 4, may, if appropriate, be temporarily or permanently prevented from exercising professional activities related to the supervision of children."
[9] Criminal Procedure Code, Official Gazette of the Republic of Slovenia, No. 63/1994, 72/1998, 6/1999.

3.1. Prohibition of direct questioning at the main hearing

Talking about a criminal offence can be very stressful for children, especially due to having to describe their victimisation to unknown people, repeat their testimony, while the stress is even more elevated if the accused is present at the hearing. Because of that, in 1999 the CPC prohibited questioning of child victims at the main hearing.[10] They can only be questioned by an investigating judge at the investigation, at which the accused must not be present. At the main hearing, their testimony is only read. The accused may pose (indirect) questions which he believes that the victim should answer in addition to their testimony. If the court decides that the questions are justified and that the answers are necessary to clear up the uncertainties, the witness is questioned by an investigating judge again, at which the prosecutor and the defense lawyer of the accused may be present, while the accused may not. The prohibition of questioning children at the main hearing interferes with the accused's ability to defend themselves but Slovenian Supreme court stated that "the right to posing indirect questions substitutes the right to confront the hostile witness" (Slovenian Supreme court, Case I Ips 1009/2011-149, 9th January 2014).

This prohibition of directly questioning is limited with the child's age; it only applies to children, who are younger than 15 at the time of the hearing. If the minor victim is 15 years of age or older, the court has the option (and not obligation) to remove the accused from the main hearing during the testimony.

The prohibition of directly questioning child victims at the main hearing and the prohibition of the presence of the accused at their questioning are efficient measures in reducing secondary victimisation. Though a question is raised of why the law only protects children up to 15 years of age from secondary victimisation. It should be considered whether it would not be appropriate to raise the age limit to the child's age of majority.

3.2. Attorney of a child victim

CPC's change in 1999 brought another important novelty: if a child up to 18 years of age is victim of specific offences (criminal offences against sexual inviolability, criminal offence of Neglect and maltreatment of a child and criminal offence Trafficking in human beings), they are required to have an attorney paid by the state.[11] An attorney is a guarantee, that the minor victim exercises their rights, granted to them by the CPC (such as prohibition from direct questioning at the main hearing, providing evidence, posing questions to the accused and witnesses, having access to the file, filing claims for indemnification). The attorney's purpose is to "lessen the pressure, which is exerted on the minor victim by the criminal procedure and the authority of the court, and to

[10] Criminal Procedure Code, Art. 331: "(5) Direct questioning of persons under 15 years of age who are victims of criminal offences referred to in the third paragraph of Article 65 of this Act shall not be permitted in the main hearing. In such instances, the court shall decide that the records of previous questioning of such persons be read."

[11] Criminal Procedure Code, Art. 65: "(3) In criminal proceedings conducted as a result of criminal offences against sexual inviolability referred to in Chapter XIX of the Penal Code, a criminal offence of neglect of minors and cruel treatment referred to in Article 201 of the Penal Code or a criminal offence of trafficking in human beings pursuant to Article 387.a of the Penal Code, an injured party who is a minor shall, from the initiation of the criminal proceedings onwards, have an attorney to care for his rights, particularly in connection with the protection of his integrity during examination before the court and during the assertion of a claim for indemnification. To injured parties who are minors without an attorney the court shall assign *ex officio* an attorney from among the members of the Bar."

help the minor participate in the procedure and understand it" (Slovenian Supreme court, Case I Ips 256/2001, 4th April 2002).

CPC ties the moment, from which a minor victim needs an attorney to the start of the criminal procedure. Though I think the moment should be set before the beginning of the procedure and should be tied to the moment the offence was reported to the police or to the child's first contact with the police. The purpose of an attorney would be fulfilled more that way (Filipčič, 2002: 191; Filipčič, 2005; Horvat, 2004: 153; Šugman, 2000: 214). This also comes from the EU Directive on helping victims (Directive 2012/29/EU); in its preamble it's stated: "(22) The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. " The Directive does not explicitly mention the right of the victim to an attorney, it's just stated that "victims may be accompanied by their legal representative" (Article 20). Its purpose is "to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings" (Article 1), meaning that victims require protection from the moment the offence is reported and not from the start of the criminal procedure.

The second question regarding attorney is who should take on the assignment. By CPC parents, as child's legal guardians, can select any person with any form of education to be the victim's representative. If not selected by the parents, it must be selected by the court in which case CPC states that it has to be a member of a Bar. In practice the attorney is mostly selected by the court. A lawyer (member of a Bar) is a suitable attorney, but only if he/she has extra competences from the fields of psychology, criminology and communication with children. In Slovenia we sadly have no specialized members of a Bar or any organised regular programmes to educate persons who would like to act as attorneys to children. The listed situation is inappropriate (Horvat, 2004: 153) and presents a bad implementation of the good purpose of an attorney, that being to protect the child's integrity during the criminal procedure. The necessity of additional training also comes from Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. In point 14 it is stated that: "All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them."

3.3. Trusted person

Since 2008 we have had another measure in the CPC important in reducing secondary victimisation of child victims: a minor victim can be accompanied by a person who is trusted by the minor.[12] This possibility is not limited to criminal procedures at which the minor victim is required to have an attorney; a trusted person can accompany a minor victim of any criminal offence. It is broader also in another aspect: the trusted person is not tied to the criminal procedure like an attorney is, as the trusted person can accompany a child at the preliminary procedure as well. The trusted person has no procedural rights, its purpose is not to care for the child's rights, but the child's feeling of safety, its understanding of what is going on at the police and the courtroom, making the child's meetings with law enforcement and the court less stressful. Thus Slovenia fulfills Directive 2012/29/EU, which in Article 20 explicitly

[12] Criminal Procedure Code, Art. 65: "(4) In a preliminary and criminal procedure, a person trusted by the minor injured party may accompany them."

states that the victim may be accompanied by a trusted person (referred to as "person of victim's choice").

With the introduction of attorneys and trusted persons, who accompany child victims during procedures, we have come close to the so-called dual representation; the attorney cares for the legal aspects of protecting the child's interests in the criminal procedure, while the trusted person cares for the child's feeling of safety and offers help in resolving mental distress. We therefore have a good legal basis, which allows the next step; establishing a professional body, which would care for children's representation in all court procedures (not only in criminal procedure) and would educate representatives, who would accompany children. This idea is not new, it has been circling the Slovenian professional public for over fifteen years (Novak, 2001).[13]

IN CONCLUSION

The Slovenian Criminal Code has been changed to ensure better protection of children; the age of sexual consent has been raised, the time limit for statute of limitations in criminal offences against children has been prolonged, the special criminal record of the convictions for criminal offences against children has been introduced. Along with the movement for the rights of victims in criminal procedures and the rights of children, formed demands, that the state has to reduce secondary victimisation of child victims with special measures. These measures have started being added to Slovenian legislation at the end of the 1990s. They aim to reduce the negative effects of questioning children, to help children exercise their rights in criminal procedures (an attorney for the child) and to help children understand the procedure (the child may be accompanied by a trusted person). The listed measures present a big step towards shaping a more child-friendly judiciary system, though the measures need to be further developed. Along with legislative changes, other measures improve the child's position in a criminal procedure, such as establishing friendlier rooms for questioning children outside the court, publishing a booklet which prepares the child for the hearing in a friendly and understandable way. Though more should be done to ensure that Slovenia meets the EU Directive from 2012 on minimal standards in the area of rights, support and protection of victims of criminal offences (Directive 2012/29/EU), and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice from 2010.

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[13] *De lege ferenda* would need to be established as a separate professional body for representing children, which would care for legal protection of children's rights during different procedures, as well as their personal integrity. In specific procedures (criminal, civil, administrative) the child would be accompanied by two persons; a lawyer and a trusted person (dual representation).

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DECA KAO ŽRTVE U KRIVIČNOM ZAKONODAVSTVU SLOVENIJE

Deci kao žrtvama, u Sloveniji se posvećuje posebna pažnja od kraja devedesetih godina dvadesetog veka. Krivični zakonik je promenjen, kako bi se osigurala bolja zaštita dece; podignuta je starosna granica u pogledu pristanka na seksualni odnos, produžen je rok zastarelosti u pogledu krivičnih dela kod kojih je pasivni subjekt dete, ali je uvedena i posebna evidencija presuda, u kojima se kao žrtva krivičnog dela pojavljuje dete. Nove odredbe Zakonika o krivičnom postupku usmerene su na: smanjenje negativnih efekata saslušanja (direktno ispitivanje osoba mlađih od petnaest godina na glavnom pretresu nije dozvoljeno), ostvarenje prava deteta u toku postupka (dete ima pravo na advokata koga plaća država), kao i na razumevanje procesa (dete može biti u pratnji osobe u koju ima poverenja). Navedene promene i mere predstavljaju veliki korak ka stvaranju pravosuđa po meri deteta, a time i efikasnije zaštite dece, pri čemu ih dalje treba razvijati, ali i posvetiti više pažnje da se umanje problemi pri njihovoj primeni u praksi.

KLJUČNE REČI: deca žrtve / starosna dob / zastarelost / saslušanje / Slovenija

PRAVOSUĐE PRILAGOĐENO DJECI - ZAKONODAVSTVO I PRAKSA U REPUBLICI HRVATSKOJ

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Osiguravanje standarda tzv. pravosuđa prilagođenog djeci kojima se bave različiti međunarodni, europski i nacionalni instrumenti podrazumijeva stvaranje uvjeta za aktivno sudjelovanje djece u postupcima i prilagodbu postupaka njihovom sudjelovanju. U Republici Hrvatskoj, posljednjih petnaestak godina značajan pomak učinjen je u području kaznenog sudovanja za mladež, slično kao i u zemljama u okruženju, razvojem specijaliziranih sudova za mladež, posebnim zakonodavstvom, te iako uvijek nedostanim, no ipak, treningom dijela stručnjaka u ovom području.

Sudjelovanje djece u građanskim postupcima, primarno obiteljskopravnim, dugo je bilo zanemareno. To posebice iznenađuje jer djeca, upravo u obiteljskopravnim predmetima sudjeluju kao stranke u postupku ili ih se odluke u tim postupcima neposredno tiču. Stoga je, uz sve druge aspekte pravosuđa prilagođenog djeci, za potrebe ovog rada najzanimljivije pitanje prava djeteta na izražavanje vlastitog mišljenja u građanskim, obiteljskim postupcima, te njegov (procesnopravni) položaj stranke u postupku. Reformom hrvatskog obiteljskog zakonodavstva iz 2014/2015. godine učinjen je ogroman normativni pomak u pozicioniranju djeteta kao stranke u obiteljskopravnim postupcima. Ostaje vidjeti koliko će praksa slijediti normativne zahtjeve te koliko su sva ostala očekivanja o pripremi djeteta prije i poslije sudskih i upravnih postupaka, opremljenost sudova, edukacija stručnjaka samo želja iskazana međunarodnim dokumentima, a koliko (ne)realnost hrvatskog pravosuđa.

KLJUČNE RIJEČI: pravosuđe prilagođeno djeci / prava djeteta / obiteljski postupci / dijete kao stranka u postupku

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UVOD

Djeca pripadaju skupini ranjivih osoba, a ta ranjivost proizlazi primarno iz njihove dobi koja za posljedicu nužno, većinu djetinjstva, ima ovisnost o drugim osobama, u pravilu roditeljima. U pravnom smislu, djeca nemaju poslovnu sposobnost, zastupaju ih zakonski zastupnici (roditelji ili skrbnici). Ova ranjivost djeteta, posebice je očita u situacijama kada dijete treba pristupiti sudu ili drugim tijelima u postupcima (sudskim ili upravnim) koji se odnose na njegova prava i interese. Stoga, relevantni pravni okvir na međunarodnoj i EU razini svojim dokumentima osigurava standarde tzv. pravosuđa prilagođenog djeci koja štiti poziciju djeteta. Temeljna načela postupno su uvođena u nacionalne pravne sustave, kako one iz država članica EU ali i u države koje to nisu, pri čemu primarno mislimo na europske države, odnosno članice Vijeća Europe.

Kako je koncept pravosuđa prilagođenog djeci izuzetno kompleksan, a odnosi se na sudske i upravne postupke, u okviru sudskih postupaka na kaznene, prekršajne, građanske, a pod pojmom postupka podrazumijevamo i faze prije kao i nakon formalnih postupaka, za potrebe ovog rada ograničit ćemo se na pravo na izražavanje mišljenja djeteta o stvarima koje ga se tiču, te njegov položaj stranke u građanskim, primarno obiteljskopravnim postupcima.

Naime, smatramo, da iako uvijek nedovoljno i s mnogim manjkavostima, kako u zakonodavstvu, a posebice u praksi, sudjelovanju djecu u sudskim kaznenim/prekršajnim postupcima pridaje se razmjerno velika pozornost. Smatramo da to proizlazi, slično kao i u drugim zemljama u okruženju, činjenici da je sustav maloljetničkog sudovanja reguliran posebnim propisom.[1] Također, imenovani su i posebni suci za maloljetnike, a njihova edukacija, iako uvijek nedovoljna, ipak se, u određenim fazama provodila.[2]

Smatramo da je sudjelovanje djece u građanskim (obiteljskim) postupcima[3] donedavno bila prilično zanemarena tema, iako djeca, gledano brojčano, puno češće sudjeluju u ovom postupcima. Ideja stranačke sposobnosti djeteta teško se "probija" kroz procesnopravna uređenja, te procesne odredbe propisa zapravo često ne korespondiraju s materijalnopravnim odredbama o pravima djeteta, a posebice ne odražavaju međunarodne standarde o pravosuđu naklonjenom djeci. Stoga ćemo se za potrebe ovog rada, osim sumarnih napomena o poznatim standardima pravosuđa prilagođenog djeci iz međunarodnih dokumenata, te napomena o stanju dječjih prava u Republici Hrvatskoj koja se odnose na sudjelovanje djece u sudskim postupcima općenito, pa i kao žrtve i svjedoka kaznenih djela, posebno baviti pravom djeteta na izražavanje vlastitog mišljenja i položajem stranke u građanskim (obiteljskim) postupcima. Naime, uz sva druga prava djece, kao i nužne materijalne i kadrovske preduvjete, interdisciplinarnost i edukaciju stručnjka, ostaje nam smatramo ipak za zaključiti kako je u samoj srži koncepta pravosuđa prilagođenog djetetu, upravo mogućnost da dijete samostalno, ili uz pomoć sudjeluje u postupku (pa i formalno kao stranka), te (neposredno) izrazi svoje mišljenje o svojim

[1] Zakon o sudovima za mladež, pročišćeni tekst zakona, Narodne novine, br. 84/11, 143/12, 148/13, 56/15.
[2] O kaznenom sudovanju za djecu, djeci kao svjedocima ili žrtvama kaznenih djela, v. poglavlje Zaštita djeteta svjedoka u postupcima policije te kaznenom i prekršajnom postupku, u publikaciji Dijete u pravosudnom postupku, Primjena Europske konvencije o ostvarivanju dječjih prava, Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu, Zagreb, 2012. (www.dijete.hr).
[3] V. više u: Uzelac A., Rešetar, B. (2009.), Procesni položaj djeteta u obiteljskom i građanskom procesnom pravu, u: Dijete i pravo, B. Rešetar (ur.), Osijek, str. 161-198.

pravima i stvarima o kojima se postupak vodi a koje ga se tiču. Upravo stoga ćemo u slijedećem poglavlju sumarno navesti odredbe međunarodnih dokumenata koji se odnose upravo na aspekt prava djeteta na izražavanje vlastitog mišljenja.

1. PRAVO DJETETA NA IZRAŽAVANJE MIŠLJENJA

1.1. Konvencija o pravima djeteta

Konvencija o pravima djeteta[4] globalni je međunarodni ugovor te najznačajniji dokument za zaštitu dječjih prava. Konvencija nema obrazloženja svojih odredaba (članaka), već Odbor za prava djeteta[5] povremeno komentira neka pitanja (sadržaje) od važnosti za primjenu Konvencije. Jedan od općih komenara Odbora, odnosi se upravo na pravo djeteta da bude saslušano. Riječ je o Općem komentara broj 12 iz 2009. godine.

Članak 12. Konvencije o pravima djeteta:

1. Države stranke osigurat će djetetu koje je u stanju oblikovati vlastito mišljenje, pravo na slobodno izražavanje svojih stavova o svim stvarima koje se na njega odnose, te ih uvažavati u skladu s dobi i zrelošću djeteta.

2. U tu svrhu, djetetu se izravno ili preko posrednika, odnosno odgovarajuće službe, mora osigurati da bude saslušano u svakom sudbenom i upravnom postupku koji se na njega odnosi, na način koji je usklađen s proceduralnim pravilima nacionalnog zakonodavstva."

Odredba članka 12. podijeljena je u dva stavka: u prvome se govori o pravu djeteta "na slobodno izražavanje svojih stavova o svim stvarima koje se na njega odnose", dakle odnosi se na vrlo široko poimanje participacije, a u drugome se koristi (pravna) procesna terminologija, pa se govori o "pravu djeteta da bude saslušano". Izrijekom se spominju sudski i upravni postupci, te se, obzirom na raznolikost nacionalnih zakonodavstva zemalja članica Konvencije određuje da se takvo izražavanje vlastitog mišljenja treba uskladiti s pravilima nacioalnog zakonodavstva. Upravo u rješenjima nacionalnih zakonodavstva vidimo stvarno jamstvo ostvarenja ovog Konvencijskog prava. Ono može biti poticajno i u skladu s duhom Konvencije, no može biti i restriktivno, te ne slijediti niti duh Konvencije, a ponekada niti materijalnopravne odredbe nacionalnog zakonodavstva koja često, deklaratorno normiraju određeno pravo djeteta, no procesne odredbe ne omogućuju ostvarenje navedenih prava u punom opsegu ili, u svjetlu Konvencije.

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[4] Konvencija o pravima djeteta, Službeni list SFRJ, Međunarodni ugovori, br. 15/1990, "Narodne novine", Međunarodni ugovori, br. 12/1993., 20/1997. U daljnjem tekstu Konvencija. Republika Hrvatska ratificirala je Konvenciju, time ona postaje dio pravnog poretka RH, a odredbom članka 140. Ustava RH po pravnoj je snazi iznad je zakona. Također, Europski sud za ljudska prava, razmatrajući navodne povrede prava djece, sve češće poziva na činjenicu da je pojedina država, prema kojoj se vodi postupak u Strasbourgu, država stranka i Konvencije o pravima djeteta. Također, EU postala je članica Konvencije.
Konvencijom je izrijekom priznato pravo na slobodno izražavanje svojih stavova u svim stvarima koje se odnose na njega, kasnije nazvano "pravo djeteta na sudjelovanje" (*participation right*). No, pod pojmom participacije djeteta danas se sadržajno smatra mnogo šire područje, kao što je sudjelovanje djeteta u društvenom životu i sl. Ovo pravo djeteta, na europskoj razini, detaljno je razrađeno u Europskoj konvenciji o ostvarivanju dječjih prava, a sadržavaju ga i drugi međunarodni dokumenti, kao što je Povelja o temeljnim pravima EU.

[5] Odbor za prava djeteta ustanovljen je odredbom članka 43. Konvencije, a predstavlja tijelo koje čini osamnaest nezavisnih stručnjaka, te oni ne predstavljaju zemlju iz koje dolaze. Odbor se sastaje jednom godišnje, svoja izvješća o radu upućuje svake dvije godine Općoj skupštini preko Gospodarskoga i Socijalnog vijeća, a države članice Konvencije dužne su mu periodično podnositi izvješća o primjeni Konvencije.

1.2. Opći komentar br. 12 o pravu djeteta da bude saslušano (2009).

Opći komentar br. 12 Odbora za prava djeteta u mnogome je širi od osadrženja samog prava djeteta da bude saslušano. Podijeljen je u nekoliko dijelova: sastoji se od analize odredbe čl. 12. Konvencije, potom se u odjeljku A objašnjavaju pretpostavke za puno ostvarenje prava djeteta da bude saslušano, posebice tijekom sudskih i administrativnih postupaka, u odjeljku B raspravlja se o povezanosti odredbe članka 12. s ostala tri opća načela Konvencije, kao i o povezanosti s drugim odredbama. U odjeljku C naznačeni su uvjeti pod kojima se ostvaruje pravo na sudjelovanje i utjecaj prava djeteta da bude saslušano u različitim situacijama i sredinama, u odjeljku D postavljene su osnovne pretpostavke za provedbu ovoga prava, a u odjeljku E izneseni su zaključci Odbora za prava djeteta. (Korać Graovac, 2012: 117)

Govoreći o pravu djeteta da bude saslušano, ključno je istaknuti slijedeće, bitne elemente elemente:

- Riječ je o pravu djeteta, no ne i obavezi.

Države ugovornice moraju osigurati da dijete dobije sve potrebne informacije i savjet, kako bi o tome moglo donijeti odluku u svojem najboljem interesu (točke 16., 22. i dalje). Dijete koje je odlučilo izraziti svoje mišljenje treba biti upozoreno da u svakom trenutku može odustati od daljnjeg sudjelovanja (točka 134.).

- Sposobnost djeteta oblikovati svoje mišljenje

Obveza je nadležnih tijela utvrditi je li dijete sposobno samo oblikovati mišljenje, a polazna pretpostavka je da jest, što znači da je teret dokaza da dijete nije sposobno oblikovati svoje mišljenje na nadležnom tijelu (točka 20. komentara). Odbor smatra kako nema dobne granice koja je pretpostavka da dijete izražava svoje mišljenje te da je zakonodavac ne bi trebao nametati, jer postoji mnogo načina da se pribavi mišljenje djeteta s obzirom na mogućnost i verbalnog i neverbalnog izražavanja (igra, govor tijela, izraz lica, crtanje i slikanje…). Nije nužno da dijete ima detaljno znanje o svim aspektima problema, već treba imati one informacije koje su dovoljne da oblikuje mišljenje.

Iskazivanje mišljenja djeteta može biti štetno za dijete, osobito kad su uključena vrlo mala djeca, djeca žrtve kaznenih djela, seksualnih delikata, nasilja ili zlostavljana djeca, a tada države moraju poduzeti sve potrebne mjere kako bi dijete bilo u potpunosti zaštićeno (točka 21. komentara)[6].

- Pravo slobodno izraziti svoje mišljenje.

Dijete mora moći izraziti svoje mišljenje bez pritiska, odnosno izabrati hoće li ga ili neće izraziti, pri čemu je i iskaz o odbijanju izražavanje mišljenja, dokaz ostvarenja tog prava. Djetetom se pritom ne bi smjelo manipulirati (tako da ne izražava vlastito mišljenje, već mišljenje druge osobe[7]), ne smije biti izloženo neprimjerenom utjecaju ili pritisku (točka 22. komentara). Važno je da se dijete saslušava samo onoliko puta koliko je to nužno,

[6] O seksualnom nasilju nad djecom, te ulozi stručnjaka izvanpravne struke, v. Buljan Flander, G, Razotkrivanje seksualnog zlostavljanja - stigma ili šansa za dijete, 25-32, u: Dijete u pravosudnom postupku, Primjena Europske konvencije o ostvarivanju dječjih prava, Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu, Zagreb, 2012.

[7] Upravo to je u praksi vrlo problematično utvrditi. Naime, vrlo često, u različitim postupcima, činjenica da npr. jedan roditelj živi s djetetom omogućava svojevrsnu manipulaciju i/ili otuđenje od drugog roditelja. Naravno, moguć je i sasvim suprotan primjer. Ovakvo manipulativno utjecanje na djecu posebice je uočljivo u tzv. Konfliktnim razvodima.

osobito kad iskazuje o po njega samog štetnim događajima. Odbor ističe kako je pribavljanje mišljenja djeteta težak proces koji može biti traumatično iskustvo za dijete (točka 24. komentara). Odbor roditelje ne isključuje,[8] već ih uključuje, ponekad zajedno s osobom koja je odgovorna za pribavljanje mišljenja djeteta, dakle profesionalcima u pojedinom sudskom ili upravnom postupku, da djetetu objasne sve o mogućim odlukama koje će biti donesene kao i o posljedicama koje uvaženo mišljenje djeteta može imati na donošenje odluka (točka 25. komentara).

- Izražavanje mišljenja o svim stvarima koje se odnose na dijete.

Odredba članka 12. obuhvaća sve situacije koje bi se mogle odnositi na dijete, i šira je od (formalnog) izražavanja mišljenja u sudskim i upravnim postupcima Primjerice, navodi se kako se ova odredba odnosi na postupke koji se vode povodom razdvajanja roditelja, o tome s kojim će roditeljem dijete živjeti, o roditeljskoj skrbi i posvojenju, kad su djeca u sukobu sa zakonom, kad su žrtve tjelesnog ili duševnog nasilja, spolne zlouporabe, povodom ostvarivanja prava iz zdravstvene ili socijalne skrbi, djeca bez pratnje, djeca žrtve ratnih sukoba… (točka 32. komentara).

Pravo djeteta da bude saslušano ne ovisi o tome tko je pokrenuo postupak, a države moraju osigurati da donositelji odluka u sudskim ili upravnim postupcima objasne[9] u kojoj su mjeri uzeli u obzir mišljenje djeteta te koje su bile posljedice uvažavanja djetetova mišljenja (točka 33. komentara).

- Uvažavanje mišljenja u skladu s dobi i zrelošću djeteta.

Odbor ističe kako jednostavno saslušanje[10] djeteta nije dovoljno, već ga se mora ozbiljno uzeti u obzir kad je dijete sposobno oblikovati svoje mišljenje (točka 28. komentara). Dob i zrelost djeteta moguće je procjenjivati samo individualno, s obzirom na primljene informacije, dosadašnje iskustvo djeteta, njegovu okolinu, društvena i kulturološka iščekivanja.

Zrelost se, pak, odnosi na mogućnost da dijete razumije i prihvati posljedice eventualno uvaženog mišljenja. Odbor za prava djeteta upućuje na to da je potrebno uzeti u obzir razvojne sposobnosti djeteta, kao i usmjeravanje te vodstvo njegovih roditelja. U kasnijem dijelu Komentara ističe kako se usmjeravanje roditelja, odnosno skrbnika, mora smanjivati kako dijete postaje zrelije, jer što je dijete zrelije, to stječe veću odgovornost pri ostvarivanju svojih prava (točke 29. do 31. te 84. do 85. komentara).

- Pravo djeteta da bude saslušano u svakom sudskom i upravnom postupku koji se odnosi na dijete.

[8] Osim u slučaju sukoba interesa.

[9] Upravo ovo izuzetno je značajno zbog npr. postupaka koji se vode pred Europskim sudom za ljudska prava. Naime, vrlo često se od stručnjka u praksi (u centrima za socijalnu skrb, suci) zna čuti primjedba .."ali..mi smo razgovarali s djetetom". Iako to može biti istina, vrlo često o tome u službenoj dokumentaciji nema nikakvog traga, te se ni na koji način ne može utvrditi da je tome doista tako, odnosno u obrazloženjima sudskih (upravnih) odluka činjenica da je dijete saslušano (i kako) vrlo često se uopće ne spominje. Stoga (nacionalno) normativno nastojanje za ostvarivanjem prava djeteta na izražavanje mišljenja ima i svoju dugoročno edukativnu funkciju. Naime, smisao odredaba zakona jest i potaknuti praksu na postupanje koje je u skladu s međunarodnim zahtjevima, a koji bez jasnih nacionalnih odredaba, usprkost postojanju konvencijskih pravila gotovo nikada ne bi bili ostvareni.

[10] Mogli bi reći da nije dovoljno strogo formalno ispunjenje obveze gdje će se u postupku dijete pitati da kaže što misli.

Dužnost je svakog nadležnog tijela koje vodi sudski ili upravni postupak u kojemu se odlučuje o nekom od pitanja koje se odnosi na dijete omogućiti djetetu da ostvari svoje pravo da bude saslušano. U spisima bi o tome svakako trebalo ostaviti odgovarajući trag.[11]

- Saslušanje može biti neposredno ili putem zastupnika ili odgovarajućeg tijela.

Nakon što je dijete odlučilo da želi biti saslušano, Odbor preporučuje da samo dijete odluči hoće li izraziti mišljenje neposredno ili posredno, a da se djetetu, kad god je to moguće, omogući da bude neposredno saslušano u postupku (točka 35. komentara). Također, Odbor za prava djeteta upozorava da, kad djetetovo mišljenje prenosi zastupnik djeteta (roditelj/i, ako ne postoji sukob interesa, odvjetnik ili neka druga osoba), važno je da ta osoba ispravno prenese stavove i mišljenje djeteta. U tom smislu zastupnik mora imati dostatno znanje i razumijevanje različitih aspekata postupka donošenja odluka u određenom sudskom postupku te iskustvo u radus djecom. Zastupnik mora biti svjestan da predstavlja isključivo interese djeteta, a ne interese drugih osoba, ustanova ili tijela, a zbog toga treba donijeti kodeks ponašanja za osobe koje su djetetovi zastupnici (točka 37. komentara).

Odbor za prava djeteta ne precizira kakav bi trebao biti utjecaj djeteta na izbor zastupnika, no sigurno je da bi i na tu odluku trebalo primijeniti pravilo da treba uzeti u obzir mišljenje djeteta.

- Saslušanje se može obaviti na način koji je u skladu s domaćim postupovnim pravilima.

Kako je riječ o globalnom dokumentu, Odbor za prava djeteta prihvaća mogućnost prilagodbe zahtjeva domaćim postupovnim pravilima, no to se ne smije tumačiti na način da se djetetu uskrati pravo da bude saslušano. Dapače, Odbor za prava djeteta ističe kako propust prvostupanjskog tijela može (i treba) dovesti do preispitivanjau postupku povodom pravnih lijekova (točke 38. i 39. komentara), no ne navodi tko bi bio ovlaštenik za ulaganje pravnog lijeka. Smatramo da, u skladu s duhom Konvencije i pravom djeteta da bude saslušano treba omogućiti procesnu poziciju djeteta kao stranke u postupcima koji ga se tiču.

Također, kako bi pravo djeteta da bude saslušano bilo doista i učinkovito primijenjeno, potrebno je, prema preporuci Odbora za prava djeteta, pet faza, bez obzira na to je li riječ o formalnim (sudskim ili upravnim postupcima) postupcima ili o nekom drugom postupku[12]. To su priprema djeteta, saslušanje, procjena sposobnosti djeteta, povratna informacija o tome kakvo je značenje pridano mišljenju djeteta te omogućavanje postupka povodom primjene pravnih lijekova za zaštitu njegova prava.

1.3. Europska konvencija o ostvarivanju dječjih prava

Europska konvencija o ostvarivanju dječjih prava donesena je 1996. godine u okviru Vijeća Europe. Skupivši dovoljan broj ratifikacija stupila je na snagu 2000. godine.[13]

[11] V. bilješku 6.
[12] Npr. medijacija ili sl.
[13] Republika Hrvatska potpisala je Konvenciju 8. ožujka 1999., a ratificirala ju je 4. veljače 2010. Narodne novine, Međunarodni ugovori, br. 1/2010.

Uporište za donošenje ove Konvencije nalazimo i u samoj Konvenciji UN-a o pravima djece koja potiče sklapanje novih ugovora, multilateralih i bilateralnih a kojima bi se omogućila i/ili olakšala primjena same Konvencije o pravima djeteta.

U svojoj srži, Europska konvencija o ostvarivanju dječjih prava je dokument postupovnog karaktera, a zbog svijesti da su prava djece posebice ugrožena u vezi s obiteljskopravnim postupcima, posebice ostvarivanjem roditeljske skrbi, Konvencija osobito ističe upravo područje obiteljskih odnosa[14]. Ona se, skladu s člankom 1. stavkom 3. primjenjuje isključivo na obiteljskopravne odnose te se od država zahtijeva da pri potpisivanju odnosno ratifikaciji odrede koje su to kategorije obiteljskih predmeta. Republika Hrvatska dala je prilikom potpisivanja izjavu da će se ova Konvencija primjenjivati na pet različitih kategorija. To su:

- postupak odlučivanja o roditeljskoj skrbi tijekom razvoda braka roditelja
- postupak ostvarivanja roditeljske skrbi
- mjere za zaštitu osobnih prava i interesa djeteta
- postupak posvojenja i
- postupak skrbništva za maloljetne osobe.

Postupovni karakter Konvencije, u smislu određivanja prava djeteta u sudskim i upravnim postupcima, ističe se kroz članak 3[15]., kojima se precizira da dijete ima pravo:

a) dobivanje svih odgovarajućih informacija,

b) dobivanje savjeta i izražavanje vlastitoga mišljenja,

c) dobivanje obavijesti o mogućim posljedicama uvažavanja iznesenoga mišljenja i svake druge odluke.

Konvencija nabraja i druga postupovna prava djece te ih u članku 5. navodi :

"... a) pravo zahtijevati da im pomaže odgovarajuća osoba koju sami izaberu kako bi im pomogla izraziti njihovo mišljenje;

b) pravo zahtijevati, osobno ili uz pomoć drugih osoba ili tijela, imenovanje posebnog zastupnika, u odgovarajućim slučajevima odvjetnika;

c) pravo imenovati svojega vlastitog zastupnika;

d) pravo ostvarivati neka ili sva prava koja imaju stranke u takvim postupcima."

[14] V. O Konvenciji v. u : Hrabar, D., Europska konvencija o ostvarivanju dječjih prava - poseban zastupnik djeteta, 103-116, u: Dijete u pravosudnom postupku, Primjena Europske konvencije o ostvarivanju dječjih prava, Zbornik priopćenja sa stručnih skupova pravobraniteljice za djecu, Zagreb, 2012; Hrabar, D. (1996.), Europska konvencija o ostvarivanju dječjih prava – novi prilog promicanju dječjih prava, Zbornik Pravnog fakulteta u Zagrebu, 46, 4, str. 391-403.

[15] Pravo biti obaviješten i izražavati svoje mišljenje u postupku.

1.4. Smjernice Odbora ministara Vijeća Europe za pravosuđe prilagođeno djeci[16]

Smjernice se odnose na sudske (kaznene, građanske) i upravne postupke u kojima sudjeluju djeca. Također, smjernice se odnose i na pravosuđe u širem smislu te pomoć djeci i prije samih formalnih postupaka, kao i nakon formalnih postupaka. Smjernicama se, kao i njezinim obrazloženjem promiču i druge aktivnosti primjerene djeci, te praćenje i provedba Smjernica.

Kao temeljna načela ističu se: načelo sudjelovanja djece, najboljeg interesa djeteta, dostojanstva djeteta, zaštite od diskriminacije (posebna pomoć ranjivoj djeci, migrantima, azilantima, izbjeglicama, djeci s invaliditetom, bez pratnje, beskućnicima) i načelo vladavine prava (presumpcija nevinosti, načelo zakonitosti i proporcionalnosti, pravo na pravni savjet, pristup sudu, žalbu...).

Prava djeteta u sudskom postupku određuju se kao:

- pravo na pristup sudu,
- pravo na pravno savjetovanje i zastupanje,
- pravo na izražavanje mišljenja,
- pravo na hitnost,
- pravo na prilagodbu prostora i jezika.

Pravo biti saslušan i izraziti svoja stajališta Smjernicama se precizira na slijedeći način:

"...44. Suci moraju poštovati pravo djece da ih se sasluša u svim stvarima koje ih pogađaju ili barem kad se smatra da dovoljno razumiju stvari o kojima je riječ. Sredstva upotrijebljena u tu svrhu treba primijeniti na razini koja odgovara djetetovoj mogućnosti razumijevanja i sposobnosti komuniciranja, vodeći računa o okolnostima predmeta. Djecu treba pitati na koji način žele biti saslušana.

45. Djetetovim pogledima i mišljenju treba dati dužnu težinu u skladu s njegovom dobi i zrelošću.

46. Pravo biti saslušan je djetetovo pravo, a ne dužnost.

47. Djetetova dob ne smije biti jedini razlog koji sprečava njegovo saslušanje. Uvijek kad dijete potakne svoje saslušanje u predmetu koji ga pogađa, sudac ne smije, osim kad je to u najboljem interesu djeteta, odbiti saslušati dijete te treba saslušati njegova stajališta i mišljenje o stvarima koje ga se tiču u tom predmetu.

48. Djeci treba dati sve potrebne informacije o tome kako djelotvorno koristiti pravo na saslušanje. Međutim, treba im objasniti da njihovo pravo na saslušanje i na to da se njihova stajališta uzmu u obzir ne mora nužno utjecati na konačnu odluku.

49. Presude i sudske odluke koja utječu djecu treba propisno obrazložiti te ih rastumačiti jezikom koji djeca razumiju, posebno one odluke koje nisu uvažile djetetova stajališta i mišljenja."

[16] Tekst Smjernica na hrvatskom jeziku preuzet s: https://rm.coe.int/16806a450a

1.5. Uredba Vijeća (EZ) br. 2001/2003

Uredba Vijeća (EZ) br. 2001/2003 od 27. studenoga 2003. o nadležnosti, priznavanju i izvršenju sudskih odluka u bračnim sporovima i u stvarima povezanim s roditeljskom odgovornošću od 27. studenog 2003. Obzirom na sve veći broj predmeta s međunarodnim elementom[17], ističemo navedenu Uredbu u kojoj se kao kao razloge nepriznavanja sudske odluke koja se odnosi na roditeljsku odgovornost, između ostalog, propisuje:

- ako je odluka donesena, (osim u žurnome predmetu), a da pri tome djetetu nije omogućeno saslušanje, kršeći pri tome temeljna postupovna načela države članice u kojoj se zahtijeva priznavanje.

2. REFORMA HRVATSKOG OBITELJSKOG ZAKONODAVSTVA: DIJETE KAO STRANKA U OBITELJSKIM POSTUPCIMA I PRAVO DJETETA DA IZRAZI SVOJE MIŠLJENJE

Posljednja reforma hrvatskog obiteljskog zakonodavstva rezultirala je "novim" Obiteljskim zakonom iz 2015. godine.[18] Ovim propisom značajno se poboljšava[19] pravna, stranačka pozicija djeteta te jasnije definira pravo djeteta na sudjelovanje u obiteljskim postupcima, njegovo nepristrano zastupanje, kao i pravo na izražavanje vlastog mišljenja. Također, reformom obiteljskog zakonodavstva nastojalo se uskladiti nacionalni propis s zahtjevima iz međunarodnih obveza koje je Republika Hrvatska preuzela, kao i s odlukama Europskog suda za ljudska prava[20] .

2.1. Postupovna sposobnost djeteta

Procesnopravni položaj djeteta u sudskim postupcima u kojima se odlučuje o njegovim pravima, odredbama Obiteljskog zakona 2015 uređen je na posve nov način. U dotadašnjoj sudskoj praksi, po Obiteljskom zakonu iz 2003. godine javljali su se prijepori vezani za pitanje položaja i prava djeteta u postupcima u kojima se odlučivalo o njegovim pravima, a dijete nije uvijek imalo položaj stranke, te je ponekad bilo upitno je li ili nije dijete stranka u određenom postupku.[21]

Člankom 358. Obz[22], određuje se:

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[17] V. Aras Kramar, S., Marginalije uz (međunarodnu) nadležnost u predmetima o roditeljskoj skrbi, Pravni vijesnik, 33(2017), 1, str. 51-71, Osijek, 2017.

[18] Narodne novine, br. 103/2015 – dalje : Obz 2015.

[19] U sudskim postupcima u kojima se odlučuje o pravima djeteta sada se paralelno primjenjuju stari Obiteljski zakon iz 2003. (NN 116/03,17/04,136/04,107/07,57/11,61/11 i 25/13 - dalje Obz 2003) na postupke pokrenute do 1. studenog 2015.g. i važeći Obiteljski zakon iz 2015. godine, na postupke pokrenute nakon toga dana i ta činjenica bitno određuje položaj i prava djeteta u postupku kao i značajno različita procesna prava djeteta.

[20] O reformi hrvatskog obiteljskog zakonodavstva i teškoćama implementiranja (postupovnih) prava djece u nacionalno zakonodavstvo v. Aras Kramar, S., Milas Klarić, I., The Main Challenges of Implementing the Procedural Rights of the Child in the Family Justice Systems of Some Southeast European Countries ,The United Nations Convention on the Rights of the Child: Taking Stock after 25 Years and Looking Ahead / Liefaard, Ton ; Sloth-Nielsen, Julia (ur.)., Leiden/Boston: Brill/Nijhoff, 2017. str. 247-271.

[21] Npr. u postupcima za razvod braka, mjerama za zaštitu djece itd.

[22] Riječ je o odredbi u osmom dijelu zakona. U osmom dijelu zakona – "Postupak pred sudom", prva glava "Opće odredbe" odnose na sve obiteljske i statusne postupke (načela postupka, suci, suradnja suda i centra za socijalnu

"...Dijete je stranka u svim postupcima pred sudom u kojima se odlučuje o njegovim pravima i interesima. "

Dijete je stranka bez obzira tko je pokrenuo sudski postupak i bez obzira je li ili nije označio dijete kao stranku.

Osim toga, procesnopravni položaj djeteta u pojedinim obiteljskim sudskim postupcima u kojima se odlučuje o njegovim pravima i interesima, propisan je i u odredbama kojima se uređuju ti posebni postupci. Dijete je sada stranka u bračnim sporovima, paternitetskim i maternitetskim sporovima u kojima se uz osnovni spor odlučuje i s kojim će roditeljem dijete stanovati, osobnim odnosima s drugim roditeljem, načinu ostvarivanja roditeljske skrbi i uzdržavanju, kao i u samostalnim parnicama kada postoji spor o roditeljskoj skrbi, osobnim odnosima ili/i uzdržavanju. Dijete je stranka i u izvanparničnim postupcima kada između roditelja postoji sporazum o sadržajima roditeljske skrbi i/ili uzdržavanju, koji sud mora odobriti da bio ovršna isprava. To su postupci radi odobravanje plana o zajedničkoj roditeljskoj skrbi, odobravanja sporazuma o osobnim odnosima s djetetom ili odobravanja sporazuma o uzdržavanju, te pojednostavljenog postupka uzdržavanja. U slučaju postojanja sporazuma dijete zastupaju oba roditelja, odnosno u postupcima radi uzdržavanja roditelj s kojim dijete stanuje, a slučaju spora ili sukoba interesa između roditelja, dijete zastupa poseban skrbnik.

Često se u praksi miješaju pomovi stranačke, postupovne i poslovne sposobnosti.[23] Stranačku sposobnost dijete stječe rođenjem (*ius standi in iudicio*), a gubi smrću.

Postupovna sposobnost djeteta u obiteljskim sudskim postupcima razlikuje se u sljedećim situacijama:

1) kada je dijete steklo potpunu poslovnu sposobnost prije punoljetnosti, sklapanjem braka, pa time i postupovnu sposobnost;

2) kada Obiteljski zakon priznaje djetetu legitimaciju i specifičnu postupovnu sposobnost za pokretanje određenih postupaka i poduzimanje radnji u tim postupcima:

a) u postupku radi davanja dopuštenja za sklapanje braka, dijete koje je navršilo šesnaest godina samostalno podnosi prijedlog u izvanparničnom postupku,

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skrb, sudjelovanje djeteta, roditelja i drugih osoba u postupku, sudjelovanje osoba lišenih poslovne sposobnosti u postupku, dostava, troškovi postupka i objava sudskih odluka i vođenje očevidnika). U drugoj glavi "Posebni parnični postupci" određena su posebna pravila koja se primjenjuju u određenim, posebnim parničnim postupcima. U trećoj glavi sadržane su opće odredbe za sve izvanparnične postupke, a potom posebna pravila koja se primjenjuju u svakom posebnom izvanparničnom postupku. U četvrtoj glavi propisana su opća pravila za sve obiteljske ovršne postupke i posebna pravila koja se primjenjuju u obiteljskim ovršnim postupcima. i to: radi predaje djeteta, radi ostvarivanja osobnih odnosa s djetetom i radi uzdržavanja djeteta. U petoj glavi su opće odredbe koje se odnose na sve obiteljske postupke osiguranja i posebna pravila koja se primjenjuju kada se odlučuje o privremenoj mjeri s kojim će roditeljem dijete stanovati, prebivalištu djeteta i ostvarivanju osobnih odnosa s djetetom, te privremenoj mjeri radi uzdržavanja.

[23] Poslovna sposobnost stječe se punoljetnošću ili sklapanjem braka prije punoljetnosti (čl.117.st.2 Obz-a). Maloljetnik koji je stekao poslovnu sposobnost sklapanjem braka, parnično je sposoban. Ograničenu poslovnu sposobnost ima dijete koje je navršilo petnaest godina života i koje radi/zarađuje. To dijete može samostalno poduzimati pravne radnje, odnosno sklapati pravne poslove i preuzimati obveze u visini iznosa koji zarađuje, te raspolagati svojom zaradom pod uvjetom da ne ugrožava svoje uzdržavanje (čl.85.st.1 Obz-a). Maloljetnik koji nije stekao potpunu poslovnu sposobnost parnično je sposoban u granicama u kojima mu se priznaje poslovna sposobnost (dijete od 15 godina koje zarađuje i dijete starije od 14 godina kojem je rješenjem suda dopušteno poduzimati sve ili neke radnje u postupku). V. Šimović, I., Utjecaj dobi na poslovnu i parničnu sposobnost, Zbornik Pravnog fakulteta u Zagrebu, 61, 5, str. 1625-1685., Zagreb, 2011.

b) maloljetni roditelj samostalno podnosi prijedlog sudu radi donošenja rješenja tko će zastupati dijete u vezi s odlukama koje su bitne za dijete iz čl.108. Obz-a85 u slučaju neslaganja maloljetnog roditelja i drugog roditelja ili skrbnika djeteta,

c) dijete koje je navršilo 14 godina podnosi samostalno zahtjev da mu sud prizna postupovnu sposobnost za poduzimanje pojedinih ili svih radnji u postupku u kojem se odlučuje o njegovim pravima i interesima.[24]

d) kada zakon ovlašćuje dijete na pokretanje postupaka radi donošenja odluke:

- o podrijetlu djeteta (tužba radi utvrđivanja majčinstva ili očinstva, tužba radi osporavanja majčinstva ili očinstva),

- o načinu ostvarivanja roditeljske skrbi te osobnih odnosa s djetetom (s kojim će roditeljem dijete stanovati, radi ostvarivanja roditeljske skrbi, osobnim odnosima djeteta s drugim roditeljem, srodnicima i drugim osobama i uzdržavanju djeteta),

- o zaštiti prava i dobrobiti djeteta (mjera privremenog povjeravanja djeteta drugoj osobi, udomiteljskoj obitelji ili ustanovi socijalne skrbi, zabrana približavanja djetetu, oduzimanje prava na stanovanje s djetetom i povjeravanje svakodnevne skrbi o djetetu, povjeravanje djeteta s problemima u ponašanju radi pomoći u odgoju, lišenje ili vraćanje prava na roditeljsku skrb, mjere za zaštitu imovinskih prava djeteta).

Odredba članka 359. Obiteljskog zakona (Postupovna sposobnost djeteta) bitno određuje novi položaj djeteta u sudskim postupcima:

" ...(1) U stvarima u kojima se odlučuje o osobnim pravima i interesima djeteta sud će na zahtjev djeteta rješenjem dopustiti djetetu koje je navršilo četrnaest godina da iznosi činjenice, predlaže dokaze, podnosi pravne lijekove i poduzima druge radnje u tom postupku ako je sposobno shvatiti značenje i pravne posljedice tih radnji.

(2) Prije donošenja rješenja iz stavka 1. ovoga članka sud je dužan zatražiti mišljenje centra za socijalnu skrb.

(3) Protiv rješenja iz stavka 1. ovoga članka kojim se djetetu priznaje postupovna sposobnost za poduzimanje pojedinih ili svih radnji u postupku nije dopuštena posebna žalba.

(4) Uz dijete iz stavka 1. ovoga članka, zakonski zastupnik djeteta ovlašten je poduzimati radnje u postupku.

(5) Ako su radnje djeteta iz stavka 1. ovoga članka i zakonskog zastupnika djeteta međusobno u suprotnosti sud će, uzimajući u obzir sve okolnosti, osobito dobrobit djeteta, procijeniti hoće li uzeti u obzir radnju djeteta ili zakonskoga zastupnika djeteta."

Ovom odredbom Obiteljskog zakona iz 2015. godine djetetu se daju nova prava (ograničena poslovna sposobnost) koja do sada nije imalo, a sucu se nalaže da osobito štiti prava i interese djeteta i to kroz obvezu suda da utvrdi je li dijete sposobno shvatiti značenje i pravne posljedice svojih pravnih radnji i kroz obvezu da sud zatraži mišljenje

[24] To su odluke koje se odnose na promjenu osobnog imena, prebivališta ili boravišta, izbor ili promjenu vjerske pripadnosti djeteta, zastupanje u vezi s vrjednijom imovinom ili imovinskim pravima, te druge odluke koje mogu znatno utjecati na život djeteta, kao što su osobni odnosi s bliskim osobama, izvanredni medicinski postupci ili liječenje, izbor vrtića, liječnika i slično.
U stvarima u kojima se odlučuje o osobnim pravima i interesima djeteta sud može djetetu koje je navršilo četrnaest godina života, rješenjem dopustiti da iznosi činjenice, predlaže dokaze, podnosi pravne lijekove i poduzima druge radnje u postupku, ako je sposobno shvatiti značenje i pravne posljedice tih radnji.

centra za socijalnu skrb[25]. Ako dijete kojem je sud dopustio poduzimanje pojedinih ili svih radnji u postupku, poduzme radnje koje su u suprotnosti s radnjama njegovog zakonskog zastupnika, tada je dužnost suda, da cijeneći sve okolnosti konkretnog slučaja, rukovodeći se prvenstveno interesima djeteta, odluči koju će od te dvije radnje kao procesno pravno relevantnu uzeti u obzir.

Obz 2015 propisao je osnivanje i rad nove javne ustanove Centra za posebno skrbništvo[26] (čl.544.-550. Obz-a). Djelatnost te ustanove je zastupanje djece u postupcima pred sudovima i drugim tijelima i zastupanje punoljetnih osoba u određenim slučajevima (iz čl.241.Obz 2015).

Osim poštivanja obveza koje smo preuzeli međunarodnim dokumentima, osnivanjem posebnog tijela se nastojao otkloniti sukob interesa koji je bio čest u statusnim i obiteljskim postupcima u kojima je centar za socijalnu skrb bio stranka, a istovremeno je djelatnik centra bio imenovan skrbnikom djetetu i/ili roditelju.[27]

Stupanjem na snagu novog Obiteljskog zakona NN 103/15, dana 1. studenoga 2015.g. uređeno je pravo djeteta da bude obaviješteno o predmetu, tijeku i mogućem ishodu postupka u kojem se odlučuje o njegovim pravima, te da to sve bude učinjeno na načina koji je prilagođen njegovoj dobi i zrelosti.

Članak 360. Obz odnosi se na sve vrste postupaka koje obiteljski zakon uređuje i nalazi se u odjeljku kojim je propisano sudjelovanje djeteta, roditelja i drugih osoba u postupku, dakle sud u svakom postupku u kojem se odlučuje o djetetovim pravima dužan je omogućiti mu izražavanje mišljenja, nema niti jedne vrste postupka koji bi bio izuzetak.

Člankom 360. Obiteljskog zakona normirano je izražavanje mišljenja djeteta:

"...(1) U postupcima u kojima se odlučuje o osobnim i imovinskim pravima i interesima djeteta sud će omogućiti djetetu da izrazi svoje mišljenje, osim ako se dijete tome protivi.

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[25] O suradnji sudova i centara za socijalnu skrb prema odredbama novog Obiteljskog zakona iz 2015.v.: Aras Kramar, S., Suradnja centra za socijalnu skrb i suda u obiteljskim sudskim postupcima - novo hrvatsko obiteljskopravno uređenje , Pravni zapisi, 5(2014),2;str.534-572.

[26] Člankom 240. st.1.Obz 2015 određeno je da će centar za socijalnu skrb ili sud, radi zaštite pojedinih osobnih i imovinskih prava i interesa djeteta, imenovati djetetu posebnog skrbnika i to djetetu u bračnim sporovima i u postupcima osporavanja majčinstva ili očinstva; djetetu u drugim postupcima u kojima se odlučuje o roditeljskoj skrbi, pojedinim sadržajima roditeljske skrbi i osobnim odnosima s djetetom kad postoji spor među strankama; djetetu u postupku izricanja mjera za zaštitu osobnih prava i dobrobiti djeteta iz nadležnosti suda kada je to propisano odredbama obiteljskog zakona; djetetu u postupku donošenja rješenja koje zamjenjuje pristanak na posvojenje; djetetu kad postoji sukob interesa između njega i njegovih zakonskih zastupnika u imovinskim postupcima ili sporovima, odnosno pri sklapanju pojedinih pravnih poslova; djeci u slučaju spora ili sklapanja pravnog posla između njih kad ista osoba nad njima ostvaruje roditeljsku skrb; djetetu stranom državljaninu ili djetetu bez državljanstva koje se bez pratnje zakonskoga zastupnika zatekne na teritoriju Republike Hrvatske; u drugim slučajevima kada je to propisano odredbama Obz 2015, odnosno posebnih propisa ili ako je to potrebno radi zaštite prava i interesa djeteta.
Posebni skrbnik je osoba s položenim pravosudnim ispitom zaposlena u Centru za posebno skrbništvo. Centar za socijalnu skrb može imenovati posebnog skrbnika izvan Centra za posebno skrbništvo kada se radi o djetetu stranom državljaninu ili djetetu bez državljanstva koje se zatekne bez pratnje.

[27] O osnivanju i radu Centra za posebno skrbništvo, njegovim ovlastima i statističkim podacima o radu, analizi istraživanja o radu Centra i teorijskim aspektima osnivanja ovakvog, posebnog tijela za zastupanje djece i osoba s invaliditetom, v. detaljno: Aras Kramar, S., Ljubić, B., O djelovanju Centra za posebno skrbništvo: rezultati, dvojbe i perspektiva I. Dio, Hrvatska pravna revija, 17(2017), 6, str. 22-33. i Aras Kramar, S., Ljubić, B., O djelovanju Centra za posebno skrbništvo: rezultati, dvojbe i perspektiva II. Dio, Hrvatska pravna revija, 17(2017), 7-8, str. 16-25.

(2) Sud će omogućiti djetetu da izrazi mišljenje na prikladnom mjestu i u nazočnosti stručne osobe, ako procijeni da je to s obzirom na okolnosti slučaja potrebno.

(3) Iznimno od stavka 2. ovoga članka, djetetu mlađem od četrnaest godina sud će omogućiti da izrazi mišljenje putem posebnog skrbnika ili druge stručne osobe.

(4) Sud koji vodi postupak nije dužan utvrđivati mišljenje djeteta kad za to postoje posebno opravdani razlozi koji se u odluci moraju obrazložiti.

(5) Dijete iz stavka 1. ovoga članka mora biti obaviješteno o predmetu, tijeku i mogućem ishodu postupka na način koji je prikladan njegovoj dobi i zrelosti te ako to ne predstavlja opasnost za razvoj, odgoj i zdravlje djeteta.

(6) Obvezu obavještavanja djeteta iz stavka 5. ovoga članka imaju posebni skrbnik djeteta, sud ili stručna osoba centra za socijalnu skrb, ovisno o okolnostima slučaja, o čemu je sud dužan voditi računa.

(7) Ministar nadležan za poslove socijalne skrbi pravilnikom će propisati način pribavljanja mišljenja djeteta. "

Dužnost je suda omogućiti djetetu izražavanje vlastitog mišljenja, ali dijete nema obvezu izraziti ga, dijete se može protiviti i sud je to protivljenje dužan poštivati. Dijete izražava mišljenje na prikladnom mjestu, a sam zakon ne definira koje bi to i kakvo mjesto bilo, već je to riješeno provedbenim propisom.

Dijete ima pravo izraziti svoje mišljenje neovisno o dobi, dobna granica nije postavljena zakonom, a ne nalazimo dobna ograničenja niti u međunarodnim dokumentima.

Dobu granicu od 14 godina zakon postavlja u odnosu na dužnost suda da djetetu mlađem od 14 godina omogući izražavanje mišljenja putem posebnog skrbnika ili stručne osobe, a ako je dijete starije od 14 godina, sudac može samostalno s njime razgovarati, no i tada može, po vlastitoj procjeni, ovisno o okolnostima konkretnog slučaja koristiti pomoć stručne osobe.

Iz obrazloženja presude ili rješenja mora se vidjeti je li sud djetetu omogućio izražavanje vlastitog mišljenja, ako nije, zašto je tako postupio. Nadalje ako se dijete protivilo, sudac mora obrazložiti kako je to utvrdio i ako ima saznanja o razlozima protivljenja djeteta.

Jedini izuzetak, slučaj u kojem sud nije dužan utvrđivati mišljenje djeteta je slučaj kada za to postoje osobito opravdani razlozi. Zakon ne definira koji bi to razlozi mogli biti, a utvrđivanje mišljenja djeteta obuhvaća i pripremu djeteta na izražavanje mišljenja, procjenu njegove sposobnosti i zrelosti i samo izražavanje mišljenja. Provedbenim propisom[28] određeno je što sve obuhvaća koja od ovih faza postupanja.

Pravilnikom se razrađuje postupanje suda, posebnog skrbnika djeteta i stručne osobe koja utvrđuje mišljenje djeteta u postupku. Stručnom osobom smatra se psiholog, a samo iznimno druge stručne osobe odgovarajuće stručne spreme te stručnih znanja i vještina potrebnih za utvrđivanje mišljenja djeteta. Pravilnik propisuje mogućnost da se pri utvrđivanju mišljenja djeteta uključi više stručnih osoba različitih

[28] Uz Obiteljski zakon iz 2015. donesen je i Pravilnik o načinu pribavljanja mišljenja djeteta, Narodne novine, br. 123/2015.

zvanja, ako se to procijeni potrebnim obzirom na razvojne, zdravstvene i druge teškoće ili specifičnosti djeteta. Ovime se uvodi multidisciplinarni pristup koji se u dječjoj psihologiji preporučuje kao iznimno dobar pristup potrebama djeteta.

Pravilnikom je izričito propisano da dijete uvijek izražava svoje mišljenje bez nazočnosti roditelja ili skrbnika, odnosno druge osobe koja skrbi o djetetu.

Prikladnim mjestom za razgovor s djetetom smatra se prostor izvan sudnice opremljen i prilagođen za rad s djetetom u kojem je nužno osigurati privatnost, sigurnost djeteta i nesmetan rad, a može se koristiti videoveza ako postoje tehničke mogućnosti.

Izražavanje mišljenja djeteta može se omogućiti u domu roditelja uz njihovu suglasnost, domu udomitelja ili prostoru fizičke ili pravne osobe kod koje je dijete smješteno što je osobito prikladno za mlađu djecu.

Člankom 7. Pravilnika propisano je da utvrđivanje mišljenja djeteta uključuje pripremu djeteta, procjenu sposobnosti i zrelosti, te izražavanje mišljenja djeteta detaljno propisuje.[29]

Obveza suca je da u obrazloženju odluke jasno iznese razloge zbog kojih nije utvrdio mišljenje djeteta u postupku i kada sudac to ne bi učinio takva odluka imala bi nedostatke zbog kojih se ne može ispitati, što je žalbeni razlog.

Žalbeni razlog bio bi i taj što je djetetu povrijeđeno pravo na izražavanje vlastitog mišljenja.

Žalbu može izjaviti poseban skrbnik djeteta, punomoćnik ako ga je dijete starije od četrnaest godina u tom postupku imenovalo temeljem rješenja suda kojim mu je dopušteno poduzimati radnje u postupku (čl.359. Obz – ograničena postupovna sposobnost djeteta priznata rješenjem suda) i samo dijete starije od četrnaest godina uz istovremen zahtjev sudu da mu dozvoli postupovnu sposobnost za podnošenje žalbe i poduzimanje pojedinih radnji u žalbenom postupku.

Poseban skrbnik odnosno zakonski zastupnik djeteta ima dužnost upoznati dijete sa sadržajem odluke i pravom na izjavljivanje žalbe. To može učiniti samostalno ili uz pomoć stručne osobe, a sa obrazloženjem odluke neće upoznati dijete ako bi to imalo posljedica na njegovo zdravlje i razvoj. Zakon ne propisuje tko je ovlašten odlučiti odnosno procijeniti kada dijete ne bi trebalo upoznati sa obrazloženjem.[30]

ZAKLJUČNE NAPOMENE

Republika Hrvatska preuzela je u svoj pravni sustav sve međunarodne dokumente, globalne i regionalne (Vijeća Europe i EU) koje se odnose na zaštitu djeteta. Znanstvena i

[29] Priprema djeteta obuhvaća informiranje djeteta o njegovom pravu izražavanja mišljenja o svim pitanjima koja se na njega odnose, informiranje djeteta o postupku utvrđivanja mišljenja, utjecaju koji izraženo mišljenje može imati na ishod postupka te o uključivanju drugih stručnih osoba;
Procjena sposobnosti i zrelosti djeteta uključuje procjenu kognitivnih sposobnosti djeteta da oblikuje i izrazi svoje mišljenje na razuman i nezavisan način te da razumije ishode izraženog mišljenja;
Izražavanje mišljenja djeteta ima oblik razgovora, a ne jednostranog ispitivanja, u poticajnom i ohrabrujućem ozračju u kojem će se dijete osjećati sigurno i poštovano te će njegovo mišljenje biti ozbiljno saslušano i uzeto u obzir.

[30] To bi mogao biti sudac koji donosi odluku, poseban skrbnik djeteta, stručna osoba koja je sudjelovala u postupku utvrđivanja mišljenja djeteta, a u nekim slučajevima moguće i roditelj djeteta.

stručna javnost upozorava na sadržaj i značaj prava djeteta i nužnost prilagodbe hrvatskog pravnog sustava konceptu pravosuđa prilagođenog djetetu. Nužno je njegovati interdisciplinarni pristup, osnovati specijalizirane obiteljske sudove, ojačati materijalne i kadrovske kapacitete, osigurati kontinuiranu edukaciju stručnjaka u sustavu. No, smatramo prije svega i najviše, nužno je mijenjati i postići svijest o tome da djeca jesu subjekti prava, te da njihov subjektivitet i volja nije nužno povezana s odlukama i mišljenjem roditelja ili drugih osoba. Stoga je dužnost zakonodavstva svojim rješenjima poticati praktičare (suce, socijalne radnike, i druge stručnjake) na dosljednu primjenu normi kojima je cilj zaštita prava djeteta na izražavanje vlastitog mišljenja, kao i ostvarenje prava djece uopće. S druge strane, normativna rješenja također mogu osvijestiti i roditelje, odnosno druge zakonske zastupnike djeteta da svoja zastupanja i /ili iskazivanja stavova moraju biti na tragu mišljenja djeteta, u skladu njegovom s dobrobiti, a ne isključivo na vlastitom mišljenju o tome što je dobro za dijete.

Reformom obiteljskog zakonodavstva u Republici Hrvatskoj postignut je značajan korak naprijed u normiranju pravnog položaja djeteta kao stranke u obiteljskim postupcima, te je svojim odredbama oživotvorio pravo djeteta na izražavanje vlastitog mišljenja. Ostaje na praksi slijediti i u punom opsegu "usvojiti" ova normativna rješenja.

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CHILD-FRIENDLY JUSTICE - LEGISLATION AND PRACTICE IN THE REPUBLIC OF CROATIA

Standards of child- friendy justice have been adopted in various international, European and national instruments. They implied creating the conditions for active participation of children in the proceedings and adopting the procedures for their participation. In the Republic of Croatia, in the last fifteen years or so, a significant shift has been made in the field of juvenile delinquency justice, similar to those in the surrounding countries, development of specialized juvenile courts and special legislation has happened, and although always lacking, but still, there was some training of the experts in this field.
Participation of children in civil proceedings, primarily in the family law, has long been neglected. This is particularly surprising because children participate in the proceedings in family law cases very often, or they are directly concerned by those decisions. Therefore, in addition to all other aspects of child friendly justice, for the purpose of this paper, the most interesting issue is child's right to express his / her own opinion in civil, family proceedings and his / her (procedural) position as the party in the proceedings. Reform of Croatian Family Law from 2014/2015 is a major normative shift in positioning a child as a party in family law proceedings. It remains to be seen how much practice will follow the normative requirements and how much are all expectations of preparing a child before and after court and administrative proceedings, equipment of the courts, expert education complie with international instruments, and how much is reality of the Croatian judiciary.

KEY WORDS: child-friendly justice / children's rights / family proceedings / child as a party in the court proceedings

PROTECTION OF PRIVACY AND DIGNITY OF A CHILD IN MEDIA SPACE

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The protection of privacy and human dignity in the media space of today is becoming more and more challenging. The situation is even more fragile when it comes to the privacy and dignity of the child. The nature of the right to privacy further complicates the establishment of a violation of the a/m right, so a reaction is needed by the person who believes that his/her privacy was violated by publishing the contents of a personal nature. When the right to privacy and dignity of a child is hurt in the media, parents or guardians react on behalf of the child. The problem arises in situations where parents have already justified the publishing content, that is have already given their consent, that endangers the right to privacy of the child. The presentation of children and minors in electronic media in a way that may jeopardize the child's interest, despite the consent of the parent or guardian, does not exclude the responsibility of the media service provider for published content in the context of media ethics.

Although, in the legal regulation, the right to privacy and the right to the dignity of a person have been brought into direct relation, a violation of dignity can be determined independently of the existence of consent for the broadcasting or reaction of the injured party when it comes to content in which the person is a subject of humiliation, discrimination, inhuman treatment and humiliation, or is unjustifiably denied his or her participation in the programme. The right to privacy and dignity of the child, although protected by many positive legal regulations, comes into conflict with the right to freedom of expression. Which of these opposing rights should be given priority to; it is necessary to evaluate in each particular case, having in mind the best public interest, and above all, the best interest of the child.

KEYWORDS: Legal privacy of a child / consent to publish content / best interest of the child

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INITIAL CONSIDERATION

World of today's children has been significantly changed in relation to the world of their parents. In the world of childhood of today's parents there were no smart phones, computers, laptops, you tube, twitter or various on-line games. Reading and writing were learned first and only later work on a computer came. Today, children are using a computer and a smart phone even before learning to read and write. This fact shows about how the world of today's children has changed in relation to the world of their parents. Today, through the new technologies, the media have entered much not only into our lives, but also into the lives of our children, that it is difficult to imagine the growth of today's children without the media.

Media is important, but parents are even more important. According to a 2014 UNICEF study, 70% of parents did not determine what their children would watch from the TV programmes offered, but would leave the choice to the children themselves. The general social interest would be for children to follow those media content that encourage their curiosity, creativity, programs that entertain, inform and educate them, motivate them to discover new, social activities, help others, and so on. In meeting this interest, the media can be of great benefit because they also provide us with the opportunity to talk to children about what they have seen on the screen. The role of adults, as media socializers, is to help children evaluate media content and rationalize their moral lessons by creating the right image of reality.

Discussion (analysis) with children of what they watched, listened or read is extremely important, because there is almost no media in which, in an explicit or implicit manner, there is no violence presented. Children are vulnerable to violence, especially those younger ones. They are not able to independently distinguish the difference between actual violence and staging of it in media, and due to their prolonged exposure they slowly adapt to it, not only as part of our everyday environment, but as an integral part of our behaviour towards others.

At least there are two reasons why violence is mentioned. The first one is that the media traditionally shows a great interest in violence, and the second one is that through the reporting of the media on violence against children, the child's rights to dignity and privacy are mainly violated by the same media.

A child who has suffered violence through the media is never just a simple victim, but a person whose dignity has to be respected. This child, who survived an injustice or a crime, deserves support, but not secondary victimization. Writing about children in the media space in the context of violence does not mean simultaneously putting media or journalists on the indictment bench. The explanation of the circulation or often even the imposed right of the public to know absolutely everything does not relieve journalists or those who post information about children as a particularly vulnerable category on social networks, from the obligation to take care of the welfare of children. The attitude of the society toward children, even the attitude of children, depends on how children are written about and how they are represented in the media (Milivojević, 2010: 41-60). If children are portrayed as weak, endangered or unprotected beings that are in all things dependent on adults, then we should not be surprised that in the media the voice of the children themselves is not heard enough and that they are not adequately visible in the media. The media world is mostly

reserved for the adults, and it seems to be only reserved in the case of aggression, for children. It should be acknowledged that children are also written about in the context of going to school, education in general, competition or poverty, but all in all, children's information agendas regarding violence has been raised very high. The media makes it useful to inform about child rights violations, but they should not do it through circulation or profit. The privacy and dignity of a child must be protected in any case, respecting ethical codes. A child must have control over who enters his/her private space, must have the right to have his / her opinion, and has the right to an identity, or right to a name. But only when you need to mention the name of the child - when the context is harmless and affirmative, and it does not cause any harm to it.

Insufficient media literacy when it comes to children's rights also leads to the creation of children's models through media messages and building their own value system. The distinction between fiction and reality becomes problematic for children. Identifying false news or propaganda content is not easy for adults either. Perhaps the solution can also be recognized or achievable through the strengthening of media literacy in the curriculum for children.

The media are important for the promotion and protection of children's rights, within a functional and ethically acceptable concept. This concept does not only obligate journalists, but also parents, that contributes to the promotion and protection of the rights of the child in general. Therefore, the legal norms regulating this area at the moment are as though they were imposing dispositions for the introduction of that other part, which is, by introducing appropriate sanctions related to the protection of children and the media space, because the current situation is far from satisfactory.

1. A FEW EXAMPLES AND ISSUES THAT OPEN UP/ARISE

During the execution of a court decision at the Center for Social Work in Bela Crkva, at the end of April 2018, with the implementation of the decision to allocate a child to the care of the mother, part of the execution was recorded by the father of VČ and broadcasted on his FB account[1]. The impression is that the father wanted to share a sensitive story about his child and relationship with his mother, with the public, in circumstances where the conflict on the relationship between former spouses became deeper, with the interest that the other party, at all costs, bear responsibility for omissions, if there are any, regardless of the protection of the child and his best interests. The picture itself does not clearly show the face of the boy and his mother at first glance, but the daily newspaper that published the news and video with the note that it was a disturbing content - gave the name and surname of the father and the place where the event happened, as well as data on the child's health condition, stating that it is about a child kidnapping and describing the details of the handover, all according to father's statement. The rule is that the other side is heard too, so the mother in the same text said that the child was abused by the father, which is why the child was excited, but that after the handover, everything was fine.

What is visible at first glance is the fact that in the text the relationship between parents is at the forefront, while about the best interests of the child was not said much, nor about the fact that the personal identity and psychological integrity of the boy have

[1] https://www.kurir.rs/vesti/drustvo/3037457/decak-8-plakao-i-dozivao-tatudok-su-ga-socijalni-radnici-predavali-majci, last time visited 26th April.2018 at22h30min

been severely violated. Institutions responsible for protecting the rights of the child have not taken part in this procedure yet either regarding the writing of the media or regarding the uploading of social media footage.

How important is the protection of the character of children, as a right to respect for the private life of the child, even in the sphere of interpersonal relations, was said through the judgment of the European Court of Human Rights (ECHR) in the Bogomolov case against Russia[2]. Namely, Bogomolova stated in the ECHR's submission that the domestic authorities did not protect her right on respect for personal and family life. In 2007, the applicant found that her son's face was published on the front page of a brochure, for a period of 3 years, without her previous consent. The European Court of Human Rights has found that the fact of publishing a photograph on the reputation of the applicant is such that there was a false public image of family ties and relations between the parents and the child, thus violating Article 8 of the European Convention on Human Rights, that is, the Russian Federation has failed to respect the positive obligations of effective respect for private and family life.

In some other cases, the European Court also dealt with the protection of the character of children, and thus supported the position of the German judiciary in the case of famous footballer Oliver Kahn, that the publisher's obligation to pay a fine when it was possible to identify on the basis of photographs of well-known parents and accompanying text about their divorce and children, although their characters were blurred (blurred). The photographs in which the child can be identified represent a powerful mixing in the child's private life.[3] According to Pavlović, the European Court also pleaded for the violation of privacy through the interference of the media into private life, even public figures of the par excellence, finding a difference in reporting on facts that are of importance in a democratic society, from media inscriptions that may cause a strong sense of mixing into personal lives, and even the sense of persecution of these same persons, as was the case in 2004 of Princess Carolina of Monaco. The Court in Strasbourg has assessed in another case of the same complainant in 2012 that media reporting and the publication of photographs of famous persons acceptable only in cases of discussion of general interest, but not in the case of the protection of the rights under Article 8 of the ECHR (Pavlović, 2017: 218-236).

In today's world, the protection of private and family life, the protection of privacy is still in its infancy and is confronted with a plethora of challenges. Photographs and footage can certainly be qualified as personal data according to the rules of internal and European law. At the end of May 2018, the GDPR - General Data Protection Regulation comes into force, where special attention is paid to the protection of children's personal data, which Serbia is waiting to adopt.

In the above examples, a whole series of questions arose, which require us to look at them at a glance, if not to offer adequate answers to them. Incidents in the media, both printed and electronic, where violations of children's rights to privacy today are no longer a rarity. These are situations where there is no respect for the protection of privacy or the dignity of a child, where media ethics does not appear at all. In the examples described, there is an obvious lack of delineation between information that violates privacy in relation to those informing the public about news of public interest. Calling for freedom of speech here is not appropriate. The reaction of the currently competent state authorities may also

[2] Bogomolova v. Russia, Application no. 13812/09 of 20th June, 2017. Judgment is final.
[3] Kahn v. Germany, judgment of 17th March, 2016, application no. 16313/10

be absent, given the fact that some of the data can only be collected by the prosecution, the police or the court, and not the administrative bodies, regardless of their status. The lack of response may also arise as a result of the fact that in the case of placement of information by the parent, this remains *res privata* to the parent, and not really *res publica*. In the case 07-3779 / 13, before the REM[4], regarding he prohibition of broadcasting DNA TV programme and apologies made by TV Pink, in the case against MP from Ljukovo near Indjija, the regulator had to collect data on the age of the injured party in order to determine whether it was a minor, which is contrary to the legal regulations, as well as the authority of the regulatory body, since such data can be collected only by the prosecution and the court in the appropriate procedure. Due to the lack of a constitutional definition of the hierarchy of legal acts, this form of application of provisions, for example, The Family Law and its Article 46 and Direct Convention on the Rights of the Child, UN Article 16, that the best interest of the child must always be taken into account would be illegal. Because the provisions of the Law on Free Access to Information of Public Importance[5] and the Law on Personal Data Protection[6], although the systemic laws do not derogate from the provisions of the Family Law and the Convention that is directly applicable, the collection of personal data by the only competent body to act in this situation was unlawful!

An additional question is how will the eventual procedure for the protection of the rights of the child be conducted if the parent is the perpetrator of a prohibited act, and a privacy request can only be submitted by the person to whom the media content in question is related to and not by any other person. Is there full protection of children from violating laws in the media space, whether the behaviours of those responsible are in accordance with ethical standards! In what way, in which procedure, in front of which body, who is actively legitimized to initiate the process of protecting children in the media and electronic media, are just some of the (more or less rhetorical) issues that can be drawn from these examples, and we will try to give answers to some of them in this paper.

2. THE LEGAL FRAMEWORK FOR THE PROTECTION OF THE BEST INTERESTS OF THE CHILD IN THE MEDIA SPACE

In order to respect the best interests of the child in the media space of Serbia, the lack of the existence of unified and hierarchically harmonized regulations and the protection of that interest between the rules of ethical standards in journalism, the codex of journalists, the provisions of international conventions and national legislation, is obvious.

The digital time in which we find ourselves, which is reflected in our journey into a virtual reality, where communication, life habits and activities move to communication channels and platforms, require that legal terms and relations in the context of the right to privacy be redefined. Serbia is still at the very beginning, although the UN General Assembly less than two years ago brought on 16th November, 2016, the Resolution on the Right to Privacy in the Digital Age[7] which states that all human rights guaranteed *offline*

[4] Regulatory body for electronic media, Republic of Serbia, case 07-3779 / 13 on the issue of TV programme emitted on 30th October, 2013 on TV Pink

[5] Law on Free Access to Information of Public Importance Official Gazette of the Republic of Serbia No. 120/2004, 54/2007, 104/2009 and 36/2010

[6] Law on Personal Data Protection Official Gazette of the Republic of Serbia No. 97/08 dated 27th October, 2008 104 / 09 – etc. Law 68/2012 Decision of the Constitutional Court and 107/2012

[7] The Right to Privacy of the Digital Age, UN Doc. A / C.3 / 71 / L.39 / Rev.1.16th Nov 2016.

must be protected *online* too, especially in the context of digital communications and mass electronic monitoring.

International law documents do not provide a definition of the right to privacy, but media, journalists, parents and third parties are bound by the UN Convention on the Rights of the Child and Article 16 which insists on the protection of the privacy of children, their families, home or correspondence, honor and reputation, through arbitrary or unlawful interference. Article 8 of the European Convention on Human Rights, the right to respect for private and family life, home or correspondence, extends this obligation to public authorities, who should take care of the application of Article 16 of the Convention on the Rights of the Child.

The Family Law[8] of Serbia in Article 6 imperatively emphasizes that everyone is obliged to handle the best interests of the child in all activities concerning the child, and that the state has the obligation to respect, protect and promote the rights of the child. The state must take all necessary measures to protect the child from neglect, physical, sexual and emotional abuse, and from any kind of exploitation. Therefore, from media exploitation also.

Then, the Juvenile Act[9] stipulates that without the permission of the court, the course of criminal proceedings against juveniles and decisions in this procedure cannot be published, except what is allowed by the Rulebook on anonymity (Pavlović, Pasca, 2017: 355-366). A provision of similar content is contained in the Criminal Procedure Code. The Law on Public Information and Media of Serbia from 2014, in its Articles 77-78, 101 and 140, refers to the presumption of innocence of minors (Jovašević, 2016: 122), the right to privacy, the protection of the free development of the personality of the minor. Special attention must be paid to the fact that the content of the media and the manner of their distribution does not harm the moral, intellectual, emotional or social development of the juvenile, or that the content of the media should not violate the juvenile's right or interest.

By-laws issued by both authorized regulatory bodies and professional associations specifically emphasize the connection of privacy protection and the protection of personality dignity. The Rulebook on Protection of Juveniles in the Field of Media Services, the Rulebook on the Protection of Human Rights in the Field of Media Services, and the Code of Conduct of Broadcasters, they protect the private and family life of the minor in the context of violation of his interests and dignity of personality (honor, reputation).

The UNICEF Ethical Guidelines on Children Reporting provide guidance to reporters in reporting to children about children.

The object of protection in all these documents is primarily the children, that is, protection of the stated human rights, as a subject of unconditional protection. The main disadvantage of all these documents is the lack of responsibility for violating these rules, except for the responsibility of the media editor for a misdemeanor if the content of the media that can jeopardize the development of the minor is not clearly and prominently marked, or if the minor has been made recognizable.

Following the allegations, done by Knežić and Glomazić, we can conclude that media reports mostly go through informative messages violating moral and legal norms. Media

[8] The Family Law in the Republic of Serbia was published in Sl. 18/2005, and started to apply from 1st July 2005.
[9] The Law on Juvenile Offenders and Criminal Protection of Juveniles was published in the Official Gazette of RS no. 85/2005, and came into force on 1st January 2006.

often choose children and minors as participants in events with elements of violence. For good sensation, the media do not care, according to the authors, to stigmatize children as the defendants, but also as victims, in contrary to all ethical and positive rules (Knežić, Glomazić, 2015: 245-257).

Information on violence is gaining weight when perpetrators or victims are children, regardless of their context, and as such are always interesting to the media, good for attracting public attention, even regardless of whether the writing about them is tabloid or so-called informative one. Therefore, the position of legislation, profession and science on this problem is particularly significant.

3. INSTITUTIONS AND MEDIA REPORTING ON CHILDREN[10]

Responding to the obligations of the state regarding the respect of the right to privacy and the rights to the dignity of the personality of the juvenile here, and in the media space, based on news from written and electronic media selected by random sample method, many omissions were noticed done not only by the media when reporting children and cases involving children, but also by institutions. Without entering into the civil liability of the same, together with the parents or guardians of children, this reporting was the occasion to conduct research in the AP Vojvodina over some institutions dealing with children (Centres for social work, Public Prosecutor's Offices, Courts and Police administrations, the latter did not submit the data within the deadline, but also later) and the media, in order to find out what is necessary to change in this area in order to protect the best interests of the child in the media space.

3.1. Centres for Social Work

There are no internal legal acts regulating communication with the media and the public in the centres for social work (CSW), except in Šid, where this area is regulated by the statute of the institution. There are no legal obligations for this, and they state this CSR as justification, along with the absence of a person in charge of public relations, which they have only in Novi Sad and Srbobran. In other centres, institution managers or case managers who are authorized to do so by the director of the CSW communicate with public and media. Centres do not have a document that regulates the way media coverage and the public should be publicized about children, which is mainly due to the release of statements, declarations and very rare interviews. Two thirds of CSWs do not keep records of public appearances, while a smaller number keeps clips from newsletters about them. The exception is CSW Novi Sad, who established such records in 2017, and placed the questionnaire on its website. Some centers (Šid, Indjija, Opovo, Bela Crkva, Bečej and Kikinda) stated in the survey that there was a publication in the media that violated the rights of the child. It is a situation where the media listed the names and addresses of children, the names of parents, that they (media) reported in a sensationalist manner, or the children were in the realities (series). What is particularly emphasized is that the media often interpret the statements of the same from the context and give them a different meaning in this way.

[10] The data that were cited here were created within the scope of research of the Provincial Ombudsman for 2018, and will be published in full scope.

Most CSWs do not have such media experience, and report that the reports are objective, that the information is accurate, and that children are recorded with the consent of the parent or guardian. Let us add that it is only about the media that took statements and announcements. Also, similar observations, that cooperation is adequate and that the media support children's rights campaigns, is a main characteristic of the statements of responsible persons in most CSWs from the territory of AP Vojvodina..

The omissions that are reported relate to publishing and those that are relevant to publicity, without having actively involved them in all protocols on the protection of children's rights. Journalists mainly insist on "now for now" information, and mostly write about negative phenomena, or sensationalist ones, in order to increase circulation. The fact is that the *audiatur et altera pars* rules are not respected. Interviews made by the media do not have enough room to say everything that is necessary about the subject.

The suggestions of employees pointed out in the centres for social work within the topic of children in the media area mostly refer to the need for drafting protocols or regulations that would regulate this area and the existence of a professional person for media relations.

3.2. Higher courts

The manner of communicating with the media and the public in higher courts is regulated by the court's rules of procedure, but the courts do not state the existence of a document in the form of an internal protocol, procedure, code, etc., which would regulate the manner of reporting to the media and the public about children and issues related to children; in this issue adhere to the legal framework, primarily the Family Law, the Juvenile Law, the Criminal Procedure Code, etc. They usually communicate with the media and the public through a press release. Higher courts do not keep records or press clipping about the number and structure of media coverage and publication in connection with their work, nor do they have information from the actions of their bodies whether the reporting media violated the rights of the child.

3.3. Senior Public Prosecutors

The work of public relations employees is regulated by various documents in different prosecutors' offices - somewhere in the communication protocol, somewhere within the Rulebook on the organization and systematization of jobs, somewhere within the program and work plan. The public prosecutor's offices in Subotica, Pančevo and Zrenjanin state that the employees had been passed the trainings in connection with the rights of the child, organized by the Judicial Academy, related to the spokespersons of the prosecution. Prosecutors do not have documents that regulate the way in which media and the public are informed about children and issues related to children. Like the courts, the public prosecutors' offices are turning to the general public in a statement or in an announcement.

The cooperation with the prosecution's media mostly cites the misunderstanding that arose as a result of the media's need for sensationalism and the efforts of the prosecution to protect the participants in the proceedings. They point out joint conferences and continuous trainings, stating that co-operation still needs to be improved. Media find information of the public prosecutor's office insufficient, and made just for the sake of information; so they examine individual participants or unconfirmed sources by

themselves. Journalists avoid giving away the identity of the injured juveniles or children, and in the Novi Sad, Public Prosecutor's Office states that cooperation with the media is exceptional.

3.4. Media

Twenty (20) media answered to the questionnaire, namely seven (7) radio stations, seven (7) TV houses and six (6) newspapers. Six media reported that they have specialized reporters on children and in relation to children. RTV Vojvodina Programme for Children and Youth, Radio Novi Sad, Romanian and Slovakian editors, RTV Pančevo, Radio Dunav and the addition to the Croatian newspaper called Hrvatska riječ - "Hrčko". Most of the media emphasize that they do not have specialized journalists because they are so-called small media services. The majority of employees in these media are not trained in the field of children rights. Only RTV Vojvodina, Children and Youth Programme, says that the editor in chief of the editorial staff attended specialized training, as well as the editor of the magazine Vzlet printed in the Slovak language.

Media responses to the question of whether they know what regulates the work of their institutions concerning the rights of the children in the media area were diverse: the UN Convention on the Rights of the Child, the Family Law, the Law on the Prevention of Domestic Violence, the Law on the Prohibition of Discrimination, the Declaration on the rights of the child, the Law on Information, the Regulations of the REM, but also stated that there is no formally such an act.

Control of children's media reports is carried out in the following ways: journalists mostly protect the identity of children, use blurring of images, without names and initials, seek parent's permission, consulting editorial collegiums, recorded materials are being watched, all children participating in programmes (RTV Vojvodina) have previously signed consent of their parents.

Against the media who responded to the questionnaire, court proceedings for violating the rights of the child, or complaints filed by the regulatory bodies, were not initiated. The media are mostly satisfied with cooperation with state institutions and bodies, but some journalists point out that CSW, police, public prosecutors and courts are closed for cooperation and reluctant to make statements.

The suggestion of journalists is that the Provincial Ombudsman as a socially responsible institution for the protection of the rights of the child organizes training for journalists in relation to the rights of the children and media reporting on children.

INSTEAD OF THE CONCLUSION

Based on the analysis of the basic international documents, positive legal solutions and by-laws, as well as on the basis of the research results and discussion therein, it can be concluded that children in media reporting are often the topic, especially the cases with sensationalistic details, which becomes a dangerous phenomenon through which media improve their market position, in a race for profit. Protecting the privacy and dignity of the child in the media space is therefore a challenge for everyone. Determining the violation of the right is complicated, due to the lack of sufficiently precise regulations, the lack of complete legal rules on this, the established hierarchy of legal acts, as well as the fact that

the contents of media reports often participate and those who should primarily take into account the best interests of the child - parents or guardians. The presentation of children and minors in the written and electronic media in a way that might jeopardize the child's interest, despite the consent of the parent or guardian, does not exclude the responsibility of media service providers and journalists for published content in the context of media ethics. The imposed right of the public to know everything, in no case, should not appear above the best interests of the child, in the media reporting, regardless to the source or the place from which he comes.

Which of these opposing rights should be the first one, is not a dilemma for sure, because there is no dilemma at all! The right to privacy and dignity of the child has no alternative in the media.

Regarding the responsibility of the state and its institutions, as well as the media itself, it is necessary to start with changes through the unification of all provisions for protecting the rights of the child in the media space, with the sanctions for the existing dispositions, which have been scattered in many legal acts at this time.

The cooperation of institutions and the media, as well as their acting in the field of children's reporting, should be regulated through the development of special rules, especially when it comes to the centres for social work. These Regulations should be unique to all the Centres, and similar can be concluded in relation to courts and / or public prosecutors, with the existence of educated employees for media relations and the public relations. It is necessary to establish a register of media referrals as well as continuous monitoring in relation to statements and announcements where children appear in the media space.

The education of professionals implies not only representatives of institutions, but also the media itself, that is, journalists, on the rights of the child in the media space, as it would be in the way of recognizing and protecting the privacy and dignity of the child in the best interests of the child. Professional, responsible and sensationalism liberated reporting is possible only with the existence of journalists who would be specialized and specially trained in this field.

In the media reporting on children , but also in stating/printing children's statements, it is necessary to respect the child's opinion, that is, his/her right to participate, and although this is one of the basic principles of the UN Convention on the Rights of the Child, it is still limited in the media space. Children and their rights should be visible in the media, but not only as problems, or often even as stigmatized victims, but as young people who have their integrity, identity, attitudes and the right to express themselves publicly.

It is necessary, in particular, to pay attention to the obligations and responsibilities of parents or guardians who from the insufficient information on the rights of the child, sometimes, only with the best intention and with the desire to protect the child, provide sensitive information and information that deeply affect the privacy and dignity of the child, which is contrary to the basic right - the best interest of the child, including his rights in the media space.

This is why the writing of this paper has just begun research on how to achieve better respect and protection of the right to privacy and dignity of the child in the media space, in the public, because the opinion and feelings of the child must always be taken into account when deciding to launch a reporting on children in public. Ethically

acceptable and legitimate reporting on children in the media space, it is possible to reduce this form/kind of present violence against children.

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ZAŠTITA PRIVATNOSTI I DOSTOJANSTVA DETETA U MEDIJSKOM PROSTORU

Zaštita privatnosti i čovekovog dostojanstva u medijskom prostoru današnjice postaje sve veći izazov. Situacija je još osetljivija kada je u pitanju privatnost i dostojanstvo deteta. Priroda prava na privatnost dodatno otežava utvrđivanje povrede prava, pa je neophodna reakcija onoga ko smatra da mu je objavljivanjem sadržaja lične prirode privatnost povređena. Kada su pravo na privatnost i dostojanstvo deteta povređeni u medijima, u ime deteta reaguju roditelji ili staratelji. Problem nastaje u situacijama kada upravo roditelji daju saglasnost za objavljivanje sadržaja koji ugrožavaju pravo na privatnost deteta. Prikazivanje dece i maloletnika u elektronskim medijima na način koji može dovesti u pitanje interes deteta, i pored pribavljene saglasnosti roditelja ili staratelja, ne isključuje odgovornost pružaoca medijske usluge za objavljeni sadržaj, u kontekstu medijske etike.
Iako se u pravnoj regulativi pravo na privatnost i pravo na dostojanstvo ličnosti dovode u direktnu vezu, povreda dostojanstva može se utvrđivati i nezavisno od postojanja saglasnosti za emitovanje ili reagovanja oštećenog, kada se radi o sadržaju u kojem je neko predmet omalovažavanja, diskriminacije, nečovečnog postupanja i ponižavanja, ili mu se neopravdano uskraćuje učešće u programu.
Pravo na privatnost i dostojanstvo deteta, iako zaštićeno mnogim pozitivnopravnim propisima, dolazi u sukob sa pravom na slobodu izražavanja mišljenja. Kojem od ovih suprotstavljenih prava dati prednost, potrebno je proceniti u svakom konkretnom slučaju, imajući u vidu najbolji javni interes, a pre svega, najbolji interes deteta.

KLJUČNE REČI: Pravo na privatnost deteta / saglasnost za objavljivanje sadržaja / najbolji interes deteta

CHILD PORN: A CRIME AGAINST SEXUAL FREEDOM AND SEXUAL MORALITY OF THE CHILDREN IN HUNGARY

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Sexual freedom and crimes against sexual morality therefore denounce behavior that is condemned by the moral norms of the majority of society. Sexuality comes most of the cases into the criminal law from the other social norms and from the morality. The question is what are the moral law's effect to the criminal law regulation of sexual acts, how the relationship between the moral prohibitions and the prohibitions of criminal law looks like.

In this essay we examine the new regulation and teh practice of the child pornograpy as the crime against the sexual freedom and sexual morality of the children in the Hungary.

KEYWORS: Criminal Code / Child Pornograpy / sexual crimes / pornographic recording / sexual morality

INTRODUCTION – SEXUAL CRIMES IN THE NEW HUNGARIAN CRIMINAL CODE

Freedom of gender and sexual morality are among the legal objects that the legislator has at some stage protected against the emergence of criminal law regulations until nowadays. Criminal rules, however, depend on the actual moral value of society, both in their content and in the language of the regulation (see, for example, the terms "anti-nature" or "crushing" in the earlier wording, which are no longer included in the present Criminal Code) went on and changed over time. Our new Criminal Code changes the title of the chapter, the former Criminal Code. XIV. Chapter II. The title of the new Criminal Code was "Crime Against Sexual Morality". XIX. Its title is entitled "Sexual freedom of life and crimes against sexual morality". Our new law also expresses that not the protection of sexual morality is the primary and only protected legal subject, but also the protection of sexual integrity, sexual self-determination and sexual freedom.

In the Middle Age, when the roots of criminal law began to evolve, the regulation of sexual offenses was very closely related to Christian religious norms. Nowadays, continuous "secularization" has taken place in this area. The XX. In the middle of the 20th century, the rules on the punishment of non-marital sexual intercourse disappeared, and there were

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radical changes in the criminal prosecution of homosexuality. Act V of 1961 (the second Hungarian Covenant) abolished the general punishment of homosexual acts between men. "It is now overcome with the same race of same-sex persons, and there is no provision in the criminal law or in the medical profession to say that only male acts can be punished, but without any restriction, this is a new conceptual based regulation,"[1] – we can read this in a monograph of that time. The end point of the decriminalization of homosexuality was the Constitutional Court Resolution 37/2002. (IX.4), which completely avoids the possibility of criminal prosecution of homosexuality in Hungarian criminal law, partly due to the development of medical science and the expectations of the EU.

In the 1950s, prostitution was ordered for the so-called "socialist morality", and after the change of regime, in 1993, prostitution (which was used as a criminal term, a business symbol) was removed from the perspective of criminal justice. Prostitution-based behavioral practices, however, have been punished since then, and our new law in 2012 also (with some modification) imposed prostitution offenses in Hungarian criminal law.

Gender morality is nothing more than "the perception of society on the generation and satisfaction of sexual desires"[2]. "Offenses against morality are essentially those that conflict with morality in the field of sexual life. These crimes directly or indirectly violate morality."[3] Sexual freedom and crimes against sexual morality therefore denounce behavior that is condemned by the moral norms of the majority of society. "Sexuality comes under the (criminal) law in the other social norms and the morality. The question here is how much the moral and criminal judgments of sexual acts and acts fall into or fall, the moral prohibitions and the prohibitions of criminal law."[4] Due to the subsidiary nature of criminal law, we are not punished for any conduct that most people he is immoral. (For example, sexual relations between brothers and sisters are condemned by the majority of society, but only the intercourse is punishable by our existing law.) Criminal law is the ultimate tool only where the other system of means provides no longer adequate protection. For this reason, for example, some aspects of prostitution belong to the area of the administrative law, the criminal law punishes only the most serious acts.

In the preparation of the new Hungarian Criminal Code, the codification of sexual freedom and sexual offenses has been a priority for the provisions of the relevant international conventions. The most important of these are:

- the International Convention on the Suppression of the Use of Prostitution in the Field of Trafficking in Human Beings and Others, New York, 21 March 1950 (hereinafter: the New York Convention, promulgated by Legislative Decree No 34 of 1955),
- ILO Convention No. 182,
- the Optional Protocol to the Children's Rights,
- the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse,

[1] Schultheisz Emil: A nemi erkölcs elleni bűntettek de lege lata Közgazdasági és Jogi Könyvkiadó Budapest, 1966. 11. p.
[2] Merényi Kálmán: A szexuális erőszak Közgazdasági és Jogi Könyvkiadó Budapest, 1987. 26. p.
[3] Lukács Tibor – Traytler Endre: A nemi erkölcs elleni bűntettek Közgazdasági és Jogi Könyvkiadó Budapest, 1963. 153. p.
[4] Szomora Zsolt: A nemi bűncselekmények alapkérdései Rejtjel Kiadó Budapest, 2009. 17. p.

- Directive 2011/93 / EU,
- the Convention on the Prevention and Combating of Violence against Women and Domestic Violence.

"These documents basically define the structure and content of the facts in which substantial changes are required. New practices can not be introduced into the conceptual system and content of the facts in force as they stretch the framework of the current situation and new facts have to be introduced. This chapter takes into account the international expectations and the social need to ensure that persons under the age of eighteen are also particularly protected in the case of such offenses. For this reason, for example, as defined in the Cf. sexual violence committed under the age of eighteen years or if the perpetrator is partially or totally under the age of 18 years with a prostitute, and regulates the exploitation of child prostitution in an independent case "[5]

The chapter contains the following offenses (already from the names of criminal offenses it can be seen that the relevant criminal law has been renewed):

- Sexual Exploitation
- Sexual Violence
- Sexual Abuse
- Incest
- Pandering
- Procuring for Prostitution or Sexual Act
- Living on Earnings of Prostitution
- Exploitation of Child Prostitution
- Child Pornography
- Indecent Exposure

The common subject of the crimes listed in the chapter XIX. is the sexual freedom of the human rights and the social order of gender relations. Slightly arbitrarily grouping these offenses, we can form the following criminological categories:

1) Violent crimes against sexual morality: Sexual Exploitation and Sexual Violence,

2) pedophile related offenses: Sexual Abuse, Exploitation of Child Prostitution, Child Pornography,

3) crime on prostitution: Pandering, Procuring for Prostitution or Sexual Act, Living on Earnings of Prostitution,

4) offenses that violate the rules of gender relations in society (ie the "other" category): Incest and Indecent Exposure.

The legislator also expresses not only in the Criminal Code but also in our Criminal Procedure Code that these crimes are extremely dangerous to society. The 64 / A. Section (a) of the Criminal Procedure Code stipulates that criminal proceedings against minor offenses against sexual freedom and sexual offenses shall be conducted out of order.

[5] Based on the reasoning for the proposal of Act C of 2012.

1. CHILD PORNOGRAPHY IN THE NEW HUNGARIAN CRIMINAL CODE

Section 204 (1) Any person who:

a) obtains or have in his possession pornographic images of a person or persons under the age of eighteen years is punishable for a felony by imprisonment not exceeding three years,

b) produces, offers, supplies or makes available pornographic images of a person or persons under the age of eighteen years is punishable by imprisonment between one to five years,

c) distributes, deals with or makes pornographic images of a person or persons under the age of eighteen years available to the general public is punishable by imprisonment between two to eight years.

(2) The penalty shall be imprisonment between two to eight years if the criminal offense defined in Paragraph b) of Subsection (1) is committed against a person who is in the care, custody or supervision of or receives medical treatment from, the perpetrator, or if abuse is made of a recognized position of trust, authority or influence over the victim.

(3) Any person who provides material assistance for the criminal act defined in Paragraph c) of Subsection (1) shall be punishable by imprisonment between one to five years.

(4) Any person who:

a) persuades a person or persons under the age of eighteen years to participate in a pornographic production is punishable by imprisonment not exceeding three years,

b) gives a role to a person or persons under the age of eighteen years in a pornographic production is punishable by imprisonment between one to five years.

(5) Any person who:

a) offers to a person or persons under the age of eighteen years to participate in a pornographic material;

b) participates in a pornographic production in which a person or persons under the age of eighteen years also participate;

c) provides material assistance for the involvement of a person or persons under the age of eighteen years in a pornographic production;

is punishable by imprisonment not exceeding three years.

(6) Any person who provides the means necessary for or facilitating the production or distribution of or trafficking in pornographic material on a person or persons under the age of fourteen years is guilty of a misdemeanor punishable by imprisonment not exceeding two years.

(7) For the purposes of this Section:

a) ‘pornographic material’ shall mean any video, movie or photograph or other form of recording that displays sexuality in a gravely indecent manner of exposure specifically for arousing sexual demeanor,

b) ‘pornographic production’ means an act or show to display sexuality in a gravely indecent manner of exposure specifically for arousing sexual demeanor.

The illicit pornographic recording abuse has been punished for over a decade and a half by the former Hungarian Criminal Code too. In our country, the abuse of illicit pornographic recording has been mentioned as a separate state of fact in the Criminal Code since 1997, when the legislature ordered punishment of pornographic material from a person who was no more than 18 years of age as a separate act, as the UN Convention on the Rights of the Child in Hungary became into force. The range of criminal behaviors has been expanded, the new Hungarian Criminal Code further expands this circle. The legal subject of the offense is the social interest of healthy sexual development of persons under the age of 18 and the fight against organized crime groups in the field of child pornography.

Anyone can commit these criminal offense, but if a person under the age of 18 is taking pornography on their own of her/his own body, we think that the crime is not realized because there is no danger to society in these special situation. In this case, at most, if many other conditions are met too, for example a special violate crime can be established. The offense can only be intentionally comitted, but it is important in this regard whether the perpetrator is aware of the age of the victim. Without such a consciousness, this crime can not be comitted.

The victim of these offense is, in principle, a person who is under eighteen. The passive subject (victim) of the case referred to in paragraph (5) may not be just fourteen years of age.

The object of the offense is a pornographic recording and broadcast of a passive subject (the persons under eighteen and the persons who are not over the age of fourteen, regardless of their sex or the fact that they are minors or adults by the civil law). According to the interpretative provision of the Article 204 (7) of the Hungarian Criminal Code:

‘pornographic material’ shall mean any video, movie or photograph or other form of recording that displays sexuality in a gravely indecent manner of exposure specifically for arousing sexual demeanor, b) ‘pornographic production’ means an act or show to display sexuality in a gravely indecent manner of exposure specifically for arousing sexual demeanor.

On the basis of the grammatical interpretation of the term "recording", graphical representations and drawing and painting can be excluded from this circle. It is not a crime too, however, that a pornographic voice record of a person or persons who has not reached the age of eighteen years even if it has been proved to have been made during a sexual act. The scientific, artistic or educational representation of the human body can not be included in the scope of committing the crime. Recruitment is a symbol of sexuality with a severely vexatious openness in the practice of medical practitioners when passive subjects are sexually active, or if at least sexual organs are visible, and the goal of setting the image, the circumstances or the background to arouse sexual desire may be inferred . (It is not pornographic, for example, a naked child who is under eighteen years is visble on a public stand, a recording made by his parents).

The perpetration behavior of the offense can be found in paragraphs (1) - (6). It is punishable to acquire, hold, prepare, offer, deliver, etc. perpetrator behavior in the former Criminal Code. similarly. It is a novelty to reconsider the social danger of the perception of perpetrators. Most of the perpetrators of the offense in practice are now connected to the Internet, so it is typically a computer offense today.

The Criminal Code lists the acts of perpetration based on the social danger. The offense based on these can be achieved with the following behaviors:

a) Acquisition: taking possession of a person (for example downloading from the Internet[6]),

b) Keeping: Continuous, longer-term possession, which is preceded by acquisition. Holding is keeping the record under the actual right of disposal of the offender either on a traditional basis (paper, video cassette, etc.) or as an electronic record (as a computer data).

(We note that since all forms of a crime can only be intentionally comitted, it is necessary to examine whether the acquittal or possession of an illicit image can be acquired or retained in the case of acquisition or retention. Computer science nowadays allows various programs downloading images and other recordings on the user's computer without the user's having to see and authorize it separately[7]),

(c) making: recording, recording on any medium,

(d) offering: the perpetrator in this case invokes another person to take the picture taken, but this call is unsuccessful. In other words, this act of perpetration imputes a case that is otherwise a preparatory act, as a sui generis criminal act,

e) giving away: means conduct which results in the taking of the property by another person from the perpetrator. It is indifferent from the point of view of the perpetration of the perpetration behavior that it will expire at the same time as it is transferred by the perpetrator or that the recording is only copied. (This is an example of sending an offending email to a third party.)

b) making available: the possibility of obtaining, copying and taking on the record, allowing the other person to know,

f) placing on the market: whether for free or unpaid use of more than or equal number of persons,

g) trading: selling image recordings (with regular sales)

h) making it accessible to the general public: creating the opportunity to become familiar with the image capture (nowadays it is practically practiced exclusively by uploading to the Internet);

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[6] Before the Internet was released, pornography was a "layered genre". It was only for those who sought targeted and made efforts to reach it, such as visiting the newspaper or entering the segregated section of the videotape for adults. Computing today offers tools (software, photo editing, digitizing programs) that make it easy and quick to view and copy pornography, and allow the internet to be presented to large masses (web site publishing, distribution of members of a closed-loop network, file exchange). Internet users can now access the pornographic (and other) content anonymously, so the personal encounter with salesmen and shop staff is no longer a deterrent (Parti Katalin: Az eladók már rég hazamentek. A büntetőjog mint az online pornográfia szabályozásának eszköze PhD thesis Pécs, 2008. 30. p.)

[7] Commentar to the Hungarian Criminal Code II. CompLex Kiadó, Budapest, 2009. 761. p.

i) Inclusion in a pornographic program: the effective imposition of the victims on a pornographic program,

j) a call for inclusion in a pornographic program: the inadequate persuasion of passive subjects to enter pornographic programs,

k) Participation in a pornographic program: participation in any kind of quality (not necessarily through the actual participation in sexual acts, any "attendant" or even purely conduct of such conduct is factual, if intentionality and the underlying consciousness can be established and proven) .

l) provision of financial means: any financial support or assistance for the production of illicit pornographic program or programs.

Of the preparatory conduct of the act, the criminal law penalizes the conditions necessary for making or placing on the market or facilitating trade, but only if the victim is special: instead of the age of eighteenth year of life, passive subject must be under fourteen.

Considering that the Criminal Code uses the "person or persons" turn, by our opinion, the offense constitutes a single crime regardless of the number of victims and the number of recordings.

The perpetrator can only carry out a type of offense with the same image for the same image, and the offense in the first order makes the offense completed.

It can only provide a basis for concursus criminum if the perpetrator has a certain number of images, and makes other recordings publicly available (for example, uploading to the Internet), so different behaviors may be in concursus if they follow different recordings get them off.

A crime may, in the absence of the passive subject's volunteering, constitute a real concursus with the violent type sex offenses. It may also have a real concursus with the sexual abuse, even if its elements are fully implemented.

2. INSTEAD OF CONCLUDING: SOME CASES FROM THE JUDICAL PRACTICE IN HUNGARY

"Abuse of illicit pornographic recording is typically related to a computer or the Internet. In addition, perpetrators prefer to engage in occupations that allow permanent and perceptual access to potential victims. Such is the informatics or school education and pedagogical occupation. However, the case law of the judiciary lacks the prohibition of engaging in a prohibition on extrajudicial counterfeiting of such offenders who violate their professional rules or commit the offense using the profession.

In one of these cases, perpetrators have obtained child pornography footage from the Internet via a file-sharing program. The court sentenced the teacher offender to 10 months' imprisonment and suspended the execution for three years. For the duration of the suspension, he also ordered the offender's probation supervision as a special behavioral rule for sex therapy. However, with a slight fading of the positive practice, the perpetrator was not banned from attending the offense despite the fact that the perpetrator was reluctantly sexually attracted to children.

In another case, the perpetrator uploaded and made available child pornography material as a member of an international file exchange network. The perpetrator was sentenced to 16 months' imprisonment by the court, suspended for three years. The court did not forbid the perpetrator from engaging in a profession despite the fact that he had graduated from computer science and used IT skills to obtain the recordings.

In the third case, he was the offender teacher, school principal, who assigned "tini szex" disks from one of the online child pornography networks. During police search, police seized more than one child pornographic material downloaded from the disks and stored on their computer at home. The court has no disqualification from employment in the case of the employee, so that the perpetrator can continue practicing the school director's work without any problem. "[8]

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DEČJA PORNOGRAFIJA: KRIVIČNA DELA PROTIV SEKSUALNIH SLOBODA I SEKSUALNOG MORALA DECE U MAĐARSKOJ

Seksualne slobode i krivična dela protiv seksualnog morala predstavljaju ponašanja koja su osuđujuća u moralnim normama većine društava. U većini slučajeva, seksualnost je pod okriljem krivičnog prava dospela iz drugih društvenih i moralnih normi. Postavlja se pitanje kakav je uticaj morala na krivičnopravno regulisanje seksualnih krivičnih dela, odnosno kakva je veza između moralnih i krivičnopravnih normi. U ovom radu, predstavljena je nova regulativa i praksa u pogledu dečje pornografije kao zločina protiv seksualnih sloboda i seksualnog morala dece u Mađarskoj.

KLJUČNE REČI: Krivični zakonik / dečja pornografija / krivična dela protiv seksualnih sloboda / pornografsko snimanje / seksualni moral

LEGAL FRAME FOR CRIMINAL PROCEEDINGS AGAINST JUVENILES IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

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The Paper analyzes applicability of legal frame of international standards on the protection of juvenile rights which are expressed through the concept of protection of "the best interests of a child and juvenile", in view of the question whether the Federation of BH performs appropriate activities and to which extent, and are there controversy points that need to be resolved separately. It points out the unknowns which the practice of the courts in the Federation of BH have not yet completely resolved, and are related to the applicability of the new rules adopted by the Law on the Protection and Treatment of Children and Juveniles in Criminal Procedure of the Federation of BH. Also, it presents a set of legal rules that regulate criminal proceedings against juveniles within the Federation of BH, with a special emphasis on the basic characteristics of this process. Finally, possible solutions to the mentioned ambiguities and dilemmas are proposed in accordance with the principle of legal certainty as essential to addressees of the relevant legal norms.

KEY WORDS: criminal procedure / juveniles / law / preliminary proceedings / Federation of BH

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INTRODUCTORY REMARKS

Criminal procedural right is a field that during history represented legal field in all social systems which transformed under influence of actual social conditions seeking creation of satisfying legal framework for objective establishment of responsibility or committed criminal offences, with maximum protection of human rights in criminal poceedings (Krapac, 1994: 91-121). Specificities of criminal proceedings for juveniles, conditionally speaking, are the best testimony of that (Grubač, 1979:144).

Criminal justice system for juveniles, unlike the criminal justice system for adults, recognizes children who are in conflict with the law as a victims, taking into account the fact that juveniles lack adequate maturity to be treated as adult perpetrators of criminal offenses (Goldson, Muncie, 2011: 47-64). The juvenile criminal justice system recognizes the susceptibility of children to experimentation, victimization, involvement in delinquent behavior, and that the problems faced by juveniles in childhood or adolescence may have long-lasting consequences (Mulvey *et al.*, 1997: 1-4). The vast majority of juveniles who come into conflict with the law are victims of neglect, severe exploitation, economic and social conditions (Kalra, 1996: 5-65). On the other hand, these juveniles should also have the right to adequate care, protection and opportunity for social reintegration (Kaiser, 1973: 105-121) - the rights on which the criminal justice system for juveniles should be based (Vasiljević, Grubač, 2002: 688).

The main goal sought to be achieved with a new Law on Protection and Treatment of Children and Juveniles in the Criminla Proceedings of the Federation of BiH[1] is harmonization of the criminal procedural legislation of the Federation of BiH with the Constitution of the Federation of BiH, the Constitution of BiH and international legal norms referring to this field[2]. However, this Law kept all that was "healthy and useful" in previous criminal procedural legislation of BiH, case-law and legal tradition. It even conditioned a significant reconstruction of organization assumptions of judicial and prosecutorial aparatus, as well as establishment of new models of mutual coordination of actions between police organs, prosecution and the court. In addition, all general legal standards referring to the right to defence, detention and protection of physical and psychological integrity applying to mature perpetrators of criminal offences, refer

[1] There are four (juvenile) criminal laws in Bosnia and Herzegovina, and these are: a) at the level of Bosnia and Herzegovina, b) Federation of BiH, c) Republika Srpska, and d) Brčko District of BiH. At the level of Bosnia and Herzegovina, there is still a traditional model according to which the legal status of a juvenile perpetrators of criminal offences is regulated by a special parts within the general criminal legislation. On the other hand, special laws on the protection and treatment of children and juveniles in criminal proceedings are applied in the Republika Srpska, the Federation of Bosnia and Herzegovina and Brčko District, as special legislative texts autonomously regulating the overall criminal status of juveniles (substantive, procedural, enforceable, and the commission of crimes at the expense of a juvenile). These laws are published in the "Official Gazette of the "Republika Srpska" Nos. 13/10 and 61/13 (ZPDMRS), "Official Gazette of Brčko District of BiH" No. 44/11 (ZPDMBD) and "Official Gazette of the Federation of Bosnia and Herzegovina" No. 7/14 (ZPDMF). They entered into force on the eighth day they are published, but with a postponed application of one year, the ZPDMRS began to apply on 1 January 2012, ZPDMBD on 18 November 2012, and ZPDMF on 1 January 2015.

[2] According to the FBiH Security Report for 2015, out of the total number of 13,012 reported persons – 429 accused persons of having committed criminal offenses are juveniles, which is less than 111 or 0,49 per cent compared to the year 2015. The number of criminal offenses for which juveniles are reported as perpetrators was reduced by 20.56 percent in 2016 compared to 2015 (Internet source: http://www.fup.gov.ba/?cat=19 - Information on status of security within the territory of the Federation of Bosnia and Herzegovina for 2016, Federal Police Administration, January 2017).

to juveniles as well, but with significantly higher degree of care and caution. Therefore, the proceedings are not conducted against but towards a juvenile (Vasiljević, Grubač, 2002: 717).

Introduction of educational measures into the register of criminal sanctions of substantive criminal law also lead to big changes in the proceedings towards juveniles which did not differ significantly from the proceedings towards mature perpetrators of criminal offences. The traditional criminal procedure in which all the attention is paid to the investigation of criminal offenses, the determination of guilt and sentence, which should correspond to the gravity of the criminal offence and degree of guilt, became completely inappropriate for trials to juveniles since introduction of educational measures (Simović *et al.*, 2009: 490). At the same time, the form of the procedure adjusted to the aim of educational measures should have been found. Namely, anything that could, figurativelly speaking, "mark" a juvenile and harm his educational future should have been removed from the "classical" procedure.

Thus, just knowing that brining of a juvenile offender before a regular criminal court and his submission, figuratively speaking, to a rigid criminal procedure and have harmfull effect on his future development, has resulted in the introduction of a special, shortened, informal and simplified procedure for juveniles (Simović *et al.* al., 2013: 294). Such an elastic and informal process has been achieved by abandoning or limiting some of the basic procedural rights and guarantees that are otherwise complied with in criminal proceedings against accused adults (Ignjatović, 1997: 138).

1. BASIC CHARACTERISTICS OF THE CRIMINAL PROCEEDINGS TOWARDS JUVENILES IN THE FEDERATION OF BIH

Criminal proceedings towards juveniles in the Federation of BiH is a special criminal procedure (Lazin, 1995: 169). The essence is to apply some specific rules in certain procedure in relation to the rules which apply in general, that is regular criminal prcedure (Škulić, 2003: 121; Govedarica, 2013: 97). Therefore, subsidicary application of the rules of general criminal proceedings is possible only if it is not contrary to ZPDMF, which, in essence, means that it is not contrary to specific aim of the criminal procedure towards juveniles (Lazin, 1995: 170). In doing so, application of specifil provisions from ZPDMF is linked to age of a juvenile offender at a time of initiation of the proceedings or a trial. The entire proceedings towards juveniles should constitute a functionnal entirety (Knežević, 2010: 169).

ZPDMF tries as much as possible to diminish consequences following from the fact that a young delinquent appears before the court[3] (Jovašević, 2008: 67-69). This is done by regulating three types of procedural provisions.

The first group includes unquestionable, generally accepted provisions that are by their very nature extremely generalized, so no further assessment of juvenile delinquent is

[3] Based on the table of the Federal Bureau of Statistics, it follows that the total number of criminal offenses is very high. The most common crimes committed by juveniles are crimes against property. There is noticeable decrease – stagnation of criminal offenses in the period from 2008 to 2011, and new increase of growth of total number of criminal offenses (as well as property offenses) in 2012 and 2013 (Bulletin No. 203/2014 of the Federal Bureau of Statistics, Sarajevo, January 2014 and Statistics Yearbook of the Federation of Bosnia and Herzegovina, January 2016).

required for their application. Such procedural provision is the rule that a special procedure for juvenile offender should be applied even in cases where the perpetrator is, at the time of the initiation of the proceedings or the trial, has not reached the age of 23.

The second group includes rules whose purpose may be achieved only if their application is concretized in relation to each juvenile delinquent individually. So, for example, a prosecutor shall not be able to make a decision on expediency to initiate proceedings towards a juvenile without taking into account previouos life of a juvenile and his personal capacities or without assessing his readiness to fulfill set requirements, so the prosecutor would not initiate a proceedings.

The third group of procedural provisions contains rules whose primary purpose is to guarantee a juvenile his right to a fair trial, and only indirectly to diminish his traumatization and stigmatization. Consequently, it also includes the right of a juvenile to defense attorney who is mandatory included at his first interrogation.

Criminal proceedings against juveniles in the Federation of BiH have three stages: preparatory proceedings, proceedings before a juvenile judge and a proceedings upon legal remedy. However, this is not a rough division of these stages because they are much more in correlation than in the general procedure, with the aim of achieving continuity in actions, i.e. to turn away a juvenile from committing criminal offenses in the future, through educational influence (Simović *et al*., 2013: 297, Škulić, 2003: 122). The basic conceptual settings of a patronazing, i.e. protective model are based on giving advantage to social-pedagogical and psychological aspects of juvenile delinquency.

A juvenile offender who has not reached the age of 14 (child) at the time of the commission of the offense - is not guilty. Having learned about this fact, the actions of the organ for the treatment of juveniles are different. Namely, if an authorized official finds that a person for whom there are grounds for suspicion of having committed a criminal offense has not reached the age of 14, it shall not question him or her but will immediately notify the prosecutor and the custodian about it. However, in the case of a criminal offense that has resulted in a serious violation of the integrity of another person or substantial material damage, an authorized official shall examine the child and submit an official report to the prosecutor.

The proceedings against a juvenile when he participated in the perpetration of a criminal offense together with an adult (objective connexity) is separated and conducted under the provisions of the ZPDMF (Article 79, paragraph 1 of ZPDMF). This rule applies regardless of the criminal offense, i.e. whether the issue is about a juvenile or an older juvenile. Exceptionally, criminal proceedings against a juvenile offender may be conducted in conjunction with a proceedings against adult persons only if the merger of the proceedings is necessary for a complete clarification of the matter (Article 79, paragraph 2 of ZPDMF).

Article 74 of the ZPDMF excludes the possibility of applying the provisions of the Criminal Procedure Code of the Federation of BiH[4] on a criminal order (Articles 350-355), pleading (Article 244), consideration of guilty plea (Article 245) and plea bargaining (Article 246) in the criminal proceedings against juveniles. Namely, in order to realize the protective purpose of juvenile criminal proceedings, the legislator had to depart from a

[4] "Official Gazzette of the Federation of BiH" Nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 09/09, 12/10, 8/13 and 59/14.

number of principles and rules that apply to ordinary criminal proceedings, which is why this procedure shows some specificities that are not found in the proceedings against adult perpetrators of criminal offenses (Jekić, Škulić, 1987: 397).

1.1. Duty to act with precaution

When undertaking actions in presence of a juvenile, especially during his or her questioning, the organs participating in the proceedings are obliged to act with precaution, taking into account mental development, sensitivity and personal characteristics of the juvenile, so that the conduct of criminal proceedings would not have harmful effect to his physical, mental and cognitive development (Article 76 paragraph 1 of the ZPDMF). Conducted by the principle of precaution, the court must not disclose the course of the criminal proceedings against the juvenile nor the decision rendered in such proceedings, as well as it is not permissible to make audio or video recording of the course of the proceedings for the purpose of publication. If a legal decision is published, the identity of the juvenile must not be disclosed (Article 84, paragraphs 1 and 2 of ZPDMF). Actions contrary to these provisions of general character (Soković, Bejatović 2009: 134) would harmfully reflect on the development of a juvenile's personality (Ramljak, Simović, 2011: 226). At the same time, the organs involved in the proceedings must not allow any undisciplined behavior of the juvenile and must prevent it by suitable measures (Grubač, 2008: 515).

1.2. Initiation of the proceedings against a juvenile

Criminal proceedings against a juvenile is initiated by an order to initiate preliminary proceedings issued by a prosecutor (Article 75 of ZPDMF). The prosecutor is the only authorized to initiate criminal proceedings against a juvenile (Knežević, 2010: 169).

1.3. Obligatory defence

Paragraph 1 of Article 77 of ZPDMF prescribes that a juvenile shall be obliged to defence attorney the first time he or she is questionned by a prosecutor or authorized official, i.e. druging the entire criminal proceedings regardless of the type and the amount of criminal sanction prescribed. Legal term "entire proceedings" understands the preparatory proceedings, first instance proceedings and the proceedings upon legal remedies (Jovašević, 2008: 69). This understands further obligations of the juvenile's defence attorney, thus the juvenile has a defence attorney even when authorized official pronounces a police warning, i.e. when the prosecutor requires a juvenile to fulfill educational recommendations under Article 26 of ZPDMF in order not to initiate the proceedings against him.

If a juvenile does not know the language on which the criminal proceeding is conducted, the court shall appoint him an interpreter (Matovski, 2003: 354). A defence attorney is elected by a juvenile, as well as persons close to him (legal representative or relatives). If those persons faile to use this possibility, the juvenile judge shall appoint an *ex officio* defence attorney (Article 77 paragraph 3 of ZPDMF). This defence attorney must have special knowledge.

1.4. Bringing of a juvenile

A measure of bringing of a juvenile is carried out by members of a court police (Article 83 of the ZPDMF). These persons should not wear uniforms and, thus, they fulfill this task in a civil clothes – taking care they do it in an unobtrusive manner (Knežević, 2010: 229).

1.5. Possibility of exemption from the duty of testimony in relation to a particular case of testimony

Procedural modification reflects in alteration of rules of general criminal proceedings referring to possibility of exemption of some witnesses, i.e. specific categories of witnesses of their duty of testimony (Jovašević, 2008: 67). Only parents, guardian, an adoptive parent, a social worker, a religious confessor, i.e. a religious official and a defense attorney are exempted in the proceedings against juveniles from their duty of testimony on the circumstances necessary for assesment of a mental development of a minor, introduction with his personality and living conditions. The institute of exemption from the duty of testimony in the proceedings against juveniles is, thus, reduced to objective facts about the juvenile's personality so, conditionally speaking, it is justified the legislator's position that aforementioned persons should not testify, because the practice has shown their statements and testimonies are not of much use (Grubač, 2008: 516).

1.6. The role of guardianship authority

Term "guardianship authority" is of a procedural nature and the function of that body in practice performes Center for Social Work, competent municipal service of social protection having the same rights and obligations towards children who are in conflict with the law and prevention of socially unacceptable behavior (Article 12 point i) of ZPDMF). Thus, centers for social work function independently from judicial system and their role is providing of some kind of protection to a juvenile, which means establishment of relationship of trust with a juvenile (Simović *et. al.*, 2013: 279).

In the proceedings against juveniles, in addition to the powers explicitely provided for in the provisions of the ZPDMF, the guardianship authority has the right to be informed with the course of the proceedings, to give proposals during the proceedings and to point out to the facts and evidence relevant for the adoption of a proper decision (Article 81 paragraph 1). The prosecutor informs the competent guardianship authority (Hirjan, Singer, 1987: 389) of any initiation of proceedings against juvenile.

In the criminal proceedings against the juvenile offender, the representative of the competent guardianship authority has the following basic procedural obligations: to give the prosecutor before the initiation of the preparatory proceedings for the offense the juvenile is charged with, so-called social background, i.e. information on the age, maturity and other characteristics of a juvenile (Article 12 point k) of ZPDMF); to get acquainted with the course of the criminal proceedings; during the proceedings, and in particular during the preparatory proceedings, to give suggestions and put questions to persons who are questioned or heard; to point out to the facts and evidence relevant for adoption of a proper decision that will best suit the given conditions.

Guardianship authority also has an important role in collecting and establishing information on the juvenile's personality. In doing so, it has to be summoned to the main hearing and cannot be removed from the main hearing.

1.7. Summoning of the juvenile and delivery of correspondence to a juvenile

Summoning of juveniles is always done through parents, i.e. legal representative, except if it is not possible due to urgent actions or other circumstances, in which case the judge appoints a special guardian upon a proposal of the prosecutor until the conclusion of the proceedings (Article 82 pragaraph 1 of ZPDMF). However, it is forbidden to put juvenile summons on the bulletin board. Likewise, neither the provision of the verbal decree nor oral statement of the juvenile he would not appeal to the court would be relevant in relation to juveniles, which provisions may be taken into account in relation to adult offenders.

1.8. Announcing of the course of criminal proceedings

Neither course of criminal proceedings against a juvenile nor a decision reached in this proceedings can be announced, and the proceedings cannot be audio or video taped (Article 84 pragraph 1 of ZPDMF). Such exclusion from prohibition of principle of publicity in criminal proceedings against juveniles is a compromise from the request to protect the juvenile's personality and the right of public to truth and complete information as much as possible (Soković, Bejatović, 2009: 115). A legally valid decision of the court can be published without stating personal data of a juvenile which may disclose his identity (Article 84 paragraph 2 of ZPDMF). Adequate criminal offence of violation of secrecy of the proceedings is contained in the Criminal Code of the Federation of BiH[5] (Article 350 – violation of secrecy of the proceedings).

1.9. Obligation of prompt actions

Authorities participating in the proceedings against a juvenile, as well as other authorities and institutions which are required some informations, reports or opinions, are obliged to act as promptly as possible – in order to complete the proceedings as soon as possible. For the same purpose, the legislator orders a juvenile judge to inform the president of the court every 15 days about the cases of juveniles which are still pending and about the reasons for that. In doing so, the president of the court is obliged to take necessary measures to speed up the proceedings (Article 114 of the ZPDMF). In addition, suspension or termination of the main hearing in the proceedings against juveniles is of a special character, and the juvenile judge is obliged to inform the president of the court on the reasons of any suspension or thermination of the main hearing (Simović *et al.*, 2013: 420-412).

[5] "Official Gazzette of the Federation of BiH" Nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16 and 75/17.

1.10. Territorial jurisdiction

Article 86 of ZPDMF stipulates an exception from a general rule on territorial jurisdiction of the court (Article 26 paragraph 1 of the Criminal Procedure Code of the Federation of BiH), and competencies of the juvenile court according to the permanent place of residence (forum domicili), i.e. temporary place of residence (forum residentiae) rule, and competency according to the place of committed criminal offence, i.e. before the court within which territory is located an institute or institution for execution of criminal sanctions in which a juvenile is located – exception. Therefore, there is deviation from a general rule to primarily establish territorial competence between criminal matter, on one side, and the territory of the court, on the other side, in case of commission of a criminal offence. It is taken into account only if it is obvious that the proceedings will be easily conducted before the court at the territory where criminal offence was committed, i.e. before the court at whose territory the institute or institution for execution of criminal sanctions of a juvenile is located (Simović *et. al.*, 2013: 309).

1.11. Composition of the court

A judge as an individual shall conduct the first instance trial for criminal offences committed at juvenile age, regardless of prescribed sentence (Article 17 paragraph 1 of ZPDMF). At the second instance trial, Panel for juveniles in the second instance shall be composed of three judges determined by that court's schedule of duties, who have special knowledge from the scope of rights of a child and juvenile delinquency. The Panel composed of three judges having special knowledge shall in the third instance decide upon the appeal filed against a second-instance decision in accordance with provisions of Article 118 of the ZPDMF. If it is not possible to compose a Panel of three judges with special knowledge – at least one judge with special knowledge shall be provided and, at the same time, he will be the president of the Panel for juveniles. The Panel for juveniles, as a rule, consists of judges of different gender.

1.12. Collection of information about a juvenile's personality

While examining of the personal and family circumstances of an adult person is optional, the legislator in Article 87 of the ZPDMF in case of juveniles was quite explicit in term of requiring that the juvenile's age, the circumstances necessary to evaluate his mental development, are specificially determined, and to examine the environment and circumstances in and under which the minor lives as well as other cicumstances related to his personality. This information is required by the prosecutor in order to decide whether to act in a particular case under the principle of opportunity, to suspend or approve the process of applying the educational recommendation or to issue an order to initiate the preparatory procedure (Zigler *et al.*, 1992: 997-1006) . The juvenile judge shall collect information on the personality of the juvenile. However, this anamnesis is also provided by an authorized official when the requirements of Article 23 of the ZPDMF are met.

1.13. Principle of opportunity of criminal prosecution in the proceedings against juveniles

ZPDMF leaves the prosecutor to assess whether he will request initiation of a criminal proceedings against a juvenile. Under Article 89 paragraph 1 of this Law, for criminal offences with prescribed fine or sentence of imprisonment for a term of up to three years, the prosecutor may decide not to initiate a criminal proceedings even though there is evidence that a juvenile has committed a criminal offence, if he considers it would not be efficient to conduct proceedings against a juvenile given the nature of criminal offence and circumstances under which it had been committed, previous life of a juvenile and his personal characteristics. For the purpose of establishing of mentioned circumstances, the prosecutor may seek information from parents, i.e. juvenile's guardian, other persons and institutions, and when necessary, he may invite these persons and a juvenile for direct interview (Simović: 2013: 294-312).

If, for the purpose of making such decisions, it is necessary to examine the personal characteristics of a juvenile, the court may refer the juvenile to a institution for children and juveniles or correctional institution upon substantiated request of an attorney, for a period of not more than 30 days. Referral to an appropriate institution may be preceded by a prosecutor's consultation with a psychologist, a pedagogue, a defectologist or some other expert person. Due to the nature of the institution where the juvenile is referring to and the restrictions of the right to freedom, the time spent in that institution is included in the sentence of imprisonment of a juvenile - if that penalty is imposed.

Also, when the execution of punishment or educational measure is ongoing, the prosecutor may decide not to initiate criminal proceedings for another criminal offense of a juvenile if, given the gravity of the criminal offense, as well as the punishment or the educational measure that is being executed, there would be no purpose to conduct the proceedings and impose criminal sanctions for that offense. This basis for application of the opportunity principle is not limited by the abstract severity of the offence.

1.14. Exclusion of public

In the juvenile proceedings, the public is always excluded (Article 111 para. 1 of the CPVO), regardless of whether it is a preparatory procedure, a session or a main trial. The same applies to proceedings before the second instance court. A juvenile judge may allow persons at the main trial to be involved in the protection and upbringing of juveniles or the suppression of juvenile delinquency as well as scientific workers.

A juvenile judge will alert persons who attend a hearing or a main trial on the duty to guard the secrecy of what is at the hearing or the main trial and that unauthorized disclosure of the secret is a criminal offense. During the main trial, the juvenile judge may order that all or one of the persons be removed from the session. However, this rule does not apply to the prosecutor, the defense attorney and the representative of the guardianship authority (Article 111 paragraph 3 of the ZPDMF).

1.15. Measures for providing the presence of a juvenile and successful conduct of criminal proceedings

When the requirements under Article 146 paragraph 1 items a) – c) of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina, are met, the court may, upon the motion of the parties or defense counsel or *ex officio*, impose prohibition measures to the juvenile instead of determining and extending custody (Marinović-Pejović, 1969: 449) (Article 95 of the ZPDMF). When prohibition measures are imposed, the provisions of Articles 140, 140a, 140b, 140c and 140e of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (Matovski, 2003: 354), are applicable.

An authorized official may deprive a juvenile of his or her freedom if there are grounds for suspicion that he or she has committed a criminal offense and if there are reasons provided for in Article 146 paragraph 1 items a), b) and c) of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina. During deprivation of liberty and during the juvenile's stay at the Ministry of Interior's Police Station, all the contacts of an authorized official with a juvenile are performed in a way to fully respects the juvenile's personality and supports his or her well-being (Ljubanović, 1999: 40-64).

Questioning of a juvenile shall be conducted by the prosecutor or, with the approval of the prosecutor, by an authorized official who ensures the presence of a parent or a guardian or adoptive parent. An authorized official shall be obliged to bring the juvenile before the prosecutor without delay and at least within 24 hours, and notify him of the reasons and the time of deprivation of liberty. If the juvenile who is deprived of his or her liberty is not brought before the prosecutor within this period, he shall be released.

A juvenile who is deprived of liberty (while in Police Station and during detention in the prosecutor's office) shall be placed in the room in which he shall not have a contact with adults (Article 97 paragraph 1 of the ZPDMF). After the juvenile has been brought, the prosecutor is obliged to question a juvenile without delay, and no later than 24 hours after the date of the referral (in Republika Srpska this period is 12 hours), if he has not been examined yet, and to decide whether to give the judge a proposal to impose a prohibiting measure under Article 95 or temporary accommodation in accordance with Article 94 of the ZPDMF or a proposal for ordering detention or will release him or her. When proposing, the prosecutor always gives priority to prohibition measures.

An appeal to a Panel referred to in Article 17 paragraph 3 (out of court Panel) is allowed within 24 hours of the receipt of this decision against a decision ordering custody. The appeal does not stay the execution of the decision (Article 99 paragraph 4 of the ZPDMF) (Josipović, 1993: 659-699).

According to the decision of the judge, custody may last no longer than 30 days from the day of the deprivation of liberty[6], with the obligation of the Panel to exercise control over the necessity of detention every 10 days, with prior statement of the prosecutor on the actions taken for the period preceding the control. If the prosecutor does not act in this manner, the prosecutor of the Cantonal Prosecution shall be informed about it in order to take necessary measures to comply with the requirements set out in this paragraph. By a decision of the Panel, upon the reasoned proposal of the prosecutor, custody may be

[6] A judge may order detention for a shorter period of time, for example 10 or 15 days. However, it is "an unwritten rule" that a judge always orders 30 days detention, and if the need for detentions seizes to exist before the expiry of this period, it shall be terminated.

extended for another 30 days. Against the decision of the Panel an appeal may be file, and it will be considered by the Panel of the second-instance court within 24 hours from the receipt of the appeal (Soković, Bejatović, 2009: 134).

After the completion of the preparatory proceedings, i.e. after the submission of the proposal for the determination of the criminal sanction, upon a substantiated proposal of the prosecutor the detention may be extended by the decision of the Panel for another two months, with control of custody each month and with the prior statement of the prosecutor on the actions taken for the period preceding the control. An appeal against this decision is allowed to the Panel of the second instance court referred to in Article 17 paragraph 2 of the ZPDMF, which shall decide on the appeal within 24 hours from the receipt of the appeal. The appeal does not stay the execution of the decision.

After the imposition of the institution educational measure or a juvenile imprisonment, the detention may last for up to two more months. If there is no second-instance decision confirming or amending the first-instance decision, the detention shall be terminated and the juvenile shall immediately be released. If within two months a second-instance decision is reached terminating the first-instance decision, the detention may last for another 30 days from the date of the pronouncement of the second-instance decision. If the juvenile is in custody and the decision imposing an institution educational measure or a juvenile imprisonment becomes legally valid, the juvenile may be released until referral to the institution for the execution of the educational measure or a sentence (Josipović, 1998: 399).

2. ACTIONS BEFORE INITIATION OF PREPARATORY PROCEEDINGS

The goal of part of the procedure in which the juvenile offender does not enter the area of initiation of criminal proceedings is not to initiate criminal proceedings in cases where the law permits or ensures proper development of the juvenile and strengthens his or her personal responsibility so he or she would not commit criminal offences in the future.

As a rule, the questioning of a juvenile is conducted by a prosecutor, and authorized official upon the approval of the prosecutor. For criminal offenses punishable by a fine or sentence of imprisonment for a term not exceeding three years, an authorized official with special knowledge shall question a juvenile, upon obtained approval of a prosecutor.

An authorized official shall question a juvenile in the presence of his or her defense attorney, parents, guardian or adoptive parent. When the parents, the guardian or adoptive parents of the juvenile are prevented from attending the questionning of a juvenile, or if their presence would not be in the interest of the juvenile, the authorized official shall question the juvenile in the presence of represtantatives of the guardianship authority or the institution for the accommodation of a juvenile (Radulović, 2009: 542).

An authorized official shall be obliged to bring the juvenile, without delay and at least within 24 hours, before the prosecutor and notify him of the reasons and the time of deprivation of liberty. After questioning of the juvenile and collecting evidence within 24 hours, an authorized official with official report may submit to the prosecutor a reasoned proposal only to warn the juvenile in the particular case. If, after consideration of the proposal, the prosecutor finds that there is evidence that the juvenile has committed a criminal offense and that due to the nature of the criminal offence and the circumstances

under which it was committed, the previous life of the juvenile and his personal characteristics, and that the initiation of the criminal proceedings would be ineffective – he may give requested approval and submit the case to an authorized official of the police body to issue a police warning to a juvenile. If the prosecutor does not approve the issuance of a police warning, he or she shall inform the authorized official and, prior to the initiation of the preparatory procedure, considers the possibility and justification for the issuance of educational recommendation within the meaning of Article 90 or orders the initiation of a preparatory procedure pursuant to Article 91 paragraph 1 of the ZPDMF.

If the prosecutor "approves" a police warning, authorized official shall, within three days from the date of submission of the case to the juvenile, issue a police warning and, on that occasion, point to the social inadmissibility and the harmfulness of his or her behavior, the consequences that such behavior may have upon him, as well as to the possibility to conduct criminal proceedings and to impose criminal sanctions in the case of re-commission of the criminal offense. The authorized official shall notify the prosecutor, the juvenile and his defense attorney, a parent, a guardian or an adoptive parent, the guardianship authority, as well as the damaged party, within three days from the date on wich the case was submitted, indicating the reasons for the decision. (Škulić, 2011: 402).

Before deciding to initiate a preparatory proceeding against a juvenile for criminal offences under Article 89 paragraph 1 of the ZPDMF, the prosecutor shall consider the possibility and justification of the application of the educational recommendation in accordance with the provisions of this Law. When the prosecutor for criminal offenses referred to in Article 89 Paragraph 1 of the ZPDMF does not apply the educational recommendation - he must explain the reasons for such a decision (Škulić 2012: 106). Likewise, if, on the basis of a report of the guardianship authority, it is established that the juvenile, for no good reason, refuses to fulfill his obligation from the educational recommendation or does not comply with it in appropriate manner, the prosecutor shall issue an order to initiate the preparatory procedure.

3. PREPARATORY PROCEDURE

Prior to making a decision on whether to file a request to initiate a criminal proceeding against a juvenile offender - the prosecutor is obliged to consider the possibility and justification of the termination of the educational recommendation. If the prosecutor decides to pronounce an educational recommendation, the prosecutor shall in his decision, among other things, and in addition to one or more recommendations, state that he would not demand the initiation of proceedings against the juvenile perpetrator of the criminal offense. No appeal against this decision of the prosecutor is allowed.

If there are grounds for suspicion that a juvenile has committed a criminal offense, and after being concluded in accordance with Article 90 paragraph 1 of the ZPDMF that there is no possibility or justification for the application of educational recommendations or if the juvenile unjustifiably refuses or does not comply with it in appropriate manner, the prosecutor shall issue an order to initiate the preparatory procedure, and shall notify the guardianship authority about it. The prosecutor shall complete the preparatory procedure within 90 days from the issuance of this order, and if the preparatory procedure is not completed within this period, the subsidiary application of the provisions of Articles 239 and 240 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina shall apply.

As a rule, a juvenile is present during preparatory procedure unless there are reasons under Article 111 paragraph 4 of the ZPDMF and the defense attorney. Questioning of the juvenile, when necessary, is carried out with the help of a pedagogue or other expert person. The prosecutor may allow the representative of the Guardianship Authority and the parent, or guardian or adoptive parent to attend the proceedings in the preparatory procedure. When these persons participate in these actions, they may make suggestions and refer questions to the person who is being questionned or heard.

The judge may, at the proposal of the prosecutor, order the juvenile during the preparatory proceedings to be temporarily placed in a shelter or similar facility for the accommodation of a juvenile if it is necessary for the separation of the juvenile from the environment where he or she has lived or for the purpose of providing him assistance, protection or accommodation, and especially if it is necessary to remove the danger of repetition of the criminal offense. An appeal against the temporary accommodation of a juvenile may be filed by a minor, a parent, an adoptive parent or a defense attorney within 24 hours. The Juvenile Panel of the same court shall decide on the appeal within 24 hours, but the appeal does not stay the execution of the decision.

4. ACTIONS AFTER THE COMPLETION OF PREPARATORY PROCEEDINGS

After examining all the circumstances referring to the commission of the criminal offense, maturity and other circumstances concerning the juvenile's personality and the circumstances in which he lives, the prosecutor shall submit to the judge, within eight days from the completion of the preparatory proceedings, a reasoned proposal for the imposition of the educational measure or punishment . In the event that the prosecutor finds that there is no evidence that the juvenile has committed the criminal offense after the completion of the preparatory proceedings, the prosecutor shall issue an order to terminate the preparatory proceedings (Article 104 Paragraph 1 of the ZPDMF).

If the prosecutor did not give a substantiated reasons for not acting in accordance with Article 89 paragraph 3 or Article 90 paragraphs 1 and 2 of the ZPDMF, the judge may express disagreement with the prosecutor's proposal to impose sanctions and request that the Panel reach a decision about it within three days. The Panel shall make a decision upon hearing the prosecutor. Likewise, the Panel may decide to return the case to the prosecutor for taking the actions in accordance with Articles 89 and 90 or decide that a judge should act in accordance with Article 106[7] and, if the requirements for application of Article 106 of the ZPDMF have not been met - to act on the prosecutor's request to impose a criminal sanction. Before making a decision on the prosecutor's proposal for the imposition of a corrective measure or a juvenile imprisonment sentence for the criminal offenses referred to in Article 89 paragraph 1, or after the Panel has rendered a decision under Article 105 paragraph 2 of the ZPDMF, the judge shall consider the possibility and justification of the application of the educational recommendation.

When the judge receives the proposal of the prosecutor for the imposition of the educational measure or juvenile imprisonment, or the decision of the Panel referred to in Article 105 paragraph 2 of the ZPDMF, the prosecutor's proposal shall be submitted to the

[7] This Article does not refer to consideration of the possibility and justification to apply educational recommendation.

juvenile and his defense attorney. The juvenile and the defense attorney may, within three days from the date of the submission of the request, state the previous objections referred to in Article 248 paragraph 1 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina, which the Panel shall decide within eight days. The time limit for submitting previous objections may be extended upon the porposal of the defense attorey, but it may not last more than 15 days from the date of delivery of the proposal.

Once a decision has been made on the previous objections, the judge shall submit the evidence referred to in Article 104 paragraph 4 of the ZPDMF to the prosecutor, and the case shall be submitted to the judge for the purpose of scheduling the session or the main trial, within eight days from the date of receipt of the prosecutor's proposal. In doing so, a judge who, as a member of the Panel, decided on the objections - can not participate in the trial. Appeal against a judge's decision is not allowed.

4.1. Session

The decision of the juvenile judge to schedule a session shall be taken into account whenever it is evident that non-custodial educational measure is to be imposed to the juvenile. The prosecutor, the juvenile, the defense attorney, the parents, the adoptive parent or a guardian of the juvenile shall be invited to attend the session, and the representative of the guardianship authority (Article 109 paragraph 1 of the ZPDMF) shall be informed about the session and can attended it. The prosecutor, the juvenile and his defense attorney are obliged to attent the session. On the other hand, inappearance of a parent, adoptive parent or a guardian of the juvenile and a representative of the guardianship authority at the session does not prevent the court from holding a session.

At the session, the prosecutor reads the proposal and briefly presents the evidence pertaining to the criminal offense and personality data of the juvenile which it collected during the preparatory procedure, as well as the reasons justifying the proposal for the imposition of the criminal sanction. At this stage of the proceedings, the application of the provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina on the modification of the charges at the main trial is to be applied, and without the proposal of the prosecutor the judge is authorized to make the decision based on presented evidence and the factual background established at the session.

4.2. The main trial

When decisions are made on the basis of the main trial, the provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina on the conduct of the main trial, the delay and the suspension of the main trial, the record and the course of the main trial are applied accordingly, but the judge may, after having heard the parties, depart from these rules if he considers their application for the case in question would not be expedient.

The prosecutor, the defense attorney and the representative of the competent guardianship authority (Article 110 paragraph 2 of the ZPDMF) are obliged to attend the main trial besides the juvenile. In addition to the persons whose presence is obligatory at the main trial, the parents of the juvenile and the adoptive parent, i.e. the juvenile's defense attorney, are invited to the main trial. When a parent, a guardian or adoptive parent are

unable or capable to attend the main trial, or they are unknown, a judge may, if he finds it to be in the best interest of a juvenile, to designate a special guardian.

4.3. Decisions of the juvenile judge

All decisions in the proceedings against a juvenile that deal with the merits of the criminal offense in the first instance may be divided into two groups, as follows: a verdict or a decision. The verdict may only follow the main trial, and it can only pronounce the juvenile imprisonment sentence. On the other hand, the decision is taken into consideration not only when the educational measure is pronounced, but also when the proceedings are terminated (Simović, 2011: 422). Likewise, the judge is not bound by the proposal of the prosecutor in deciding whether to impose a sentence on the juvenile or to apply the educational measure.

The juvenile judge shall, by its decision, terminate the proceedings in cases the court pursuant to Article 298 paragraphs c, e and f of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina renders a verdict dismissing the charges or by which the accused is released from the charges under Article 299 of the same law, as well as when he finds it purposeful to impose a juvenile neither educational measure nor punishment. The reasoning of the decision ordering an educational measure to the juvenile, only states which measure is being imposed but the juvenile is not declared guilty for the criminal offense he is charged with. This is a consequence of the fact that establishment of guilty in the criminal proceedings against the juvenile is, conditionally speaking, in the "second plan" in relation to the acquaintance with the personality and the circumstances of the juvenile.

A judgment ordering a juvenile a sentence of juvenile imprisonment is issued in a form prescribed by the Criminal Procedure Code of the Federation of BiH for a verdict declaring the accused guilty.

4.4. Costs of the proceedgins and property and legal requests

The court may oblige the juvenile to pay for the costs of the criminal proceedings and to fulfill the property and legal claim only if he has imposed an imprisonment sentence to the juvenile. If a juvenile has been imposed an educational measure or the proceedings have been terminated, the costs of the proceedings shall fall under the burden of the court's budget and the damaged person is instructed to file a property claim through civil proceedings. Also, if the juvenile has incomes or a property, the judge may order him to pay for the costs of the criminal proceedings and to fulfill the property claim when he or she has been pronounced an educational measure, or when the judge finds that it would be of no purpose if the juvenile is pronouced a juvenile imprisonment sentence or an educational measure. Costs of mediation carried out by an organization under Article 26 paragraph 4 of the ZPDMF shall fall under the budget of the prosecution or the court.

5. LEGAL REMEDIES

The system of legal remedies in proceedings against juveniles is arranged to distinguish regular and extraordinary legal remedies. There are three regular legal remedies: appeal against the first instance judgment, appeal against the second instance judgment and appeal against the decision.

Against the judgment imposing a juvenile a sentence of imprisonment, against the decision imposing an educational measure to the juvenile and against the decision on termination of the proceedings under Article 113 paragraph 2, all the persons being entitled to file an appeal against the judgment under Article 308 of the Law on Criminal Procedure of the Federation of Bosnia and Herzegovina , may file an appeal within eight days from the date of receipt of the judgment or ruling (Article 116 paragraph 1 of the ZPDMF). A defense attorny, a prosecutor, a spouse, an extramarital partner or other person with he or she lives in a permanent community, a blood relative in the first line, an adoptive parent, a guardian, a brother, a sister and a fosterer may file an appeal in favor of a juvenile without his will. An appeal against a decision imposing an educational measure in the institution or a judgment imposing a juvenile imprisonment shall stay the execution of a decision, unless the judge decides otherwise, with the consent of the parents of the juvenile and upon the hearing of the juvenile.

An appeal against the decision of the second instance court is permitted in the cases referred to in Article 118 paragraph 1 of the ZPDMF. The appeals against the second instance decision shall be decided by a court of third instance in a Panel composed of three judges, having special knowledge in the field of child rights and juvenile delinquency, assigned according to the schedule of duties of that court. The decision is made at a session of the Panel, which, by analogy, applies all the provisions of the Panel session before the second instance court.

The Provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina on renewal of the criminal proceedings concluded by a valid judgment shall accordingly apply to the renewal of the proceedings concluded by a judgment imposing a juvenile a sentence of imprisonment or to issued decision on the application of an educational measure or a decision to terminate the proceedings[8].

CONCLUSION

Fight against juvenile delinquency in the Federation of Bosnia and Herzegovina requires a coordinated action of all social subject starting from the Federal Ministry of Justice, Cantonal and Municipal Courts, prosecutors, guardianship bodies and all the subjects having "active" role both in the criminal proceedings and in execution of criminal sanctions against juveniles. In addition to that, criminal proceedings against juveniles has to be regulated in a clear and presice manner, based on international principles and standards. In that context, it is to expect the ZPDMF shall, conditionally speaking, "begin to live" in practice and eliminate legal gaps which had existed before it was adopted.

[8] Criminal procedural legisaltion of the Federation of BiH knows no extraordinary remedy – request for the protection of legality which exists in the Republic of Srpska.

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PRAVNI OKVIR ZA KRIVIČNI POSTUPAK PREMA MALOLJETNICIMA U FEDERACIJI BOSNE I HERCEGOVINE

U radu se analizira primjenjivost pravnog okvira međunarodnih standarda o zaštiti prava maloljetnika koji se izražavaju kroz načelo o zaštiti "najboljih interesa djeteta i maloljetnika" (the best interests of the child), i to s obzirom na pitanje obavlja li Federacija BiH odgovarajuću djelatnost i u kojem obimu prema tom okviru i postoje li tačke kontroverzi koje je potrebno posebno razriješiti. Ističu se nepoznanice koje praksa sudova u Federaciji BiH nije još do kraja razriješila, a tiču se primjenjivosti novih pravila koje je donio Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Federacije BiH. Također se prezentira skup pravnih pravila koja unutar Federacije BiH regulišu krivični postupak prema maloljetnicima, uz poseban naglasak na osnovne karakterisike tog postupka. Na kraju se predlažu moguća rješenja navedenih nejasnoća i dilema, saglasno načelu pravne sigurnosti kao izuzetno bitnom za adresate predmetnih pravnih normi.

KLJUČNE RIJEČI: krivični postupak / maloljetnici / zakon / pripremni postupak / Federacija BiH

ALTERNATIVNE MJERE I KRIVIČNE SANKCIJE ZA MALOLJETNIKE U MALOLJETNIČKOM KRIVIČNOM ZAKONODAVSTVU CRNE GORE

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Maloljetničko krivično zakonodavstvo Crne Gore doživjelo je značajne izmjene u poslednjih desetak godina. Donošenjem Zakona o postupanju prema maloljetnicima u krivičnom postupku 2011. godine dodatno se naglašava poseban krivičnopravni status maloljetnika kao učinioca krivičnog djela počevši od materijalnopravnih odredbi ovoga zakona, preko njegovih procesnopravnih odredbi do odredbi izvršnopravnog karaktera. U ovom radu smo se osvrnuli na nekoliko pitanja. Najprije iznosimo neka opšta razmatranja o načelnoj potrebi da se maloljetnici kao učinoci krivičnih djela različito tretiraju u odnosu na punoljetna lica gdje smo se dotakli i nekih značajnih međunarodnih dokumenata kao izvora savremenih zakonodavstava iz ove oblasti. Zatim smo se bavili alternativnim mjerama za maloljetnike i njihovim karakteristikama u maloljetničkom krivičnom zakonodavstvu Crne Gore. I na kraju, u poslednjem dijelu rada smo prikazali kraći pregled krivičnih sankcija za maloljetnike propisanih Zakonom o postupanju prema maloljetnicima u krivičnom postupku.

KLJUČNE RIJEČI:Maloljetničko krivično zakonodavstvo / alternativne mjere / krivične sankcije

UVODNA RAZMATRANJA

Maloljetnici su kategorija učinilaca krivičnih djela koja je od konstituisanja savremenih pravnih sistema imala u većoj ili manjoj mjeri naglašen poseban krivičnopravni status. Taj specifičan položaj maloljetnika u krivičnom zakonodavstvu bio je najčešće izražen na način da su u okviru opštih odredaba krivičnih zakona bile predviđene posebne odredbe za maloljetne učinioce krivičnih djela i da su se te odredbe u principu primijenjivale na maloljetnike, a ostale opšte odredbe samo onda kada nisu u suprotnosti sa posebnim odredbama. Ovakva situacija bila je prisutna i u krivičnom zakonodavstvu Crne Gore do donošenja novog (prvog) cjelovitog zakona koji u potpunosti reguliše položaj maloljetnika kao učinioca krivičnog djela sa aspekta materijalnog krivičnog prava,sa aspekta procesnog krivičnog prava i sa aspekta izvršnog krivičnog prava. Ovaj zakon koji nosi naziv Zakon o postupanju prema maloljetnicima u krivičnom postupku (u daljem tekstu Zakon) i koji

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osim pomenutih cjelina reguliše i zaštitu maloljetnika kao žrtve i oštećenog u krivičnom postupku donesen je krajem 2011. godine. Donošenjem ovog zakona samo je uvaženo nešto što predstavlja tendenciju u savremenim krivičnim zakonodavstvima i uporednom pravu, a to je potreba da se maloljetnim učiniocima krivičnih djela pristupi sa posebnom pažnjom i obazrivošću počevši od definisanja opštih uslova za njihovu odgovornost u krivičnom pravu i uslova za izricanje krivičnih sankcija za maloljetnike, preko posebnih odredaba kada su u pitanju organi koji započinju i vode takođe poseban krivični postupak za maloljetnike, do posebnih odredaba koje se odnose na izvršenje krivičnih sankcija za maloljetnike. Možemo ustvrditi da je naš zakonodavac ispravno postupio kada se odlučio na jednu ovakvu kodifikaciju maloljetničkog krivičnog zakonodavstva, jer smatramo da nema adekvatnijeg modaliteta da se na jednostavan, a sadržinski, i u svakom drugom smislu sveobuhvatan način reguliše položaj maloljetnika u krivičnom pravu od donošenja zakona ovog tipa.

Naglašavajući značaj posebnog zakona o maloljetnicima, ne treba izgubiti iz vida da je naše dosadašnje maloljetničko zakonodavstvo, i prije i poslije osamostaljenja Crne Gore, spadalo u red najnaprednijih zakonodavstava i da je uvijek u prvi plan isticana pomoć maloljetnom učiniocu krivičnog djela u smislu njegovog vaspitanja i reintegracije, a ne trpljenja zbog onoga što je učinio. Zato i postupak prema maloljetnicima nije postupak u pravom smislu riječi (Perić,1995: 174), nego postupak *sui generis*. Odavno se uvidjelo da krivična represija ne predstavlja optimalan vid društvene reakcije prema maloljetnim delinkventima, čak šta više može da bude kontraproduktivna, pa je iskrsla potreba pronalaženja alternativnih instrumenata suprotstavljanja maloljetničkoj delinkvenciji. (Knežević,2008: 126). I, upravo ovaj Zakon je utemeljen na takvim stremljenjima u krivičnom pravu sa posebnim naglaskom na restorativnoj pravdi (Konstantinović-Vilić,Kostić, 2012: 317; K. Haines, D. Omahony,2006:111-112), odnosno elementima diverzionog modela koji se ogleda u novim mjerama-posebnim obavezama, odloženom gonjenju, vaspitnim nalozima, opomeni i slično.

U literaturi se navode određeni elementi koji se smatraju glavnim razlozima naglog razvoja izbjegavanja krivičnog postupka i postupanja sa maloljetnim delinkventima u okviru vansudskih društvenih struktura. Ti razlozi se nalaze u mnogim benefitima koje ovakav način društvenog reagovanja na kriminalitet maloljetnika posjeduje u odnosu na vođenje tradicionalnog konvencionalnog krivičnog postupka i izricanje krivičnih sankcija. Kao najznačajnije prednosti ističu se sledeće: primjenom diverzionih modela izbjegavaju se negativni efekti koje vođenje klasičnog krivičnog postupka može imati na hipersenzibilnu ličnost i budući razvoj maloljetnog učinioca, izbjegava se stigmatizacija maloljetnika, na ovaj način se u značajnoj mjeri rasterećuju kapaciteti krivičnog pravosuđa, dalje, ekonomski momenat je veoma bitan i značajna sredstva koja se štede u budžetu na ovaj način, a koja izvršenje institucionalnim mjera i sankcija neminovno podrazumijeva. Konačno, brojna istraživanja pokazala su da alternativno postupanje predstavlja efikasniju i racionalniju strategiju reagovanja na kriminalitet maloljetnika jer stopa recidivizma nakon primjene alternativnih mjera i postupaka nije veća ili je čak i manja u odnosu na slučajeve koji su procesuirani pred redovnim sudovima za maloljetnike (Gurda,2013: 468). Postavlja se pitanje šta je to što ukazuje na potrebu da se maloljetnici kao učinioci krivičnih djela različito tretiraju od strane zakonodavca u odnosu na punoljetna lica? Najprije, mora se imati u vidu biopsihički razvoj i sazrijevanje čovjeka. Čovjek od rođenja pa do okončanja života, u jednom prirodnom procesu, od ranog djetinjstva prolazi određene faze u biopsihičkom i sociološkom razvoju. Svaki od tih perioda u razvoju čovjeka karakteriše se određenim elementima koji definišu pojedinca na odgovarajući način dajući mu društveni, ekonomski i pravni status prilagođen njegovom uzrastu odnosno starosnoj dobi. Ono što je

specifično za doba maloljetstva jeste činjenica da se radi o periodu biopsihičkog razvoja koji se odlikuje naglim stepenom izrastanja,velikom kolebljivošću i posebnom podobnošću da se na njih utiče (Škulić, 2003). Sve ovo zakonodavac je imao u vidu kada je maloljetnike tretirao kao posebnu kategoriju delinkvenata,a posebno potrebu da se prema njima odnosi sa posebnim senzibilitetom uz akcenat na pomoći, nadzoru i zaštiti maloljetnih učinilaca krivičnih djela kako bi se kod njih razvio osjećaj lične odgovornosti, kako bi se pravilno vaspitali i obrazovali i tako preduprijedilo njihovo delinkventno ponašanje. Uvijek treba imati na umu da je riječ o mladim ljudima koji su tek zakoračili u život i kojima treba pružiti priliku da postanu korisni članovi društva. U našem krivičnom pravu lice ispod četrnaest godina smatra se djetetom, prema njemu ne mogu biti primjenjene krivične sankcije (Stojanović,2008: 357) i ono ne posjeduje sposobnost za odgovornost u krivičnom pravu. Dakle, ovo su lica koja se kada ostvare elemente bića nekog krivičnog djela bez obzira na tu činjenicu nalaze van krivičnog prava, van zone odgovornosti u krivičnom pravu. Kada lice ispod četrnaest godina učini protivpravno djelo koje je u zakonu određeno kao krivično djelo, njegova odgovornost se određuje prema propisima koji regulišu porodične odnose. Maloljetnicima se smatraju lica koja su navršila četrnaest, a nisu navršila osamnaest godina i oni mogu da budu subjekat odgovornosti u krivičnom pravu. Razlikujemo dvije kategorije maloljetnika prema Zakonu o postupanju prema maloljetnicima u krivičnom postupku, mlađe maloljetnike, lica od 14 do 16 godina i starije maloljetnike, lica od 16 do 18 godina. Mlađim maloljetnicima mogu biti izrečene sve krivične sankcije i krivičnopravne mjere predviđene Zakonom osim maloljetničkog zatvora, dok starijim maloljetnicima mogu biti izricane sve sankcije i krivičnopravne mjere bez izuzetka, dakle uključujući i maloljetnički zatvor.

U pripremi određenog zakonskog teksta, a pogotovo jedne značajne kodifikacije kao što je donošenje jedinstvenog zakona o maloljetnicima kao učiniocima krivičnih djela, zakonodavac se osim na nacionalne izvore neizostavno rukovodi i najvažnijim međunarodnim standardima i dokumentima iz odgovarajuće oblasti. Postupanje zakonodavca na ovaj način samo je posljedica nastojanja naše države da usaglasi svoju legislativnu aktivnost sa preporukama Evropske Unije i međunarodne zajednice u cjelini u cilju obezbjeđenja poštovanja osnovnih ljudskih prava i sloboda uopšte, a u ovom slučaju maloljetnika kao učinioca odnosno žrtve krivičnog djela (Simović i drugi, 2015: 38-52).

Tako je naš zakonodavac pripremajući ovaj Zakon imao u vidu određene međunarodnopravne izvore, a istorijat međunarodno-pravnog regulisanja maloljetničkog zakonodavstva i pravosuđa odvijao se paralelno sa razvojem dječjih prava (Stojanović-Milišević,2004: 402). U svim međunarodno-pravnim dokumentima ističe se značaj alternativnih mjera i što više izbjegavanje sudskih postupaka. Tako je Konvencijom UN o pravima djeteta (usvojena Rezolucijom Generalne skupštine OUN 20.11.1989.g.) predviđeno korišćenje što šireg spektra alternativnih mjera (usmjeravanje, nadzor, uslovno kažnjavanje, pravna pomoć, prihvat, obrazovanje i stručno obučavanje-čl.40(4). Pomenuta konvencija reguliše određena pitanja od velikog krivičnopravnog značaja kada se govori o pojmu djeteta i položaju djeteta u odnosu na maloljetna lica koja podliježu krivičnom pravu. Konvencija osim o pojmu djeteta govori i o načelu ravnopravnosti djece, formulisanju najboljeg interesa djeteta kao osnovnog cilja svakog postupka prema djeci, pravu djeteta na porodicu i porodični život, pravu djeteta na izražavanje sopstvenog mišljenja, pravu djeteta na privatnost, posebnu pravnu i faktičku zaštitu, posebnim pravima djeteta u krivičnom postupku i u vezi sa postojanjem određenog stepena sumnje da je izvršilo krivično djelo i konačno, o utvrđivanju minimalne starosne granice sposobnosti za krivicu i davanju prednosti alternativnim načinima postupanja u odnosu na

djecu kao učinioce krivičnih djela. (Škulić,2011: 176; Simović, Jovašević i drugi, 2013: 33). Sva ova pitanja pružaju značajne smjernice u regulisanju položaja djeteta (maloljetnika) kao učinioca krivičnog djela sa aspekta materijalnog, procesnog i izvršnog krivičnog prava.

Standardima minimalnih pravila Ujedinjenih nacija za maloljetničko pravosuđe-tzv. Pekinška pravila (usvojena Rezolucijom Generalne skupštine UN br.40/03 29.11.1985.g.) propisuje se mogućnost odstupanja od redovnog postupka, bez pribjegavanja formalnim raspravama, pri čemu je odstupanje od redovnog postupka moguće uz saglasnost maloljetnika ili njegovih roditelja ili staratelja. Primjera radi u čl. 11.4 predviđaju se alternativni programi kao što su privremeni nadzor i usmjeravanje lokalne zajednice, naknada štete oštećenom i slično.

Smjernicama Ujedinjenih nacija za prevenciju maloljetničke delinkvencije - tzv. Rijadske smjernice (usvojene Rezolucijom Generalne skupštine OUN 45/112 od 14.12.1990.g.) ukazuje se na potrebu izbjegavanja kažnjavanja maloljetnika zbog ponašanja koja ne izazivaju veće negativne posljedice, a naglašava značaj preventivnih i alternativnih mjera.

Standardna minimalna pravila UN za alternativne kaznene mjere - tzv.Tokijska pravila (usvojena Rezolucijom Generalne skupštine OUN 14.12.1990.g.) propisuju mogućnost primjene alternativnih mjera divezionog karaktera u svim fazama krivičnog postupka (prema prestupnicima koji se mogu optužiti, ili kojima se može suditi ili koji se mogu uputiti na izvršenje kazne). Primjena alternativnih kaznenih mjera treba da predstavlja korak ka ukidanju kažnjavanja i dekriminalizaciji (2.7) s tim što primjena tih mjera treba da se temelji na strogom legalitetu (3.1). Kod izricanja ovih mjera nadležni organi treba da imaju u vidu prirodu i težinu djela, ličnost maloljetnika, svrhu kažnjavanja i prava žrtve (3.2), s tim što je neophodan pristanak maloljetnika na primjenu alternativnih mjera (3.4). Primjenom alternativnih mjera ne smiju se ograničavati prava prestupnika u većoj mjeri u odnosu na mjere sudskih organa (3.10.). Tokijskim pravilima propisuje se širok katalog mjera diverzionog karaktera kojima se predupređuje izricanje krivičnih sankcija ili se zamjenjuju krivične sankcije.

Od ostalih međunarodnih dokumenata u kojima se naglašava potreba za alternativnim modelima postupanja prema maloljetnim učiniocima krivičnih djela treba pomenuti i Evropska pravila o društvenim sankcijama i mjerama za sprovođenje maloljetničkog krivičnog pravosuđa (Bečka pravila) iz 1997. godine i Rezoluciju XVII Kongresa međunarodnog udruženja za krivično pravo održanog u Pekingu 2004.godine kojom su usvojene određene preporuke od velikog značaja za dalji razvoj maloljetničkog krivičnog prava. (Jovašević, Stevanović,2008: 128).

Na kraju ovog osvrta na međunarodne izvore maloljetničkog krivičnog prava kao osnovni princip ustanovljen već Konvencijom UN jeste princip "najboljeg interesa maloljetnika", ali koji najbolji interes neće biti shvaćen kao vulgarno pojednostavljen način, jer, na primjer, obustava postupka ili izbjegavanje čak i zavodske vaspitne mjere, ne moraju bezuslovno biti najbolje solucije za konkretnog maloljetnika u datoj životnoj, psihološkoj, emotivnoj i obrazovnoj situaciji. (Prelić,2011: 226).

1. ALTERNATIVNE KRIVIČNOPRAVNE MJERE U NOVOM ZAKONU O POSTUPANJU PREMA MALOLJETNICIMA U KRIVIČNOM POSTUPKU

Ako govorimo o maloljetnicima kao učiniocima krivičnih djela, istina je da i takva lica mogu da se pojave kao subjekti izvršenja krivičnih djela čija težina opredijeljuje potrebu da istima budu izrečene institucionalne vaspitne mjere odnosno maloljetnički zatvor. Cilj novog Zakona jeste da, između ostalog, stimuliše primjenu alternativnih krivičnopravnih mjera i da se pronađe prostor za njihovu primjenu,nekad čak i u situacijama težeg kriminaliteta, kada bi formalno bilo moguće maloljetnom učiniocu izreći institucionalne vaspitne mjere ili maloljetnički zatvor. Kao što smo u uvodu naznačili, tendencije su u maloljetničkom krivičnom zaknodavstvu, uključujući i naprijed citirane međunarodne izvore, da se što više ide na alternativne, odnosno diverzione mjere čija je svrha da se prema maloljetniku ne pokreće postupak ili da se postupak obustavi, te da se primjenom tih mjera utiče na pravilan razvoj maloljetnika i jačanje njegove lične odgovornosti kako ubuduće ne bi činio krivična djela (čl.9). Slijedeći taj trend novi Zakon uvodi jednu alternativnu mjeru koja do sada nije postojala u zakonodavstvu, a to je opomena i takođe konkretizuje uslove za izricanje i broj vaspitnih naloga kao krivičnopravnih mjera koje su naše krivično zakonodavstvo uvedene izmjenama i dopunama iz 2008. godine.[1] I opomena i vaspitni nalozi su mjere *sui generis*, svrstane i formalno u alternativne mjere, sa posebno definisanom svrhom primjene, uslovima za izricanje, sadržinom i organima koji ih mogu primijeniti.

Opomena se može izreći, odnosno odrediti za krivična djela za koja je propisana novčana kazna ili kazna zatvora do tri godine, a izriče je državni tužilac, odnosno određuje policajac za maloljetnike (ovlašćeni policijski službenik sa posebnim znanjima iz oblasti zaštite prava maloljetnih lica)[2] na odobrenje državnog tužioca. Uslovi za izricanje opomene su: 1) da postoje dokazi iz kojih proizilazi osnovana sumnja da je maloljetnik učinio krivično djelo, 2) da maloljetnik da svoj pristanak na izricanje ove mjere uz saglasnost zakonskog zastupnika i 3) da maloljetniku ranije nije izrican vaspitni nalog ili krivična sankcija. Kada cijeni uslove za izricanje opomene nadležni organ će posebno voditi računa o odnosu maloljetnika prema krivičnom djelu koje je izvršio i oštećenom. (čl. 10 Zakona). Već na prvi pogled jasno je da opomena predstavlja najblažu moguću mjeru krivičnopravne reakcije na lakše oblike kriminaliteta maloljetnika koju ne izriče sud i čija sadržina se sastoji u upozorenju maloljetnom učiniocu krivičnog djela kome ranije nisu bile izricane krivične sankcije da će sledeći put prema njemu biti biti izrečena krivična sankcija ako se ne uzdrži od vršenja krivičnih djela. Dakle, i opomena,kao u ostalom gotovo sve mjere i sankcije za maloljetnike, ima naglašeno specijalnopreventivno dejstvo kad je svrha njenog određivanja u pitanju. Ovdje je ostavljeno nadležnom organu da mimo postupka ili nakon započetog postupka pod određenim uslovima izrekne opomenu maloljetnom učiniocu krivičnog djela kada procjeni da će upozorenje biti dovoljno da ga odvrati od daljeg vršenja krivičnih djela i da će se tako obezbijediti pravilan razvoj i razvijanje lične odgovornosti maloljetnika. Budući da je neophodan pristanak maloljetnika dat u prisustvu zakonskog zastupnika,možemo zaključiti da je ovdje riječ o svojevrsnom sporazumu kojim maloljetnik posredno priznaje izvršenje krivičnog djela koje mu se stavlja na teret, a zauzvrat dobija

[1] Zakon o izmjenama i dopunama Krivičnog zakonika, Službeni list Crne Gore br.40/08.

[2] Postupak prema maloljetnicima, shodno novom Zakonu, karakteriše se i po tome što i državni tužilac, sudija, policajac za maloljetnike i advokat (branilac) moraju imati posebna znanja iz oblasti zaštite prava maloljetnih lica.

beneficiju koja se sastoji od oprosta izvršenog krivičnog djela, izbjegavanja stigmatizacije krivičnim postupkom i izricanja krivične sankcije. S obzirom da je kao jedan od uslova za izricanje opomene postavljen zahtjev da se radi o primarnom (maloljetnom) učiniocu, njemu se ne određuju nikakve posebne obaveze. Slična mjera,[3] sa gotovo istim uslovima i sadržinom postoji u Zakonu o zaštiti i postupanju da djecom i maloljetnicima u krivičnom postupu Republike Srpske.[4] Razlika u odnosu na naše zakonodavstvo je u tome što je mjeru policijskog upozorenja izriče isključivo policija odnosno ovlašćeni policijski službenik uz odobrenje tužioca.

Vaspitni nalog je druga alternativna mjera predviđena novim maloljetničkim zakonodavstvom Crne Gore. Vaspitni nalozi kao mjere *sui generis* uvedene su u krivično zakonodavstvo Crne Gore izmjenama i dopunama iz 2008. godine,ali su njihov broj, sadržina i uslovi za izricanje bili restriktivnije definisani u odnosu na sadašnje stanje. Uslovi za izricanje jednog ili više vaspitnih naloga jesu da se radi o krivičnom djelu za koje je propisana kazna zatvora do deset godina ili novčana kazna,da postoje dokazi iz kojih proizilazi osnovana sumnja da je maloljetnik učinio krivično djelo i da maloljetnik da svoj pristanak u prisustvu zakonskog zastupnika. Za razliku od opomene koju osim državnog tužioca za maloljetnike može izreći i policajac za maloljetnike, vaspitne naloge može izreći samo državni tužilac za maloljetnike i pri njihovom izricanju mora naročito da vodi računa o odnosu maloljetnika prema krivičnom djelu i oštećenom.

I za opomenu i za vaspitni nalog zajedničko je to da će se prilikom njihovog izricanja, odnosno određivanja naročito cijeniti odnos maloljetnika prema krivičnom djelu i oštećenom. Dakle, procjena subjektivnog odnosa maloljetnika prema djelu i oštećenom je u isključivoj nadležnosti državnog tužioca. Takvo zakonsko rješenje (kakvo imamo i u Srbiji) u literaturi je ocijenjeno kao kolizija sa intencijom ovog zakona kojom se reguliše i zaštita oštećenog maloljetnika, jer ne postoje validni razlozi za uskraćivanje aktivne uloge oštećenog u kontroli preusmjeravanja društvene reakcije prema maloljetnom prestupniku sa kolosjeka krivične represije na različite vidove alternativnog legalnog reagovanja. (Knežević, 2008: 130). Na osnovu čega će državni tužilac cijeniti taj subjektivni odnos maloljetnika prema krivičnom djelu i oštećenom, pošto zakonodavac nije odredio sadržaj tog odnosa? U svakom slučaju, potrebno je da maloljetnik pokaže određenu svijest u odnosu na djelo i njegove posljedice i da izrazi određenu dozu kajanja i razumijevanja položaja oštećenog čije je neko pravo krivičnim djelom povrijeđeno ili ugroženo. (Škulić, 2011: 281). Stavljanjem u nadležnost državnom tužiocu izricanje vaspitnog naloga, ističe se u literaturi, narušava se princip odvojenosti krivičnoprocesnih funkcija, (Knežević, 2008: 130) tako da bi uloga državnog (javnog) tužioca mogla da bude samo inicijativne prirode u smislu predlaganja primjene vaspitnog naloga, a ne i u izricanju ove mjere. (Ignjatović,2004: 536). Međutim, državni tužilac i u postupku protiv punoljetnih lica nastupa kao državni organ, a ne kao stranka, kojeg obavezuje načelo istine (da sa jednakom pažnjom ispituje i utvrđuje činjenice koje terete okrivljenog i koje mu idu u korist) i on može

[3] Ova mjera se naziva policijsko upozorenje i izriče se pod sledećim uslovima:a) da je riječ o krivičnom djelu za koje je propisana kazna zatvora do tri godine ili novčana kazna,b) da maloljetnik priznaje krivično djelo, c) da je priznanje dato slobodno i dobrovoljno,d) da postoji dovoljno dokaza da je maloljetnik učinio krivično djelo, e) da prema maloljetniku nije ranije izricano policijsko upozorenje,primijenjena vaspitna preporuka ili izricana krivična sankcija. Navodi se još i zahtjev da su ispunjeni uslovi iz člana 88. ovog zakona i da je izricanje ove mjere srazmjerno okolnostima i težini krivičnog djela

[4] Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske, Službeni glasnik Republike Srpske broj 13, 2010.g..

odložiti krivično gonjenje (diverzija krivičnog postupka) i naložiti osumnjičenom neku od obaveza predviđenih u članu 272 ZKP. I ovdje u postupku prema maloljetnicima kod izricanja vaspitnih naloga radi se o diverzionom modelu postupanja.

Katalog vaspitnih naloga u odnosu na dosadašnje stanje zakonodavstva znatno je proširen, skoro udvostručen i umjesto ranijih pet sada imamo devet vaspitnih naloga (čl.12), a to su:

1) poravnanje sa oštećenim,

2) redovno pohađanje škole ili redovno odlaženje na posao,

3) uključivanje u određene sportske aktivnosti,

4) obavljanje društveno korisnog i humanitarnog rada,

5) plaćanje novčanog iznosa u korist humanitarne organizacije, fonda ili javne ustanove,

6) podvrgavanje odgovarajućem ispitivanju i odvikavanju od zavisnosti izazvane upotrebom alkohola ili droge,

7) uključivanje u pojedinačni ili grupni tretman u odgovarajućoj zdravstvenoj ustanovi, savjetovalištu ili drugoj odgovarajućoj organizaciji,

8) pohađanje kurseva za stručno osposobljavanje ili priprema i polaganje ispita,

9) uzdržavanje od posjećivanja određenog mjesta ili kontakta sa određenim licima.

Ono što je novina u odnosu na dosadašnje stanje zakonodavstva jeste da prilikom izbora i primjene vaspitnog naloga državni tužilac za maloljetnike sarađuje sa organom starateljstva, odgovarajućom ustanovom ili organizacijom, posrednikom pedagogom, psihologom ili drugim stručnim licem koje može pružiti odgovarajuća obavještenja o maloljetniku odnosno primjeni vaspitnog naloga.

Budući da vaspitni nalog nema represivni karakter, nego da mu je osnovna svrha da utiče na pravilan razvoj maloljetnika i jačanje njegove lične odgovornosti kako ubuduće ne bi činio krivična djela, to je moguća i kumulativna primjena vaspitnih naloga, a sve njih, gore navedene mogli bismo klasifikovati u tri grupe-restorativne, edukativno vaspitne i terapeutske.

I prije uvođenja vaspitnih naloga u naše maloljetničko zakonodavstvo primjenjivalo se načelo oportuniteta bez izricanja bilo kakvih mjera, što se u teoriji naziva jednostavna diverzija (I. Stevanović,2006: 63), koja ne podrazumijeva neki posebni angažman struktura uključenih u maloljetničko pravosuđe. To se bitno razlikuje od diverzije sa intervencijom (Banović i drugi, 2012: 225) kod primjene vaspitnih naloga koja podrazumijeva širu lepezu mjera koje utiču na pravilan razvoj maloljetnika i jačanje njegove lične odgovornosti.

Gledajući uslove za izricanje vaspitnih naloga, kao i vrste naloga, može se zapaziti da je odlučujuća uloga maloljetnika (izuzimajući poravnanje sa oštećenim) u realizaciji vaspitnih naloga i da ga stavljaju u sam centar odlučivanja. Upravo je i smisao uvođenja vaspitnih naloga u maloljetničko zakonodavstvo stavljanje adolescenta u položaj i situaciju subjekta koji se informiše, odmjerava, odlučuje i prihvata obavezu da nalog i ostvari, u opštem, a prije svega sopstvenom najboljem interesu. (Prelić, 2011: 229).

Kad su u pitanju maloljetnici kod kojih izvršenje krivičnog djela predstavlja epizodu koja nije prešla u model ponašanja, nije poželjno kao prvu mjeru primijeniti krivičnu

sankciju. Savremena naučna istraživanja ukazuju da to može da bude i kontraproduktivno, pa je u tom smislu poželjna postupnost, pa poći od primjene parapenalnih mjera, a na planu procedure izbjegavati postupak pred sudom. (Radulović, 2008: 29). Iako je vaspitni nalog kao alternativna mjera prema maloljetnicima uveden u naše krivično zakonodavstvo Zakonom o izmjenama i dopunama KZ 2006. godine, on do sada nije naišao na širu primjenu u praksi. Zašto je to tako, teško bi bilo dati argumentovan odgovor bez određenog empirijskog istraživanja. Ali, čini nam se da se razlog, bar djelimično,nalazi u činjenici da je naše pravosuđe, u dobroj mjeri konzervativno i da teško šire otvara vrata novim institutima. Svaki od naprijed navedenih vaspitnih naloga zaslužuje bar kraći komentar, ali bi to tražilo više prostora, tako da se na tome nećemo zadržavati. Mislimo da je ipak najvažniji onaj koji je stavljen na prvo mjesto u čl.12 - poravnanje sa oštećenim. Mislimo da će to biti i najčešće primjenjivani vaspitni nalog, ali je za njegovu realizaciju bitan i stav oštećenog. Značaj stava oštećenog još više dolazi do izražaja ako je i oštećeni maloljetno lice, što posebno treba imati u vidu prilikom zaključenja poravnanja, gdje maloljetni oštećeni od pasivne žrtve krivičnog djela treba da postane mnogo aktivniji učesnik u postupku, što za prvu posljedicu ima kontinuirano informisanje oštećenog o kretanju konkretnog slučaja, a u krajnjem ishodu to u mnogome doprinosi osnaživanju oštećenog. (Obradović, 2006: 259). Uvažavanje stava i ponašanja oštećenog maloljetnika značajno je i radi predupređenja mogućeg osvetničkog reagovanja oštećenog koje se, u ambijentu kakav je Crna Gora, često dešava.

2. KRIVIČNE SANKCIJE ZA MALOLJETNE UČINIOCE KRIVIČNIH DIJELA PREMA NOVOM ZAKONU O POSTUPANJU PREMA MALOLJETNICIMA U KRIVIČNOM POSTUPKU

Što se tiče krivičnih sankcija prema maloljetnicima u novom Zakonu uvedene su određene novine, neke su više tehničke i terminološke, a neke su suštinske. Zakon, kao i do sada, predviđa tri vrste krivičnih sankcija koje se mogu izreći maloljetnim učiniocima krivičnih djela: 1) vaspitne mjere, 2) maloljetnički zatvor i 3) određene mjere bezbjednosti, pri čemu su vaspitne mjere osnovna vrsta maloljetničkih krivičnih sankcija, i kad se njima ne može postići svrha onda se poseže za maloljetničkim zatvorom. Nadalje, vaspitne mjere su podijeljene na:

1) mjere upozorenja i usmjeravanja;
   - sudski ukor,
   - posebne obaveze.

2) mjere pojačanog nadzora;
   - pojačan nadzor od strane zakonskog zastupnika,
   - pojačan nadzor u drugoj porodici,
   - pojačan nadzor od strane organa starateljstva,
   - pojačan nadzor uz dnevni boravak u odgovarajućoj ustanovi ili organizaciji za vaspitanje i obrazovanje maloljetnika.

3) institucionalne mjere;
   - upućivanje u vaspitnu ustanovu nezavodskog tipa,

- upućivanje u vaspitnu ustanovu zavodskog tipa,
- upućivanje u specijalizovanu ustanovu.

Kad je riječ o svrsi krivičnih sankcija prema maloljetnicima ona je određena u članu 15. i znatno se razlikuje od svrhe vaspitnih mjera i maloljetničkog zatvora kako je bilo propisano u članu 88. KZ. Izostala je ranija odredba da se svrha krivičnih sankcija postavlja "u okvire opšte svrhe krivičnih sankcija" (opšta svrha propisivanja i izricanja krivičnih sankcija je suzbijanje djela kojima se povrijeđuju ili ugrožavaju vrijednosti zaštićene krivičnim zakonodavstvom), pa se kaže da je svrha krivičnih sankcija prema maloljetnicima da se pružanjem zaštite i pomoći maloljetnim učiniocima krivičnih djela, vršenjem nadzora, opštim i stručnim osposobljavanjem i razvijanjem lične odgovornosti, obezbijedi vaspitanje i pravilan razvoj, sa ciljem da ubuduće ne vrše krivična djela. Ovo zadnje "da ubuduće ne vrše krivična djela" u KZ je bilo vezano samo za svrhu maloljetničkog zatvora, a ne i za vaspitne mjere. Naglasak je na zaštiti i pomoći maloljetniku jer krivične sankcije prema maloljetnicima, načelno nemaju represivni karakter, mada to faktički nije slučaj sa kaznom maloljetničkog zatvora pa ni sa vaspitnom mjerom upućivanje u vaspitnu ustanovu zavodskog tipa. (Škulić, 2011: 285). Svaka "kazna" po logici stvari, kako se ističe u literaturi, samim tim što ima "kazneni karakter" uvijek podrazumijeva da se njome suštinski ostvaruje i odgovarajuća represija. (Škulić, 2011: 287).

U okviru mjera upozorenja i usmjeravanja (umjesto ranijih disciplinskih mjera) novi Zakon uvodi posebne obaveze. Posebne obaveze imali smo i u KZ ali one se nisu mogle samostalno odrediti nego uz vaspitnu mjeru pojačanog nadzora. Ako se pogleda katalog vaspitnih naloga i katalog posebnih obaveza onda se može zapaziti da su po sadržaju slične, skoro identične. Razlikuju se po subjektu koji ih izriče - posebne obaveze izriče sud nakon sprovedenog krivičnog postupka, a vaspitne naloge izriče državni tužilac u zamjenu za pokretanje krivičnog postupka ili obustavu postupka. Osim po organu koji ih izriče, posebne obaveze i vaspitni nalozi se razlikuju i po svrsi, po trajanju, po posljedicama neispunjenja mjere, a uz to posebne obaveze se izriču u krivičnom postupku poslije izvedenih dokaza. (Jovašević, Stevanović, 2008: 125).

Nemamo više mjere upućivanje u vaspitni centar za maloljetnike, u katalog mjera ponovo se uvodi nekadašnja mjera pojačan nadzor u drugoj porodici (iako ni ranije dok je postojala u zakonodavstvu skoro da i nije primjenjivana). Ranije zavodske mjere sada su preimenovane u institucionalne mjere-nezavodskog i zavodskog tipa i specijalizovanu ustanovu.

Preimenovanjem posebnih obaveza od dodatka uz mjere pojačanog nadzora u samostalnu vaspitnu mjeru znatno je proširen broj vaspitnih mjera i time stvoren osnov za što veću individualizaciju, odnosno izbor adekvatne mjere potrebama vaspitanja i zaštite maloljetnika.

S obzirom na brojnost vaspitnih mjera, različitosti maloljetnih učinilaca, značajno je i pitanje propisivanja i kriterijuma za izbor odgovarajuće vaspitne mjere. Po ovom pitanju uporedna zakonodavstva se međusobno razlikuju. Imamo zakonodavstva koja i ne propisuju te kriterijume, nego radi veće fleksibilnosti ostavljaju potpunu slobodu sudu kod izbora adekvatne mjere. Nasuprot ovome ima zakonodavstava koja precizno nabrajaju kriterijume ne dopuštajući sudu nikakvu slobodu u pogledu odlučivanja o tome koje će okolnosti uzeti u obzir prilikom izbora vaspitne mjere. (Simović i drugi, 2010: 110).

Naš zakonodavac je u članu 17. propisao kriterije za izbor vaspitne mjere, po principu *exempli causa*, koje sud mora da cijeni, ali i sve druge okolnosti koje mogu da budu od

značaja za izbor adekvatne mjere. Kod propisivanja ovih kriterija u novom Zakonu učinjene su izmjene u odnosu na regulisanje ovog pitanja u KZ. Tako se sada kao značajan kriterij navodi "ponašanje poslije učinjenog krivičnog djela, a posebno da li je spriječio ili pokušao da spriječi nastupanje štetne posljedice, kao i odnos prema oštećenom". Kod propisivanja kriterija za izbor vaspitne mjere očito je stavljanje u prvi plan ličnosti maloljetnika i njegovih potreba, ali uzimanjem u obzir i žrtve naglašavanjem važnosti činjenice da je maloljetnik "naknadio ili pokušao da nadoknadi pričinjenu štetu" primjetan je uticaj kako zaštitničkog modela regulisanja krivičnopravnog statusa maloljetnika tako i koncepta restorativne pravde. (Soković, 2011: 121). Širok dijapazon vaspitnih mjera, od najlakše-sudski ukor, do najteže - upućivanje u ustanovu zavodskog tipa, otvara još jedno pitanje kod izbora mjere-pitanje postupnosti pri izricanju mjere. Neka zakonodavstva[5], su to pitanje regulisala tako što su uvela princip srazmjernosti (postupnosti) po kome se uvijek primjenjuje lakša mjera ako se njome može postići svrha, a tek potom se izriče teža mjera. U teoriji imamo mišljenja da ovakav raspon (dodali bismo i raskoš) vaspitnih mjera, omogućava postupnost u izricanju krivičnih sankcija i reverzibilnost. (Soković, 2011: 116). Na drugoj strani ima mišljenja da prilikom izbora krivičnih sankcija prema maloljetnicima nema mjesta nikakvoj postupnosti (Milošević, 2011: 774) nego, obrnuto, potrebno je u svakom slučaju rukovoditi se načelom adekvatnosti i u svakom slučaju procijeniti koja je krivična sankcija odnosno mjera odgovarajuća u odnosu na konkretnog maloljetnika i krivično djelo koje je učinio (Škulić, 2011: 280).

Naš Zakon ni u jednoj odredbi ne pominje postupnost pri izricanju vaspitnih mjera nego ostavlja sudu da autonomno procjenjuje za koju će se mjeru opredijeliti, s tim ako maloljetnik nastavi sa kriminalnom djelatnošću, što ukazuje da nije bio adekvatan izbor mjere, kasnije posegne i za težom mjerom kojom će se ostvariti svrha.

Međutim, treba biti realan, kako se ističe u teoriji, da izbor vaspitne mjere u praksi, najčešće nije rezultat prije svega, procjene konkretnih potreba postupka, odnosno maloljetnika, nego je u istoj mjeri, ako ne i više od toga, diktiran postojanjem ili nepostojanjem realnih uslova za izvršenje određene vaspitne mjere (Soković, 2011: 115).

Što se tiče kazne maloljetničkog zatvora u normativnom pogledu u novom Zakonu u odnosu na ranije stanje maloljetničkog zakonodavstva, uvedene su samo neke novine. Kazneni raspon je umjesto od šest mjeseci do osam godina sada od šest mjeseci do pet godina. Zatvor se umjesto u posebnom kazneno-popravnom domu izvršava u posebnoj organizacionoj jedinici za maloljetnike Zavoda za izvršenje krivičnih sankcija. Uslovni otpust kod kazne maloljetničkog zatvora je obligatoran nakon izdržane dvije trećine izrečene kazne (ranije se mogao uslovno otpustiti ako je izdržao jednu trećinu izrečene kazne, a ne manje od jedne godine), osim ako postoje okolnosti koje ukazuju da nije postignuta svrha maloljetničkog zatvora. Novina je i to što se uslovno otpuštenom određuje obaveza javljanja Odsjeku za uslovnu slobodu pri ministarstvu pravosuđa umjesto ranije mogućnosti određivanja mjere pojačanog nadzora.

Kad je riječ o mjerama bezbjednosti koje se izriču prema maloljetnicima jedino što je novo u odnosu na KZ jeste da je precizirano da mjere bezbjednosi obavezno psihijatrijsko liječenje i čuvanje u zdravstvenoj ustanovi, obavezno psihijatrijsko liječenje na slobodi, obavezno liječenje alkoholičara i obavezno liječenje narkomana traju do prestanka razloga zbog kojih su primijenjene, ali u svakom slučaju do prestanka izvršenja vaspitnih mjera i

[5] Vidi čl.9 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske, Službeni glasnik Republike Srpske broj 13, 2010.g.

kazne maloljetničkog zatvora (čl. 39 st. 4 Zakona). Međutim, izuzetno mjera bezbjednosti obavezno psihijatrijsko liječenje i čuvanje u zdravstvenoj ustanovi može trajati i duže od izrečene kazne maloljetničkog zatvora.

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ALTERNATIVE MEASURES AND CRIMINAL SANCTIONS FOR JUVENILES IN JUVENILE CRIMINAL LEGISLATION OF MONTENEGRO

Juvenile criminal legislation of Montenegro has experienced important changes in the last ten years. Special criminal and legal status of juveniles as perpetrators of criminal offences is additionally emphasized by adoption of the Law on Treatment of Juveniles in Criminal Proceedings in 2011, starting from substantive provisions of this Law, throughout its procedural provisions to provisions of enforceable type. In this Paper we have examined several questions. First, we present some general considerations on principle necessity to treat differently juveniles as perpetrators of criminal offences in comparison to adults where we have also addressed some important international documents as sources of modern legislations from this field. Then we have addressed alternative measures for juveniles and their characteristics in the juvenile criminal legislation of Montenegro. Finally, in the last part of the Paper we have laid out a summary of criminal sanctions for juveniles prescribed by the Law on Treatment of Juveniles in Criminal Proceedings.

KEY WORDS: Juveniles criminal legislation / alternative measures / criminal sanctions

THE SANCTIONING SYSTEM APPLICABLE TO JUVENILE OFFENDERS: THE CHILD-FRIENDLY VISION OF ROMANIAN LEGISLATOR

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The sanctioning system applicable to the juvenile offenders provided by the actual Romanian criminal law was reconfigured by the adoption of the 2009 Penal Code, which entered into force in 2014. The new regulation of the juvenile's criminal liability, although welcomed in doctrine, it is not an absolute novelty. Practically, the adoption of the "New" Romanian criminal code marks a return to an older vision of the Roman legislator, which was applicable between 1977 and 1992. It took 17 years for the Romanian legislator to recognize the ineffectiveness of a sanctioning system that included punishments alongside with educational measures to provide a solution that, although it was not new, it is much better than the previously applied option.

In the present study the authors aim to offer a balanced presentation of the sanctioning system of the juvenile offenders governed by the Romanian Criminal Code from 2009, highlighting both its strengths and its perfectible aspects.

KEYWORDS: criminal liability of a juvenile / educational measures / custodial educational measures / non-custodial educational measures / restorative justice

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1. INTRODUCTORY NOTES ON THE ROMANIAN SANCTIONING SYSTEM FOR MINORS

Declared ab initio as "the central point of the reform proposed by the New Criminal Code"[1], the regulations on the criminal liability of minors bring as a main innovation the total renunciation of punishment for the exclusive application of educational measures.

The age of criminal liability is set and maintained by the Romanian legislator at age 16, with the possibility that the 14-16 years old juvenile will be held criminally responsible, if it is proved that he has acted with discernment at the time of committing the offense. We say that the legislator of the new Roman criminal code maintained these provisions because, through another draft-law, the age of exceptional criminal liability was tried to be lowered to 13 years, stating that:

a) the number of offenses committed by juveniles under the age of 14 has steadily increased in recent years, in quite a few cases juveniles were committing very serious deeds or being caught up in the activity of organized criminal groups, precisely because they could not be held a criminally liable;

b) the statistical data on the forensic expertise carried out on the existence of discernment in the case of minors aged between 14 and 16 years had showed that in over 90% of cases, the existence of this discernment has been established, meaning that, as a rule, discernment is usually present before the age of 14. This is a natural consequence of technological progress and the contemporary social environment, which favor a more mature adolescence than half a century ago.

At the same time, such an amendment would have been in accordance with a general trend in European law for minors, since the age limit for holding a minor criminally liable and to be subject of proceedings is 10 years in France (Article 2 of the Ordinance of 2 February 1945, as amended in 2002), United Kingdom (Article 34 of the Crime and Disorder Act 1998) and Switzerland (Article 3 of the Act of 20 June 2003, in force since 1 January 2007), 12 years in Greece (Article 126 of the Greek Penal Code) and the Netherlands (Article 77b of the Nederland Penal Code), while in Spain the age is currently set at 14, but a draft law under parliamentary debate stated for this age to be reduced to 12 years.

We consider that maintaining the 16-year age standard for the presence of criminal capacities and 14 years for the exceptional criminal liability of a minor follows the child-friendly trend that characterizes European juvenile criminal justice without minimizing the seriousness of the offenses committed by them.

From the evidence point of view, the existence or non-existence of discernment is a circumstance that must be determined by reference to the concrete deed, through a psycho-legal forensic expertise. If, as a result of this expertise carried out in a concrete case, it is established that the minor has not acted with discernment, then the cause of non-imputability provided by art. 27 RCC comes into action. According to art.27 RCC, "an act stipulated by criminal law does not carry imputability when committed by an underage person, who at the date of commission of the act did not meet the legal

[1] Explanatory Memorandum to the Draft-law on Criminal Code of Romania, p. 16, http://www.cdep.ro/proiecte/2009/300/00/4/em304.pdf, accesed 10.05.2018.

requirements for criminal liability". If, as a result of psycho-legal forensic expertise, it is proved that the minor has a diminished discernment, the criminal responsibility of the juvenile between the ages of 14 and 16 shall be imposed, but the court will consider this during the process of individualizing the educational measure.

Juveniles aged between 14 and 16 which have committed an offense with discernment proved by a medical forensic examination, as well as juveniles who have reached the age of 16, shall be held criminally liable according to art. 113 par. (2) and (3) C. pen. In case of juveniles aged 16 to 18 operates a legal relative presumption of the presence of discernment, meaning that they are presumed to have the ability of understanding the importance and consequences of their deeds, and to consciously direct their will. Due to the fact that it is only a relative legal presumption, it can be removed by the opposite statement.

With regard to the sanctioning regime for minors, the New Romanian Criminal Code form 2009 abandoned the mixed system of penalties and educational measures for juvenile offenders, limiting their criminal treatment only to educational measures, following the French and Belgian legislation model, where the concept of "minor in danger" was launched. (Pedron, 2012: 404)

This change in the vision of the Romanian legislator is based on the desire to capitalize the experience and the positive results obtained at an international level in the field of combating juvenile delinquency (Antoniu et.al., 2011: 328). The new sanctioning system of the juveniles is not an absolute innovation. In fact, during the 1977-1992 period, by adopting the Decree no. 218/1977 the Romanian legislator focused exclusively on educational measures applicable by the court to minors with criminal capacity. By Decree no. 218/1977, the provisions of Title V of RCC from 1968 which allowed the application of punishments to juveniles were tacitly abolished, and, as a consequence, the only possible applicable sanctions to the juvenile offenders were those provided by this act. Later, after the Romanian Revolution in December 1989, a new change occurred in the sanctioning system for minors. Thus, Law no. 104/1992 was adopted, which, by repealing Decree no. 218/1977, restored the provisions of Title V of the general part of RCC 1968, entitled "*Rules on criminal liability of an underage offender*". Also, the sanctioning regime was modified by Law no. 140/1996, by which art. 103 on the supervised freedom was reshaped and some provisions of art. 110 regarding the suspension of the punishment for minors were abolished, while new provisions regarding the suspension of execution of the punishment under supervision or control were introduced.

Despite the principles governing juvenile justice during the period of application of the former RCC requiring the main application of educational measures and only if they were insufficient, the application of punishments to juvenile offenders, quite the opposite, the courts were mainly applying punishments, and less educational measures.

The new orientation of the 2009 RCC code is part of the restorative justice paradigm that dominates the current European legal framework. Restorative justice is a rediscovery and refinement of criminal practices specific to "acts of justice", which seeks to provide a viable and effective response to crime and conflict. To this end, restorative justice imposes the need to enable the victim and the offender to play the leading roles in making the decision to resolve the conflict between them. restorative justice treats offenders with respect, to ensure legal behavior on their part and to reintegrate them into the community (UN, Office on Drugs and Crime, 2006: 7-9).

The purpose of restorative justice within a legal relationship of criminal nature is to analyze and bring balance, in order to solve all the problems generated by it, namely problems specific to the victim and the need to assist him / her in the recovery process, problems of the community related to the need for public order and security, problems related to the restoration of the losses caused, by imposing the direct responsibility of the offender, as well as the problems in relation with the offender, such as his/her need for social reintegration (Niţă, 2017: 50). Restorative justice is based on three fundamental principles: responsibility, restoration and reintegration. Based on these three principles, restorative justice has as its main objectives, among others, the need of increasing the responsibility of offenders towards the person and the community they have victimized; the need of increasing the responsibility of the community in engaging liability of the offender and of identifying solutions to the needs of the victim and offender; preventing recidivism by reintegrating offenders into the community. In almost all countries, as the case may be, three ways to deal with juvenile delinquency are followed, namely: social assistance; punitive-criminal nature justice; a mixed path that aims to achieve a compromise between the previous two paths.

In the process of implementing non-custodial educational measures, the National Probation Directorate, a structure organized within the Romanian Ministry of Justice, and its 42 territorial structures, called probation services, play an important role. The National Probation Directorate is a structure established and organized by Law no. 252/2013 on the organization and functioning of the probation system, published in the Official Gazette of Romania, Part I no. 512 of August 14, 2013 and by Government Decision no. 1079/2013 for the approval of the Regulation for the application of the provisions of Law no. 252/2013 regarding the organization and functioning of the probation system, published in the Official Gazette of Romania, Part I no. 5, January 7, 2014.

Thus, in order to analyze and evaluate the necessary criteria for choosing the educational measure, at the request of the judicial bodies, the Probation Service carries out the evaluation of the juvenile offender, which he records in an evaluation report. The evaluation report contains data on the child's family and social background, the educational and professional situation, general conduct and criminal behavior analysis, the risk of committing new crimes, and motivated proposals on the nature and duration of social reintegration programs that the minor must follow, as well as other obligations that may be imposed by the court.

According to the new RCPC, the detention and pre-trial detention of the juvenile offender is an exceptional measure and it is executed under a special detention regime, taking into account the particularities of the age so that the deprivation of liberty does not prejudice the physical, mental or moral development of these persons (Neagu et.al., 2014: 646).

As stated by art. 37 of the Law no. 304/2004 on judicial organization, specialized courts may be set up for cases involving minors and families. However, in Romania there is only one specialized court for minors set up in 2004, the Brasov Tribunal for Minors and Families. This court was established under a pilot program through the Order of the Minister of Justice, while in the other counties only specialized sections for minors and families were set up in the courts.

According to Law no. 272/2004 on promoting the rights of the child, art. 2 par. (4), the principle of the best interest of the child shall prevail in all approaches and decisions

concerning children undertaken by public authorities and authorized private bodies, as well as in the cases dealt with by the courts. In addition, in the process of individualization of criminal sanctions against juvenile offenders, the courts should focus on the re-education and reintegration function, the responsibility of the minor regarding his / her future conduct, the promotion of the minor's cohesion with the society.

The necessity of a special sanctioning regime for minors has raised in most states, which thus renounced the repressive system, considering that it was not able to achieve its educational and social reintegration purpose for the minor offender, given the particularities of his/her personality characterized by insufficient psycho-physical development (Antoniu et. al., 2011: 328). One can identify a tendency to devalue the liability of minors in case of committing offenses and a preeminence of the initial educational function, since the criminal constraint, as means of achieving the rule of law, targeting the human person itself, and therefore an essential value, must occur only in the cases and conditions provided by law.

2. EDUCATIONAL MEASURES PROVIDED BY ROMANIAN CRIMINAL CODE

RCC provides a double set f educational measures, non-custodial and custodial. The non-custodial educational measures are:

a) civic traineeship;

b) supervision;

c) curfew on weekend;

d) assistance on a daily basis.

RCC provides two custodial educational measures, confinement in an educational centre and confinement in a detention centre. All types of educational measures to be taken against a juvenile shall be chosen according to the general criteria of individualization of penalty established by the Romanian legislator for adult offenders. In addition a specific rule is set up by art. 114 RCC: a juvenile who, at the time of the offense, is aged between 14 and 18, shall be subject to a non-custodial educational measure. In exceptional cases the juvenile offender may ab initio be subject to custodial educational measures only in the following cases:

a) the juvenile committed another offense for which an educational measure was taken and served or the service of which started before the commission of the offense for which the juvenile is subject to trial;

b) the penalty required by law for the committed offense is a term of imprisonment of seven years or more, or life imprisonment.

According to art. 116 RCC, for the purpose of assessing a juvenile, according to the general criteria of individualization of penalty, the court shall require the Probation Service to draft a report also including justified recommendations on the nature and duration of social reintegration programs that the juvenile should follow, as well as any other obligations imposed on a juvenile by the Court. The compliance assessment report or the enforcement of educational measures and imposed obligations shall be

prepared in almost all the cases by the Probation Service, except the cases provided by law, when such report shall be drafted by the educational or detention centre.

3. RULES ON NON-CUSTODIAL EDUCATIONAL MEASURES

The lightest non custodial educational measure is civic traineeship. It consists of a juvenile's obligation to participate in a program not exceeding 4 months, which would help them understand the legal and social consequences they are exposed to when perpetrating offenses and would make them accountable for their future behaviour. The Probation Service shall coordinate the organization, the juvenile's participation and the supervision during such civic traineeship, without affecting the juvenile's school or professional program.

The non-custodial educational measure of supervision consists of controlling and guiding a juvenile throughout their daily program, for a time period between two and six months, under the supervision of the Probation Service, in order to ensure their participation in school or vocational courses and to prevent them from engaging in certain activities or from contacting certain persons that might affect their reformation process.

Curfew on weekend imposes an obligation to the juveniles not to leave their domicile on Saturdays and Sundays, for a time period between 4 and 12 weeks, unless, in this period, they are required to participate in certain programs or to carry out certain activities imposed by the court. Supervision is performed under the coordination of the Probation Service.

The harshest non-custodial educational measure is the assistance on a daily basis. It consists of a juvenile's obligation to follow a schedule set by the Probation Service, which contains the timetable and conditions for conducting activities as well as the prohibitions imposed on the juvenile. The educational measure of assistance on a daily basis is enforced for a period between 3 and 6 months and supervision is performed under the coordination of the Probation Service. During the service of non-custodial educational measures, in accordance with the provisions of art. 121 RCC, the court may impose on a juvenile one or more of the following obligations:

a) take classes in school or a vocational training;

b) not to cross the territorial limit set by the Court, without the Probation Service's approval;

c) not to be in certain places or at certain sporting cultural events or other public meetings indicated by the Court;

d) to stay away from and not communicate with the victim or members of their family, the participants in the offense or other persons indicated by the Court;

e) to report to the Probation Service on the dates set by the latter;

f) to comply with medical control, treatment or care measures.

Supervision of fulfilment of the obligations imposed by the Court is performed under the coordination of the Probation Service which has to notify the court if reasons justifying either the change of the obligations imposed by the court or cessation of some of them appeared or a supervised person violates the conditions of the educational measure's service or fails to meet their obligations, under the established terms. If during the

supervision term reasons justifying either the imposition of new obligations or the increase or reduction of the service conditions for those existing appeared, the court orders the change of obligations accordingly so as to ensure better chances for the supervised person to reform. The court orders suspension of the service of the obligations imposed by it when it deems that their maintaining is no longer required.

If a juvenile does not comply, in ill-faith, with the educational measure's conditions or with the obligations imposed, the court rules to:

a) increase the educational measure, without exceeding the maximum term provided by law for it;

b) replace the previous measure by another, more severe, non-custodial educational measures;

c) replace the enforced measure by confinement in an educational centre, in case the most severe non-custodial educational measure was taken initially.

In the cases referred to in lett. a) and b), if the conditions for the service of the educational measure or obligations imposed are still not complied with, the court shall replace the non-custodial educational measure with the measure of confinement in an educational centre.

If a juvenile serving a non-custodial educational measure commits a new offense or is subject to trial for one of multiple offenses committed previously, the court rules to:

a) increase the educational measure, without exceeding the maximum term provided by law for it;

b) replace the previous measure by another, more severe, non-custodial educational measure;

c) replace the previous measure by a custodial educational measure.

In the cases referred to in lett. a) and b) the Court may order new obligations to a juvenile or may extend the service conditions of the existing ones.

4. RULES ON CUSTODIAL EDUCATIONAL MEASURES

RCC provides only two custodial educational measures - internment in an educational centre and internment in a detention centre, thus, in our opinion the "child-friendly" feature of the Romanian sanctioning system for minors being met once more.

The educational measure represented by the internment in educational centres consists of the internment of underage offenders in institutions specialized in the recovery of underage offenders, where the latter attend educational and professional training programs in accordance to their skills, as well as social reintegration programs, for a time period between one and three years. If, during the internment period, an underage offender commits a new offense or is trilled for a previously committed multiple offense, the court may sustain the measure of internment in an educational centre, extending the duration of such measure without exceeding the maximum duration provided by law, or may replace it by the measure of internment in a detention centre. If, during the internment period, an underage offender proves a continuous interest in acquiring knowledge and professional training, and shows obvious progress in view of social reintegration, following service of at

least half of the internment period, the court may order the replacement of the internment by the educational measure of daily assistance for a period equal to the duration of the internment still to be served, but no more than six months, if the person has not turned 18 or even the release from the educational centre, if the person has turned 18.

Simultaneously with such replacement or release, the court shall order the observance of one or several obligations provided under Art. 121, until reaching the duration of internment.

If an underage offender, in ill-faith, does not observe the conditions for the service of the measure of daily assistance or the obligations ordered, the court shall reconsider the replacement or release, and shall order service of the remaining measure of internment in an educational centre. If, until the completion of the internment period, the person not having turned 18, with respect to whom the measure of internment in an educational centre was replaced by the measure of daily assistance, commits a new offense, the court shall reconsider the replacement and shall order either service of the remaining initial internment measure, with a possibility of extension until reaching the maximum provided by law, or internment in a detention centre.

The harshest educational measure provided by RCC is internment in detention centres. It consists of the internment of an underage offender in an institution specialized in the recovery of underage persons, under guard and monitoring, while attending intensive social reintegration programs, as well as educational and professional training programs tailored according to their skills. Internment may be ordered for a time period between 2 and 5 years, except for the case when the penalty provided by law for the committed offense is a term of imprisonment of 20 years or more, or life imprisonment, in which case internment is ordered for no less than 5 and no more than 15 years.

If, during the internment period, an underage offender commits a new offense or is tried for a previously committed multiple offense, the court shall increase the measure of internment, without exceeding the maximum provided by law. If, during the internment period, an underage offender proves a continuous interest in acquiring knowledge and professional training, and shows obvious progress in view of social reintegration, following the service of at least half of the internment period, the court may order, like in case of internment in an educational centre: either replacement of the internment by the educational measure of daily assistance for a period equal to the duration of the internment still to be served, but no more than six months, if the interned person has not turned 18, or the release from the detention centre, if the interned person has turned 18. Concurrently with the replacement or release, the court shall order the observance of one or several obligations until reaching the duration of internment. If an underage offender, in ill-faith, does not observe the conditions for service of the measure of daily assistance or the obligations ordered, the court shall reconsider the replacement or release, and shall order service of the remaining measure of internment in a detention centre. If, until completion of the internment period, a person not having turned 18, in whose respect a measure of internment in a detention centre was replaced by a measure of daily assistance, commits a new offense, the court shall reconsider the replacement and shall order service of the remaining initial internment measure in a detention centre or the extension of such internment to its maximum time limit.

It is quite interesting that, despite its "child friendly orientation", the Romanian legislator allows replacement of the penalty service regime if, during the service of a

custodial educational measure, an interned person who has turned 18 demonstrated conduct that has a negative impact on, or prevents the recovery or reintegration of other interned persons. In such a case, the Court may order the service of the rest of the educational measure in prison.

5. COMMENTS ON NON-CUSTODIAL AND CUSTODIAL EDUCATIONAL MEASURES PROVIDED BY ROMANIAN LEGISLATOR

During the complex process of choosing the most efficient educational measure and its duration to be taken against the juvenile offender, the courts shall take into account, two main categories of key criteria:

1. criteria regarding the criminal deed: the circumstances and the manner in which the act is committed, the state of the danger posed by the act for the protected social value, the nature and gravity of the result produced;

2. criteria regarding the characteristics of the perpetrator: the nature and frequency of the criminal offenses that constitute the offender's criminal history, conduct after committing the crime and during the criminal proceedings, as well as the level of education, age, state of health, family and social situation.

As regards the first set of criteria, provided by art. 74 lett. a-d RCC, the court shall apply them in the same way to juvenile offenders as in the case of the adult ones, so that the educational measure taken is fair, appropriate to the deed and meet the requirements of social reintegration and inspiration of the moral values indispensable to any citizen in a state.

With regard to the second set of criteria, provided by art. 74 lett. e-g RCC, the evaluation report, which provides essential data regarding the physical condition of the minor, the intellectual and moral development, the behavior, the conditions in which he grew up or lived, any other elements of nature to characterize the offender's person.

Juvenile's social deviance or their criminal conduct, denial of the norms and values of the society, proves an inadequate, faulty or non-existent preoccupation of their parents, guilty of giving the minors the negative example of dishonesty, vice and violence. For this reason, the juvenile justice system, both at the level of the criminal policy and in the concrete individualization of criminal sanctions for juvenile offenders, must ensure the well-being of minors in such a way that the reaction to juvenile offenders is appropriate to the circumstances committing the offense, also taking into account the person of the minor, as set out by Beijing Rules.

Also, when applying an educational measure on a juvenile offender, the court must see the principle of proportionality, referring not only to the gravity of the offense as such but also to the personal circumstances (family situation, social position, previous conflict with the criminal law, the efforts made to compensate the injured person and the wish of the minor offender to return to a state of observance of the criminal law rules). In order not to undermine the fundamental rights of the juvenile offender, there must be a proportionate court decision that balances both the minor offender's and the victim's own circumstances (4, 2015: 489).

The sanctioning regime that governs these educational measures is designed to provide broad possibilities for individualisation, allowing its adaptation according to the conduct of

each minor during the execution of the educational measure. Thus, when the minor proves that he has made significant progress towards social reintegration, after serving at least half of the duration of the custodial educational measure, it is possible either to replace this measure with the daily assistance measure if the juvenile has not reached the age of 18, or to release the juvenile in case he/she reached this age. In both cases, the court will impose compliance with one or more of the obligations set out in art. 121. This ensures that the juvenile is supervised in the immediate period of the release, knowing that the risk of committing new offenses is higher during this period.

Other general provisions meet the same "child-friendly" orientation, such as criminal statute of limitations for underage offenders provided by art. 131 RCC which states that in case of persons who are underage at the date the offense is committed, the statute of limitations of criminal liability provided under law for adult offenders shall be reduced to half and shall be postponed or suspended as provided by law in case of adults. Also, statute of limitations for serving educational measures provided by art. 132 RCC states that non-custodial educational measures shall have a limitation term of two years, which runs from the date the conviction sentence ordering them is final. Custodial educational measures shall have a limitation term equal to the duration of the relevant educational measure, but no less than two years.

Regarding the sanctioning treatment in the case of reiterating the criminal conduct and after reaching the age of 18, we consider that the provisions of art. 129 RCC do no longer satisfy the "Child-friendly" rule, this rule being replace with a true "mala sanctio" rule. Thus:

In case of multiple offenses committed while underage, a single educational measure is ordered for all offenses. In case of two offenses, one of which is committed while underage and the other one after having turned 18, an educational measure shall be ordered for the offense committed while underage and a penalty shall be ordered for the offense committed after having turned 18, and:

a) in case of non-custodial educational measures, *only the penalty* shall be served;

b) in case of custodial educational measures, if the penalty is imprisonment, *the imprisonment shall apply and shall be extended* by at least one-fourth of the duration of the educational measure or of the remaining educational measure still to be served at the date of the offense committed after having turned 18;

c) if the penalty ordered for an offense committed after having turned 18 is *life imprisonment, only this penalty shall be served*;

d) in case of custodial educational measures, and the penalty consists of a fine, *the educational measure shall be served, and its duration shall be extended by no more than six months*, by observing the maximum term provided by law for such measure.

The penalty ordered pursuant to the stipulations of lett. b, may not be subject to enforcement postponement or to suspension of service of a sentence under supervision, although an adult offender could benefit of these types of serving a penalty. In our opinion this provision is excessive and should be modified by the Romanian legislator.

6. SECURITY MEASURES IN CASE OF JUVENILE OFFENDERS

Even if the same "child-freindly" orientation is met also in case of security measures provided by RCC and appliable to juveniles, unfortunately, the system in not functioning at dezirable standards.

For example, in the case of juvenile drug addicts, chronic alcohol users or suffering of psychiatric illness, an essential measure is the obligation imposed by the court that the minor should undergo medical treatment until healing. In spite of the well-established and substantiated legislation, their practical application to concrete cases presents many shortcomings, with Romania being convicted by the Strassbourg Court for violating the provisions of the ECHR. Thus, in the case of the Center for Legal Resources on behalf of Valentin Câmpeanu v. Romania (*Case* Center for Legal Resources on behalf of Valentin Câmpeanu v. Romania, Application no. 47848/08, ECHR Grand Chamber, Judgement of 17 July 2014, https://www.luju.ro/static/files/2014/iulie/18/case_of_centre_for_legal_resources_on_behalf_of_valentin_campeanu_v._romania.pdf, accessed 10.05.2018), the Romanian State was convicted for violating the provisions of art. 2, 3 and 13 of the ECHR, because The Grand Chamber stated that the provisions of Article 2 of the Convention were not respected if the protection afforded by domestic law existed only in theory; above all, this protection must work in practice (par. 132). On the basis of the evidence presented in this case, the Court found that the Romanian State is responsible under Article 2 for failing to protect Mr Câmpeanu's life during the care of the domestic medical authorities and for failing to conduct an effective investigation to determine the circumstances that led to his death (par. 152). The Court found a violation of Article 13 in conjunction with Article 2 of the Convention as a result of the failure of the State to ensure and implement an appropriate legal framework that would have allowed Mr Câmpeanu's allegations of breaches of his right to life to be examined by an independent authority (par. 153). Unfortunately, for vulnerable minors, there is no effective strategy to protect their fundamental rights. Taking medical-curative safety measures is not enough, with the need for medical and psychological assistance provided by people with training in this field, especially in the case of juvenile offenders suffering from a mental illness or drug addiction.

7. STATISTIC DATA ON ROMANIAN JUVENILE CRIME

Unfortunately in the early 2000's juvenile delinquency in Romania has seen significant changes, with an increasing number of children being involved in crimes and other violent crimes.

Of the total offenses committed in 2000, 7.2% were committed by underage perpetrators, a similar percentage being registered in 1999 (7.1%). Out of all crimes and offenses committed by juveniles, 90.6% were crimes and offenses against the person, the age of the perpetrators being 14-17 years old. However, most offenses committed by minors were against property, accounting for 70% of all offenses committed by minors. Prostitution and international trafficking in human beings are alarming phenomena for Romania. 112 cases of prostitution were reported in 1998, in 2000 the number dropped to 85 cases (http://www.salvaticopiii.ro/romania/copiii_romania/delincventa_juvenila.html, accessed 12.05.2018). Meanwhile criminal law in Romania decriminalized the offense of prostitution.

However, the number of victims in recovery and integration projects in non-governmental organizations is much higher. The situation of children involved in drug trafficking is aggravating each year. If 14 cases of juvenile offenders (14-17 years old) who committed drug trafficking offenses were reported in 1993, 35 cases were recorded in 2000, indicating a worsening of the situation. In recent years, Romania has turned from a transit country to a drug market. The number of drug users aged less than 18 years has increased and the age at which drug use starts has dropped to 13-14 years. Studies by non-governmental organizations have shown that about 10% of high school students have used drugs at least once (Stănilă, 2017:190).

In 2011-2015, over 20,000 minors were indicted in Romania, of which almost 15,000 were convicted (Danileț, 2016). The new Criminal Code, which reduced penalties for most offenses and eliminated the application of juvenile prison sentences, generated a one thousand decrease in the number of children sent to trial, although this does not mean a decrease in the number of crimes committed by minors. Over the last two years, there have been about 800 children sentenced to custodial educational measures serving them in special detention designated places.

Statistics show that five minors are being sued each day for committing theft and two minors for robbery. Every three days, a minor is appears to a judge for committing a sexual offense to another minor or for committing a rape. Also, yet another minor is brought before the court every three days because he killed a person, in most cases intentionally - only 10% of murders are committed by negligence.

Although in Romania the driving license is obtained from the age of 18, yet a number of over 100 minors are caught driving and convicted every year. In Romania, juveniles are also involved in committing less common offenses such as child pornography, drug use, drug trafficking, and trafficking in human beings (Danileț 2016).

But it is worth to mention that, in the last 2 years (2016, 2017), the number of crimes and offenses committed by juveniles started to decrease for theft and rape, as showed below, although in case of other types in slowly continued to increase. All the statistical data were presented by the Public Ministry of Romania in its Activity Report for, the year 2017 (http://www.mpublic.ro/sites/default/files/PDF/raport_activitate_2017.pdf, accessed 10.05.2018):

Fig. 1 Juveniles indicted for theft and rape between 2011-2017

Juveniles indicted	2011	2012	2013	2014	2015	2016	2017
Theft	2172	2882	2770	1850	1761	1633	1478
Rape	67	97	96	103	110	72	56

Fig.2 Juveniles (14-18 years) indicted between 2008-2017:

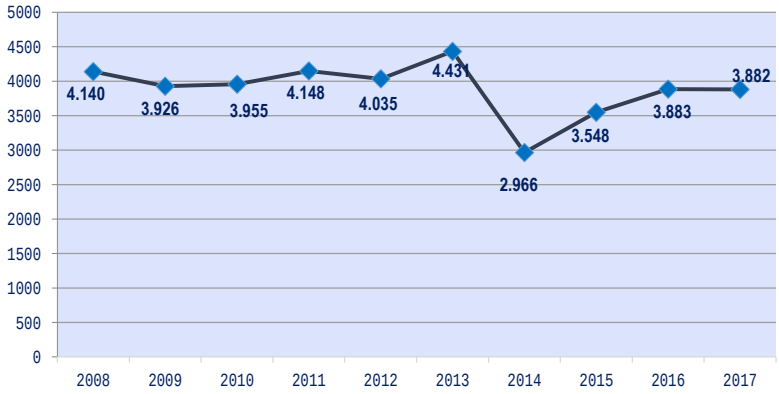


Fig. 3 Juveniles (14-18 years) indicted between 2008-2017 for crimes against person:

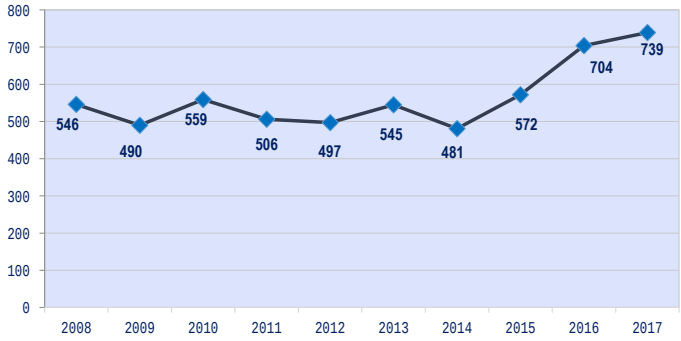


Fig. 4 Juveniles (14-18 years) indicted between 2008-2017 for crimes against property:

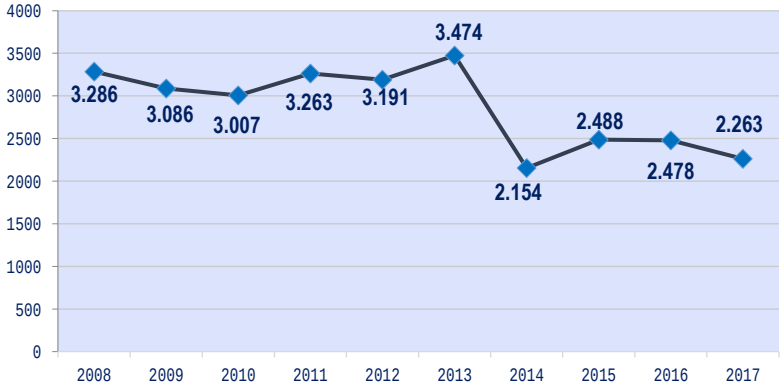
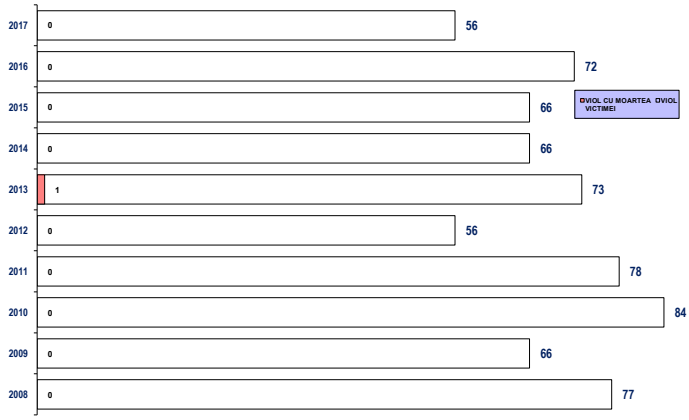


Fig. 5 Juveniles (14-18 years) indicted between 2008-2017 for rape:



CONCLUSIONS

Even if the Romanian law provides a good set of provisions regarding the sanctioning criminal regime for juvenile offenders, unfortunately the social reality brings us negative examples of judicial failure in the process of imposing criminal liability to an under-age offender.

Even if the statistics show an decrease of criminal conducts in relation with some types of crimes and offenses, such as rape and theft, in general the tendency is to the increase of criminal conducts of the juveniles in general. In our opinion this does not show an inefficiency of specific Romanian legislation, but more of a uncoordinated criminale policy of the State in case of minors. Other tools, such as education, reintegration programs, psychologic aid, etc., should be taken into accound in combating juvenile criminal deviancy. Despite its well designed legislation, Romania needs a long-term efficient policy oriented in the sense of preventing criminal conduct in case of minors and a more coordinated action envolving specific state institutions, organizations and civil society.

We, among other scholars (Banciu 2000, 233), also emphasize the need for protecting the rights of delinquent under-aged during the criminal trial and to resocialize the minor who has committed criminal offenses.

Among the main levers of control and prevention as well as of combating juvenile delinquency are:

- Establishment and operation of juvenile courts;
- Designation of a representative in criminal proceedings from each of the judicial institutions concerned (police, prosecutor, bar) to deal only with criminal cases with juvenile offenders;
- institutionalization of delinquent juvenile in specialized centers until the finalization of the criminal file.

- developing social services for the family by nominating a social worker to identify and monitor juveniles with deviant behaviour.

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SISTEM SANKCIONISANJA MALOLETNIH UČINILACA KRIVIČNIH DELA: VIZIJA RUMUNSKOG ZAKONODAVSTVA PO MERI DETETA

Sistem sankcionisanja koji se primenjuje prema maloletnim učiniocima krivičnih dela, u važećem krivičnom zakonodavstvu Rumunije, izmenjen je 2009. godine, usvajanjem novog Krivičnog zakonika, koji je stupio na snagu 2014. godine. Nova regulativa krivične odgovornosti maloletnika, iako je dobrodošla u doktrini, ona nije sasvim nova. Praktično, usvajanje "novog" krivičnog zakonika, predstavlja povratak starijoj viziji zakonodavca, koja se primenjivala između 1977. i 1992. godine. Zakonodavcu Rumunije je bilo potrebno sedamnaest godina da prizna neefikasnost sistema sankcionisanja, koji je predviđao kažnjavanje zajedno sa vaspitnim merama, kako bi se obezbedilo rešenje koje, iako nije novo, predstavlja mnogo bolju opciju od prethodno korišćenih. U ovoj studiji, autori imaju za cilj da predstave sistem sankcionisanja maloletnih učinilaca krivičnih dela, u skladu sa rumunskim krivičnim zakonikom iz 2009. godine, uz posebno isticanje njegovih snažnih i dobrih aspekata.

KLJUČNE REČI: krivična odgovornost maloletnika / vaspitne mere / mere zavodskog karaktera / nezavodske vaspitne mere / restorativna pravda

KRIVIČNOPRAVNA ZAŠTITA ŽIVOTA I TELESNOG INTEGRITETA MALOLETNIH LICA U NAŠEM KRIVIČNOM ZAKONODAVSTVU[*]

Prof. dr Đorđe ĐORĐEVIĆ[*]

Naše krivično zakonodavstvo maloletnim licima pruža pojačanu krivičnopravnu zaštitu. Ona se ogleda u postojanju značajnog broja krivičnih dela koja se mogu učiniti samo protiv maloletnih lica, ali i postojanju krivičnih dela koja, iako mogu biti učinjena protiv svih lica, dobijaju teži vid ako su učinjena protiv maloletnih lica. I jednih i drugih ima u mnogim grupama krivičnih dela u našem Krivičnom zakoniku, ali svojom težinom i značajem posebnu pažnju zaslužuju krivična dela protiv života i tela. U ovoj grupi ima nekoliko krivičnih dela koja, ako su učinjena prema maloletniom licu, predstavljaju teži oblik tih dela. Iako se opravdanost takve pojačane zaštite života i telesnog integriteta maloletnih lica gotovo uopšte ne dovodi u pitanje, način na koji je ona realizovana u našem Krivičnom zakoniku ostavlja određene dileme. One se najvećim delom odnose na međusobnu usaglašenost ovih odredbi, kao i doslednost u zaštiti pojedinih kategorija maloletnih lica (deca, maloletnici, lica do 16 godina starosti). Stoga bi, de lege ferenda, a u cilju dosledne i što sveobuhvatnije krivičnopravne zaštite ovih lica, trebalo razmisliti o mogućnostima njihovog usklađivanja i unapređivanja.

KLJUČNE REČI: Krivični zakonik / krivičnopravna zaštita / maloletna lica / maloletnici / deca / krivična dela protiv života i tela

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1. OPRAVDANOST POJAČANE ZAŠTITE MALOLETNIH LICA U NAŠEM KRIVIČNOM PRAVU

Maloletna lica predstavljaju veoma značajnu kategoriju i kao aktivni i kao pasivni subjekti u našem krivičnom pravu. Stoga je problematika njihove krivične odgovornosti kao i krivičnopravne zaštite posebno regulisana Zakonom o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica.[2] Članom 4. ovog zakona propisano je da se "odredbe Krivičnog zakonika, Zakonika o krivičnom postupku, Zakona o izvršenju krivičnih sankcija i drugi opšti propisi primenjuju ako nisu u suprotnosti sa ovim zakonom". S obzirom da ćemo se u ovom radu baviti krivičnopravnom zaštitom ovih lica to nas u prvom redu interesuju, pored odredaba ovog zakona, odredbe Krivičnog zakonika (u daljem tekstu KZ) kojima se ovim licima pruža posebna, pojačana zaštita.

Iako je u savremenom društvu opšteprihvaćen princip da se svi ljudi rađaju jednaki i jednako im pripadaju sva ljudska prava (Belat, Bertrand, 1966: 14), krivično zakonodavstvo često pojedinim kategorijama lica pruža pojačanu krivičnopravnu zaštitu. Ovo ne implicira neki privilegovan položaj tih lica, već samo predstavlja izraz želje zakonodavca da ta lica jače zaštiti jer smatra da su iz različitih razloga pojačano ugrožena. Ta pojačana ugroženost obično se vezuje za istovremenu ugroženost i nekih drugih značajnih vrednosti (na pr. službena dužnost, obavljanje poslova od javnog značaja i sl), ili za činjenicu da su neke kategorije lica posebno ugrožene zbog fizičke ili psihičke inferiornosti, neiskustva i sl. što ih čini manje sposobnim da predvide i da se suprotstave različitim oblicima ugrožavanja. Maloletna lica svakako pripadaju ovoj drugoj kategoriji.

Iz tog razloga naše krivično zakonodavstvo maloletnim licima pruža pojačanu krivičnopravnu zaštitu. Ona se manifestuje u postojanju posebnih krivičnih dela koja se mogu učiniti samo prema maloletnom licu ili posebnih, težih oblika pojedinih krivičnih dela ako su učinjena prema maloletnom licu. Kod jednih se dakle svojtvo pasivnog subjekta pojavljuje kao obeležje krivičnog dela, a kod drugih kao kvalifikatorna okolnost (Simović-Hiber, 2008: 69). Nekada se ova dela odnosno ovi oblici dela odnose na sva maloletna lica, a nekada samo na neke kategorije maloletnih lica: decu, maloletnike, lica do 16 godina starosti.

Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica maloletnim licima smatra sva lica starosti do 18 godina (deca i maloletnici), s tim što se pod decom podrazumevaju sva lica koja nisu navršila 14 godina, a pod maloletnicima lica koja su navršila 14, a nisu navršila 18 godina, s tim što se ova kategorija deli u dve podkategorije, mlađi maloletnici (lica navršila 14, a nisu navršila 16 godina) i stariji maloletnici (navršila 16, a nisu navršila 18 godina). Na isti način pojmove maloletnog lica, maloletnika i deteta određuje i KZ u članu 112, tač. 8,9 i 10.

Ova podela je tradicionalna u našem pravu i ima svoj puni smisao. Ne ulazeći u dileme da li se neka od ovih granica može pomeriti na gore ili na dole, na ovom mestu treba naglasiti samo da termini upotrebljeni za označavanje ovih kategorija nisu najsrećnije odabrani, jer šira, laička javnost često ne pravi razliku između pojmova maloletnik i maloletno lice, a do zabune ponekad može doći i kod stručnjaka, pa čak i u nekim zakonskim tekstovima. Ovo pogotovu zato što je staro jugoslovensko krivično

[2] Službeni glasnik RS, br. 85/2005.

zakonodavstvo pod pojmom maloletnika podrazumevalo sva lica do navršenih 18 godina,[3] dakle ono što se danas naziva maloletnim licima, odnosno ova dva pojma tretiralo kao sinonime (Stojanović, 2003: 381).

Strana zakonodavstva veoma različito definišu pojedine kategorije maloletnih lica, različito određujući granice pojedinih kategorija (Knežević, 2010: 24), pa su uporednopravne analize pojedinih rešenja iz stranog zakonodavstva znatno otežane. To naročito dolazi do izražaja kad su u pitanju pojedine međunarodne konvencije čija rešenja naše zakonodavstvo želi da implementira. Tako Konvencija o pravima deteta usvojena na Generalnoj skupãtini UN, 20. novembra 1989, koja je izvršila veliki uticaj na kasnije donete konvencije, pod pojmom deteta podrazumeva "svako ljudsko biće koje nije navršilo osamnaest godina života, ukoliko se, po zakonu koji se primenjuje na dete, punoletstvo ne stiče ranije" (član 1. Konvencije),[4] što sadržinski pokriva ono što se u našem pravu naziva maloletno lice.

Krivičnih dela kojima se obezbeđuje pojačana zaštita maloletnih lica ima u mnogim grupama krivičnih dela u našem KZ: protiv života i tela, protiv sloboda i prava čoveka i građanina, protiv polne slobode, protiv braka i porodice, protiv zdravlja ljudi i dr. Međutim, s obzirom na težinu i značaj krivičnih dela svakako da u tom smislu najviše pažnje zaslužuju krivična dela protiv života i tela, pa ćemo se u ovom radu prvenstveno baviti krivičnim delima iz ove grupe kojima se maloletnim licima pruža pojačana krivičnopravna zaštita.

2. UBISTVO DETETA KAO OBLIK TEŠKOG UBISTVA

Ubistvo deteta je u našem KZ, zajedno sa ubistvom bremenite žene, propisano kao jedan od oblika krivičnog dela teškog ubistva. Ovaj oblik teškog ubistva prvi put je unet u naše krivično zakonodavstvo Krivičnim zakonikom iz 2005. godine.

Brojni su razlozi koji opravdavaju ovakvu pojačanu zaštitu dece od najtežih krivičnih dela protiv života i tela. Iako je pravo na život, posmatrano kao subjektivno pravo, jednako za sve ljude i kao takvo uživa jednaku krivičnopravnu zaštitu, krivično delo ubistva deteta se može smatrati kao teže krivično delo s obzirom na neke okolnosti koje su za njega karakteristične. Krivičnim delom ubistva pasivni subjekt se zapravo lišava preostalog dela života. Iako se nikada ne može znati koliki je deo života koji pojedinac još ima u određenom momentu, statistički posmatrano on je svakako veći što je lice lišeno života mlađe, pa je pasivni subjekt izgubio više ukoliko je ubijen u mlađim godinama. Krivično pravo u mnogim svojim odredbama pruža pojačanu krivičnopravnu zaštitu nemoćnim licima i deci, a deca su i kao žrtve ubistva svakako manje sposobna da se eventualno suprotstave ubici i manje iskusna da izbegu situaciju u kojoj im preti ubistvo (Đordević, 2014: 14), jer su zbog dugog perioda odrastanja i sazrevanja zavisni od punoletnih osoba (Mrvić-Petrović, 2011: 38). I sa demografskog aspekta ubistvo deteta je svakako štetnije, jer će za posledicu imati izostanak njegovog potomstva (što inače može da stoji i kod lica nešto starijeg uzrasta). Sve ove navedene okolnosti su se i prema ranijem krivičnom zakonodavstvu, pre donošenja Krivičnog zakonika iz 2005. godine, mogle uzeti kao otežavajuće, ali je predviđanjem ubistva deteta kao teškog ubistva okolnost da je pasivni subjekt ubistva dete postala

[3] Tako, na primer, članom 72. Osnovnog Krivičnog zakona bilo je propisano da se "Prema maloletniku koji u vreme izvršenja krivičnog dela nije navršio četrnaest godina (dete) ne mogu se primeniti krivične sankcije"
[4] *Konvencija o pravima deteta*, Unicef, Beograd, 1989, str. 5.

kvalifikatorna okolnost koja zasniva strožu kvalifikaciju krivičnog dela za koje je predviđena i teža kazna, čime je svakako eksplicitnije izražena želja zakonodavca da deci pruži pojačanu krivičnopravnu zaštitu (Stojanović, Delić, 2014: 15).

Ubistvo deteta kao teži oblik ubistva postoji u mnogim krivičnim zakonicima savremenih zemalja: Ruske federacije (čl. 105, 2c),[5] KZ Francuske (čl. 221-4.t.1),[6] KZ Tadžigistana (čl.104, stav 2. t, s.),[7] KZ Albanije (čl. 79. t. c.),[8] KZ Hrvatske (čl. 111. t. 2),[9] KZ Makedonije (čl. 123. st. 2. t. 8.),[10] KZ Republike Srpske (čl. 125. st. 1. t. 7.),[11] KZ Crne Gore (čl. 144. st.1. t. 6.).[12]

Osnovno pitanje kod ove inkriminacije je do kog uzrasta pasivni subjekt ovog krivičnog dela treba da uživa ovu pojačanu krivičnopravnu zaštitu. U tom pogledu u uporednom pravu postoje različita rešenja, koja se uglavnom kreću u rasponu od 14 (Srbija, Crna Gora) do 18 godina (Republika Srpska, Makedonija), dok KZ Hrvatske govori o "posebno ranjivim osobama zbog svoje dobi...". Inače, nezavisno od postojanja ovog krivičnog dela, uzrast kojim se ograničava pojam deteta se u raznim zakonodavstvima veoma različito određuje (Jovašević, 2011: 40).

Unošenje ove inkriminacije teškog ubistva u KZ svakako ima puno opravdanje i svakako doprinosi pojačanoj zaštiti dece od najtežeg krivičnog dela protiv života. Može se ipak učiniti primedba da je ovu inkriminaciju trebalo proširiti i na kategoriju maloletnika (lica od 14 do 18 godina), jer svi razlozi koji se mogu izneti u pogledu opravdanja ovog oblika teškog ubistva stoje i kada su u pitanju maloletnici kao žrtve ubistva, a u prilog takvog rešenja govore i mnogi primeri iz uporednog prava.

3. PRIVILEGOVANA UBISTVA

Među tzv. privilegovanim ubistvima u našem KZ nema takvih krivičnih dela kod kojih bi činjenica da je pasivni subjekt maloletno lice predstavljala kvalifikatornu okolnost. Međutim, kod dva od ovih krivičnih dela okolnost da je pasivni subjekt maloletno lice pojavljuje se kao značajna za postojanje krivičnog dela.

Krivično delo **lišenja života iz samilosti** spada u privilegovana (lakša) ubistva iako ga KZ i ne naziva ubistvom zbog toga što pobude iz kojih se ovo delo čini ne odgovaraju u etičkom smislu onima iz kojih se vrše druge vrste ubistva. Ovakvo lišenje života drugoga naziva se još i eutanazija.

Osnovni elementi ovog krivičnog dela su isti kao i kod običnog ubistva s tim što kod ovog krivičnog dela postoje i elementi po kojima se ovo delo razlikuje od drugih ubistava. Ti elementi su da delo treba da će učinjeno iz samilosti, tj. iz sažaljenja prema žrtvi zbog teškog stanja u kome se ona nalazi, da se lice koje se lišava života nalazi u teškom zdravstvenom stanju i da je lice koje je lišeno života samo zahtevalo na ozbiljan i izričit način da mu lišenjem života budu prekraćene teške patnje kojima je izloženo. Međutim,

[5] dostupno na: www.legislationline.org , pregledano 25.4.2018.
[6] dostupno na: www.legislationline.org , pregledano 25.4.2018.
[7] dostupno na: www.legislationline.org , pregledano 25.4.2018.
[8] dostupno na: www.legislationline.org , pregledano 25.4.2018.
[9] dostupno na: www.zakon.hr , pregledano 25.4.2018.
[10] dostupno na: www.pravdiko.mk , pregledano 25.4.2018.
[11] dostupno na: www.mup.vladars.net , pregledano 25.4.2018.
[12] dostupno na: www.paragraf.me , pregledano 25.4.2018.

ovo krivično delo se može izvršiti samo prema punoletnom licu jer se u ovakvim situacijama izjave maloletih lica zbog njihove nezrelosti i životnog neiskustva ne mogu smatrati relevantnim da bi se na osnovu njih moglo prihvatiti da ih neko po njihovom pristanku, i pored teške situacije u kojoj se nalaze, liši života iz samilosti (Đorđević, 2014: 17). Lice mora biti punoletno ne samo u momentu lišenja života već i u momentu iznošenja ozbiljnog i izričitog zahteva (Stojanovič, Delić, 2014: 22).

Na taj način, isključena je mogućnost da pasivni subjekt ovog privilegovanog ubistva bude maloletno lice. Time se, indirektno, pojačano štite maloletna lica jer se ubistvo maloletnog lica, bez obzira na okolnosti koje ga karakterišu, nikada ne može smatrati eutanazijom.

Iz samog naziva krivičnog dela **ubistva deteta pri porođaju** vidi se da pasivni subjekt ovog krivičnog dela može da bude samo dete, dakle maloletno lice. Međutim, imajući u vidu elemente ovog krivičnog dela jasno je da se ono može odnositi samo na ubistvo novorođenčeta jer se radnja dela sastoji u lišavanju života deteta od strane majke za vreme porođaja ili neposredno posle porođaja dok traje poremećaj izazvan porođajem. On ne mora da po intenzitetu bude tako izražen da izaziva neuračunljivost ili bitno smanjenu uračunljivost, što bi uticalo na isključenje krivice ili bilo od uticaja na ublažavanje kazne, ali je u svakom slučaju takav da može biti osnov za blažu kvalifikaciju dela kao privilegovanog ubistva. Iako se kao pasivni subjekt ovog krivičnog dela pojavljuje novorođenče privilegujuća okolnost kod ovog krivičnog dela sigurno nije svojstvo pasivnog subjekta već psihičko stanje majke u vreme izvršenja krivičnog dela, a to je postojanje poremećaja izazvanog porođajem. Krivično delo može da bude izvršeno samo od strane majke deteta, tako da druga lica ne mogu biti učinioci ovog krivičnog dela. Ukoliko bi neko drugo lice (otac, lekar, babica ili bilo koje drugo lice) učestvovalo u izvršenju ovog krivičnog dela kao saizvršilac, podstrekač ili pomagač ono ne bi odgovaralo za ubistvo deteta pri porođaju, već za krivično delo teškog ubistva, tj. ubistva deteta iz člana 114. stav 7. KZ (Stojanović, Delić, 2014: 20).

4. MALOLETNA LICA KAO PASIVNI SUBJEKTI KRIVIČNOG DELA NAVOĐENJE I POMAGANJE U SAMOUBISTVU

Osnovni oblik ovog krivičnog dela sastoji se u navođenju drugog na samoubistvo ili u pomaganju drugome da izvrši samoubistvo. Kao navođenje na samoubistvo smatra se svaka radnja kojom se kod drugog izaziva odluka o tome da izvrši samoubistvo ili, ukoliko onaj koji se navodi na samoubistvo već ima takvu ali ne definitivnu odluku, svaka radnja kojom se doprinosi njenom učvršćivanju. Kao pomaganje u samoubistvu smatra se svako pružanje pomoći drugome koji se odlučio na samoubistvo da tu odluku i ostvari. To pomaganje može biti fizičko (davanje sredstava, stvaranje povoljne situacije, otklanjanje prepreka) ili psihičko (davanje saveta, ohrabrivanje). Da bi postajalo ovo krivično delo potrebno je da je samoubistvo izvršeno ili bar pokušano.

Kod ovog krivičnog dela pojavljuju se različiti oblici zavisno od ličnosti koja se navodi na samoubistvo ili kojoj se pomaže u samoubistvu, odnosno od stepena njene sposobnosti da shvati značaj svoga dela. Kod osnovnog oblika u pitanju je punoletno, uračunljivo lice, kod prvog težeg oblika maloletnik ili lice u stanju bitno smanjene uračunljivosti, dok je kod trećeg, najtežeg oblika, lice koje se navodi na samoubistvo ili mu se u tome pomaže maloletno lice mlađe od četrnaest godina (dete) ili neuračunljivo lice. Ovaj oblik dela je po kazni izjednačen sa teškim ubistvom, čime je izražena želja zakonodavsca da ovakve

slučajeve "praktično prekvaifikuje u ubistvo" (Simović-Hiber, 2010: 75), bez obzira što učinilac ne preduzima radnju kojom se pasivni subject lišava života (Lazarević, 2006: 371). Razlog da se ovakvi slučajevi tretiraju kao teži oblik ovog krivičnog dela leži u tome što su ova lica podložnija navođenju ili se prema odluci o samoubistvu odnose sa manje promišljenosti. U tom smislu se teži oblici ovog krivičnog dela nalaze u funkciji, između ostalog, i pojačane zaštite maloletnih lica od ovakvih oblika ugrožavanja života. Zanimljivo je da po Krivičnom zakonu Srbije koji je važio do donošenja KZ iz 2005. godine ovo bilo jedino krivično delo iz grupe protiv života i tela kod kojeg je postojala pojačana zaštita maloletnih lica.

5. NEDOZVOLJEN PREKID TRUDNOĆE

Krivično delo nedozvoljenog prekida trudnoće sastoji se u nedozvoljenom, nasilnom prekidanju trudnoće i uništenju ploda. Prema našem KZ ono se sastoji u izvršenju pobačaja bremenitoj ženi sa njenim pristankom, ali protivno propisima o vršenju prekida trudnoće, započinjanju vršenja takvog pobačaja ili pomaganju bremenitoj ženi da izvrši pobačaj u uslovima kada pobačaj po pomenutim propisima nije dozvoljen.

O vršenju pobačaja postoje različita shvatanja, a i zakonska rešenja u zakonodavstvu pojedinih zemalja su različita, počev od potpune dozvoljenosti, preko dozvoljenosti pod različitim uslovima, do potpune zabrane vršenja pobačaja. Naše zakonodavstvo ovo pitanje reguliše Zakonom o postupku prekida trudnoće u zdravstvenoj ustanovi[13]. Prema tom zakonu trudnoća se sa pristankom bremenite žene sme prekinuti do navršene desete nedelje trudnoće, izuzev u slučajevima ako bi se takvim prekidom trudnoće teže narušilo zdravlje ili ugrozio život bremenite žene. Ukoliko je bremenita žena mlađa od šesnaest godina za dozvoljenost pobačaja potrebna je i pismena saglasnost bar jednog od njenih roditelja, usvojioca ili staraoca. Izvršilac ovog krivičnog dela može biti svako lice izuzev same bremenite žene koja se po KZ ne smatra izvršiocem ovog krivičnog dela. Ovo se pravno opravdava ustavnim pravom o slobodnom odlučivanju o rađanju dece (član 27 Ustava Republike Srbije), a u prilog tome se mogu navesti i drugi razlozi. Tako, na primer, pretnja kaznom bremenitoj ženi za pobačaj nad samom sobom mogla bi da utiče da se bremenita žena pri pokušaju pobačaja, u slučaju nastanka kakvih zdravstvenih komplikacija pri tom zahvatu ili posle njega, iz straha od kazne zbog učinjenog krivičnog dela ne obrati za potrebnu medicinsku pomoć, što bi moglo da ugrozi njeno zdravlje pa i život. Osim toga kažnjavanje bremenite žene za pobačaj pogodovalo bi licima koja se bave vršenjem nedozvoljenih pobačaja, jer bi se njihova krivična dela teže otkrivala i dokazivala ako najvažniji svedok u ovakvim situacijama, bremenita žena, iz straha od kazne, prikrivajući svoje prikriva i njihovo krivično delo.

Jedan od težih oblika ovog krivičnog dela postoji ako izvršilac nad bremenitom ženom bez njenog pristanka izvrši ili započne da vrši pobačaj, a ako je u pitanju bremenita žena mlađa od šesnaest godina bez njenog pristanka i bez pismene saglasnosti njenog roditelja, usvojioca ili staraoca. S obzirom da su ovi uslovi dati kumulativno ovaj oblik dela će postojati i kad je pobačaj izvršen bez pismene saglasnosti roditelja, usvojioca ili staraoca, čak i kad je postojao pristanak trudnice (Đorđević, Đorđević, 2017: 133). Kod ovog oblika krivičnog dela kažnjiv je svaki pobačaj i svako započinjanje vršenja pobačaja bez obzira na to da li je u pitanju pobačaj koji bi sa pristankom bio dozvoljen ili ne.

[13] Službeni glasnik RS, br. 16/95

Ova odredba o težem obliku ovog krivičnog dela, tačnije onaj njen deo koji se odnosi na vršenje nedozvoljenog prekida trudnoće bremenitoj ženi mlađoj od 16 godina bez njenog pristanka i bez pismene saglasnosti njenog roditelja, usvojioca ili staraoca prvi put je uvedena u naše krivično zakonodavstvo Krivičnim zakonikom iz 2005. godine. Cilj ovakve odredbe svakako je pojačana krivičnopravna zaštita maloletnih lica. Granica pojačane zaštite je kod ovog dela postavljena na 16 godina starosti, ali bi se *de lege ferenda* moglo razmisliti o njenom postavljanju na granicu punoletstva, odnosno na 18 godina starosti.

6. TEŠKA TELESNA POVREDA MALOLETNOG LICA

Teška telesna povreda predstavlja tešku povredu telesnog integriteta ili teško narušavanje zdravlja. Ovo krivično delo ima pet oblika: obična teška telesna povreda, osobito teška telesna povreda, teška telesna povreda kvalifkovana smrću, teška telesna povreda iz nehata i teška telesna povreda na mah. Prva tri navedena oblika teške telesne povrede imaju svoje kvalifikovane oblike, a kvalifikatorne okolnosti se odnose na svojstvo pasivnog subjekta: maloletno lice, bremenita žena ili lice koje obavlja poslove od javnog značaja.

Dakle, i obična, i osobito teška i teška telesna povreda kvalifikovana smrću, ako su učinjene prema maloletnom licu, dobijaju svoje teže oblike. Ovo rešenje se može oceniti kao potpuno ispravno i logično sa stanovišta pojačane zaštite maloletnih lica koja je prihvaćena kao princip u našem krivičnom zakonodavstvu. Međutim, pada u oči da se kod teške telesne povrede ta pojačana zaštita odnosi na sva maloletna lica, a kod ubistva samo na decu. Za ovakvo rešenje ne vidi se nikakvo opravdanje (Đorđević, 2014: 23). Čak bi obrnuto situacija bila logičnija: da se pojačana zaštita od ubistva odnosi na sva maloletna lica, a od teške telesne povrede samo na decu. Opravdanje za ovu nelogičnost možda treba tražiti u činjenici da je odredba o ubistvu deteta postojala u KZ od njegovog donošenja 2005. godine, a da je odredba o teškoj telesnoj povredi maloletnog lica uneta u KZ njegovim izmenama iz septembra 2009, opravdano, ali bez njenog usaglašavanja sa drugim odredbama KZ.

Kao što je već istaknuto u izlaganju o ubistvu deteta, s obzirom da su razlozi za pojačanu zaštitu podjednako prisutni kod svih maloletnih lica čini se da je jedino ispravno obezbediti je za sva maloletna lica i kod jednog i kod drugog krivičnog dela.

7. MALOLETNA LICA KAO PASIVNI SUBJEKTI KRIVIČNIH DELA ODBACIVANJA

U sistematici posebnog dela krivičnog prava krivična dela odbacivanja pominju se kao podgrupa krivičnih dela protiv života i tela (Čejović, 2006: 462; Đorđević, 2014, 10) ili kao posebna krivična dela u okviru podgrupe krivičnih dela ugrožavanja života i tela. Tu bi spadala krivična dela izlaganja opasnosti, napuštanja nemoćnog lica i nepružanja pomoći. Međutim, u tim sistematikama ova dela imaju jedan uži okvir i ne obuhvataju sva ona krivična dela koja po svojim zakonskim obeležjima imaju karakter krivičnih dela odbacivanja. Osim ovih kao krivična dela odbacivanja u teoriji se najčešće pominju i neukazivanje lekarske pomoći, nepružanje pomoći povređenom u saobraćajnoj nezgodi, kršenje porodičnih obaveza i nepružanje pomoći licu u opasnosti

na moru ili u unutrašnjim vodama iz Zakona o pomorskoj i unutrašnjoj plovidbi (Đorđević, 2010: 26).

Pojam krivičnog dela odbacivanja nije zakonski definisan, ali se on teorijski može odrediti na osnovu opštih karakteristika kojima se ova krivična dela odlikuju. Te zajedničke karakteristike krivičnih dela odbacivanja odnose se na radnju, posledicu i izvršioca ovog krivičnog dela.

Radnja ovih krivičnih dela se sastoji u nepružanju pomoći ili napuštanju (koje po svojoj prirodi sadrži i nepružanje eventualno potrebne pomoći) nekog lica koje se nalazi ili je dovedeno u opasnost. To lice, pasivni subjekt, može biti svako lice, a okolnost da je u pitanju maloletno lice ili bremenita žena kod jednog od ovih dela, izlaganja opasnosti, predstavlja kvalifikatornu okolnost koja zasniva težu kvalifikaciju dela.

Opasnost se odnosi na život, zdravlje ili telesni integritet lica koje je pasivni subjekt ovih krivični dela. Ta opasnost može biti konkretna ili apstraktna (koja je nastupila ili mogla da nastupi), a ona je mogla da nastane dejstvom prirodnih sila, radnjama samog lica koje se našlo u opasnosti ili radnjama drugih lica, a kod nekih od ovih dela radnjama učinioca krivičnog dela koji nije pružio pomoć ili je napustio ugroženo lice. U tom smislu krivična dela odbacivanja po svojim posledicama predstavljaju krivična dela ugrožavanja, ali u pojedinim slučajevima ona za posledicu mogu imati i povredu tj. narušavanje zdravlja ili kakvu drugu telesnu povredu ili smrt lica kome nije pružena pomoć odnosno koje je napušteno.

Izvršilac ovog krivičnog dela je lice koje je po nekom osnovu bilo dužno da pruži pomoć licu kome je pomoć uskraćena, odnosno lice koje je po nekom osnovu bilo dužno da se stara o licu koje je napustilo. U pitanju je ponašanje koje je protivno svojoj ili opštoj građanskoj dužnosti, što proizlazi iz ustava ili zakona, službene dužnosti, ugovorom preuzete obaveze ili iz obaveze nastale prethodnim činjenjem izvršioca krivičnog dela.

KZ iz 2005. godine nije sadržao oblike ovih krivičnih dela kod kojih bi se kao kvalifikatorna okolnost pojavljivala okolnost da je pasivni subjekt maloletno lice. Međutim, izmenama KZ iz septembra 2009. godine u odredbu o krivičnom delu izlaganja opasnosti unet je novi stav kojim je uveden teži oblik ovog krivičnog dela koji postoji ako je delo učinjeno prema maloletnom licu ili bremenitoj ženi (Jovašević, 2014: 43). Na taj način je i ovom inkriminacijom pojačana krivičnopravna zaštita života i telesnog integriteta maloletnih lica (Đorđević, 2014: 28).

Međutim, ovde se može postaviti pitanje zašto je ovakav teži oblik dodat samo kod krivičnog dela izlaganja opasnosti, a ne i kod druga dva krivična dela iz ove podgrupe krivičnih dela protiv života i tela. S obzirom na velike sličnosti između ovih krivičnih dela na koja je već ukazano čini se da bi sa sličnom argumentacijom ovakvi kvalifikovani oblici mogli biti uvedeni i kod ovih krivičnih dela.

ZAKLJUČAK

Naše krivično zakonodavstvo je donošenjem KZ iz 2005. godine, njegovim kasnijim izmenama kao i donošenjem Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica učinilo značajan korak unapred po pitanju pojačane zaštite maloletnih lica u odnosu na ranija rešenja iz perioda SFRJ, SRJ i Državne zajednice Srbije i Crne Gore. Ovo se naročito odnosi na krivična dela iz grupe krivičnih dela protiv

života i tela koja su bila predmet našeg interesovanja u ovom radu. U starom zakonodavstvu, od gore analiziranih krivičnih dela, samo su kod krivičnog dela navođenja na samoubistvo i pomaganja u samoubistvu postojali teži oblici koji se odnose na maloletna lica, pa se može zaključiti da je pojačana zaštita ovih lica danas daleko prisutnija nego u ranijem periodu, što se svakako može oceniti kao pozitivna promena.

Međutim, i pored svih istaknutih pozitivnih aspekata pojedine odredbe KZ kojima se obezbeđuje pojačana zaštita maloletnih lica nose sa sobom i određene probleme i nedoumice. Pre svega neadekvatan izbor termina kojima se označavaju pojedine kategorije lica mlađih od 18 godina može stvoriti značajne probleme, naročito prilikom prevoda Zakonika ili pojedinih njegovih odredaba na strane jezike, jer oni po pravilu ne sadrže odgovarajuće pojmove. U nemogućnosti da se pronađu adekvatni termini koji bi odgovarali duhu srpskog jezika možda je najednostavnije i najsigurnije označavati ih numerički (lica do 14 godina, lica do 18 godina i sl). Osim toga prilikom određivanja pojedinih oblika vezanih za maloletna lica primećuju se izvesne nedoslednosti koje bi *de lege ferenda* trebalo ispraviti. Tu u prvom redu mislimo na preformulisanje ubistva deteta u ubistvo maloletnog lica i unošenje kvalifikovanih oblika u krivična dela napuštanja nemoćnog lica i nepružanja pomoći.

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CRIMINAL LAW PROTECTION OF MINOR'S LIFE AND BODY INTEGRITY IN SERBIA

Our criminal legislation provides the enhanced criminal law protection for juveniles. It is reflected in the existence of a significant number of criminal offenses that can only be committed against minors, as well as in offenses that can be committed against all persons, but gain more severe form if they are committed against minors. Both of them can be found in various crime groups of our Criminal Code, within which special attention is given to crimes against life and limb, because of their severity and importance. In this group there are several criminal offences that, if committed against a minor, represent the aggravated form of those offences. Although the justification of such an enhanced protection of the life and physical integrity of minors is almost undisputed, its implementation into our Criminal Code leaves certain dilemmas. They mostly relate to the mutual compliance of these provisions, as well as the consistency in the protection of certain categories of minors (children, juveniles, persons up to 16 years of age). Therefore, de lege ferenda, for the purpose of consistent and comprehensive criminal protection of these persons, the focus should be on the possibilities of their harmonization and improvement.

KEY WORDS: Criminal Code / Criminal Law / Minors / Juveniles / Children / Criminal Offenses against Life and Body

CHILD VICTIMS IN SERBIA - NORMATIVE FRAMEWORK, REFORM STEPS AND EU STANDARDS*

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Despite the fact that the Law on Juvenile Offenders and Criminal Protection of Juveniles at the time of its adoption represented an important step towards introducing and reviving the principles of child-friendly justice in the legal system of the Republic of Serbia, its application, as well as the lack of necessary, continuous improvement based on the practice observed problems in implementation, but also harmonization with other relevant laws, and primarily with the new Code of Criminal Procedure, support the conclusion that in this important work has been stopped half way. Bearing this in mind, the author analyzes the challenges faced by Serbian lawmakers and the judiciary in the context of improving the position of child victims in criminal proceedings in the framework of compliance with relevant international standards and benchmarks for progress in the process of accession negotiations with the EU.

KEY WORDS: child-friendly justice / child victims / international standards / EU

INTRODUCTION

Protection of a physical and psychological integrity of a victim have been recognized as one of the imperatives in criminal law theory and practice for decades, but its importance becomes even a more significant in criminal proceedings which includes child victims. Considering this, several main principles of this type of criminal proceedings have been integrated in main international legal instruments, but also in national legal systems all around the world.

When it comes to international standards on dealing with child victims they exist as a part of universal standards on victims' rights, mostly developed through the EU legislation. (Kovačević, M, Turanjanin, V. 2014, 307-324) In parallel, a special

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treatment of the child victims became a main topic of various international instruments dedicated exclusively to the rights of child.

Serbian penal legislation made significant step forward in this regard by adoption of a Law on Juvenile Offenders of a Crime and Criminal Protection of a Juveniles (hereinafter: Law on Juveniles) in 2005. However, multiple unsuccessful attempts to amend this law or to adopt a new one which will be aligned with the newest international standards as well as with the Criminal Procedure Code from 2011 (hereinafter: CPC) resulted in a various discrepancies between relevant laws and numerous problems in their implementation. The limited progress has been made through some project initiatives, but significant and sustainable developments are still required and will be measured also as a part of EU accession negotiations process.

1. EU STANDARDS ON VICTIMS' RIGHTS AND CHILD VICTIMS

As it mentioned above, the child victims have been recognized as vulnerable group in the main international legal instruments aimed at improvement of the victims' rights.[1]

The Framework Decision and the Directive on Compensation to Crime Victims were just the first step made to improve victims' rights. The real step forward towards regulation their position in general but also in cross-border criminal proceedings, aimed at ensuring minimum of victims' rights within the EU, regardless of their citizenship or nationality, was adoption of the EU Directive **of the European Parliament and of the Council of 25 October 2012** establishing minimum standards on the rights, support and protection of victims of crime on the strengthening of the position of victims of crime (EU/2012/29) (hereinafter Victims' Directive). Beside above-mentioned Directive which rules the position of victims in general, there are numerous relevant international instruments dealing with position of particular vulnerable groups such women, children, LGBTI, Roma, victims of war crimes, national minorities, etc., that require special measures of protection and support. Even the Victims' Directive emphasizes a need to provide tailor made treatment for "victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organized crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

The Best interests of the child, as main principle contained in the UN Convention on the Rights of the Child[2] was well interpreted through the recommendation to Serbia that says

[1] The United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), adopted by the UN General Assembly on 29 November 1985 (hereinafter: The UN Declaration (A/RES/40/34)), was a substantive leap forward in the process of legislative developments for victims of crime worldwide. When it comes to EU, a period of intensive legislative activities through the adoption of policy decisions and legal instruments started with the EU Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA) from 15 March 2001 (hereinafter: EU Council Framework Decision (2001/220/JHA)) and the EU Directive on Compensation to Crime Victims (2004).

[2] Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance

that the state should strengthen its efforts to ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children. The same principle basically reflects main two aspects of the child victims' treatment, in detailed defined in the articles 12 and 19 of the Convention. The Art. 12 of the Convention stipulates that the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law, while the Art. 19 says that states Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Therefore, the right of the child to be heard in the criminal procedure, but to stay maximally protect from revictimization are the core principles that state parties needs to strive for.

These principles have been detailly reflected in the Guidelines of the Committee of the Ministries of the Council of the Europe on child-friendly justice (hereinafter: Guidelines) from 2010[3]. According to the Guidelines, the child-friendly justice is: accessible; age appropriate; speedy; diligent; adapted to and focused on the needs of the child; respecting the right to due process; respecting the right to participate in and to understand the proceedings; respecting the right to private and family life; respecting the right to integrity and dignity. The Guidelines emphasized importance of the right to the legal counsel and representation; right to be heard and express views; right to reasonable length of the procedure, child-friendly environment (interviewing premises) and language; presence of their parents during the interviewing; use of specialized investigative methods and equipment; avoiding repeated interviews; specialized support and therapeutic programs. The all of these require highly educated judges, prosecutors, police officers and other relevant staff.

2. RELEVANT PROVISIONS OF THE SERBIAN LAW

The Law on Juveniles, in general, provides solid normative framework for child-friendly criminal proceedings where victim of a crime is a child.

The mandatory specialization for judges and public prosecutors[4] for investigation, prosecution and decision -making in criminal proceedings where juveniles are victims of a crime is stipulated by the Part Three (Special provisions on protection of minors as victims in criminal proceeding), Article 150 of the Law on juveniles. According to this provision, a

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with article 49, available on: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx, last accessed on April 28, 2018.

[3] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, available on: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3, last accessed on April 28, 2018.

[4] For more on specialization of judiciary in this field see: Kolakovič-Bojović, M. (2015) Jačanje kapaciteta Pravosudne akademije kao preduslov održivosti kvaliteta obuke za postupanje u krivičnim postupcima prema maloletnicima, *Maloletnici kao izvršioci i žrtve krivičnih dela i prekršaja*, (Kron, L. ur.), Institut za kriminološka i sociološka istraživanja, 395-404.

bench, presided by a judge with special skills in the field of the rights of the child, and criminal protection of juveniles, shall try adult offenders for the criminal offences committed against minors, set forth by the Criminal Code and listed in the Law of juveniles.[5] The state prosecutor with special skills in the field of the rights of the child and in criminal protection of minors, shall initiate proceeding against adult perpetrators of other criminal offences stipulated by the Criminal Code, in compliance with the provisions of the Law on Juveniles, if in his opinion it is necessary to do so for purpose of protecting personality of minors as victims in criminal proceedings.

The Law on Juveniles regulates, in the Article 151, that the CPC is the source of general rules for conducting criminal proceeding against perpetrators of above listed criminal offences. The same article provides for specialization of an investigative judge with special skills in the field of the rights of the child, and criminal protection of minors as well as of the specialized members of the police authorities with special skills in the field of the rights of the child and criminal protection of minors shall participate in investigation of criminal offences prejudicial to minors, when particular activities are delegated to these authorities.

The Article 152 reflects the best interest of the child principle and stipulates that, when conducting proceeding for criminal offences committed against juveniles, the state prosecutor, investigative judge and judges of the bench shall treat the victim with care, having regard to his age, character, education and living circumstances, particularly endeavouring to avoid all possible prejudicial consequences of the proceeding on his character and development. Questioning of a child or juvenile shall be conducted with the assistance of psychologist, pedagogue or other qualified person. The Law limits number of questioning of a child on two and exceptionally more if necessary to achieve the purpose of criminal proceeding. If the juvenile is questioned more than twice, the judge shall particularly have regard for the protection of personality and development of the juvenile. The same article provides for use of technical devices for transmitting of image and sound if, due to the nature of the criminal offence and the juvenile's character the judge considers it necessary. In that case judge shall order questioning of the juvenile with the aid, and the questioning shall be conducted without presence of the parties and other participants in the proceeding in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogue, social worker or other qualified person. The additional option allowed by the Law is that juveniles may be questioned as witness-victims in their apartment or other premises and/or authorised institution – organisation that is professionally qualified for questioning of minors. In order to avoid revictimization, when a juvenile has been questioned in aforementioned cases, the record of his testimony shall always be read at the main hearing or a recording of the questioning heard. The Law on Juveniles regulates also in the article 153, that if a juvenile is questioned as witness, who due to the nature of the criminal offence, consequences or other circumstances is particularly vulnerable or is in a particularly

[5] Murder (Article 114), Inducement to suicide and assistance in suicide (Article 119), Heavy bodily harm (Article 121), Abduction (Article 134), Rape (Article 178), Sexual assault of a defenseless person (Article 179), Sexual assault of a child (Article 180), Sexual assault by misconduct in office (Article 181), Indecent assault (Article 182), Procuration and facilitating sexual intercourse (Article 183), Mediation in prostitution (Article 184), Display of pornographic material and pornographic abuse of children (Article 185), Common law marriage with a juvenile (Article 190), Capture of a minors (Article 191), Altering family status (Article 192), Neglect and abuse of a minor (Article 193), Family violence (Article 194), Withholding financial support (Article 195), Incest (Article 197), Burglary (Article 205) Robbery (Article 206), Extortion (Article 214), Facilitation of the use of narcotics (Article 247), War crime against civilians (Article 372), Slave trade (Article 388), Child trafficking for adoption (Article 389), Slavery and transport in slavery (Article 389).

difficult mental state, confrontation between him and the defendant is prohibited. The Law (art. 154) also prescribes as a mandatory presence of a legal representative from the first questioning of the defendant (chosen or appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles.

The special protection of a child victim is also contained in the art. 155 which stipulates that if recognition of the defendant is done by a juvenile who is a victim, the Court shall proceed with particular care and shall conduct such recognition in all phases of the proceeding in a manner that completely prevents the defendant from seeing the juvenile.

However, the first decade of the implementation of the Law on Juveniles shows various gaps and inconsistences in the application of this law require its continuous monitoring and improvement. The same goes for initial training of judges, prosecutors and police officers, who were not obliged (or even offered) to continue their education in this regard. These issues, combined with new acquis in the field of procedural safeguards and changed concept of the CPC resulted in significant requirements regarding juvenile justice legislation in the Chapter 23 of accession negotiation with EU.

3. CHAPTER 23 REQUIREMENTS AND PROTECTION OF CHILD VICTIMS AND WITNESSES

The opening of the accession negotiations with EU[6] resulted in additional obligations for Serbia in the field of victims' rights, including child victims. Progress made in these fields, the EC will measure through the interim benchmarks (hereinafter: IB) contained in the Common negotiation position that requires "Serbia to strengthens its investigative, prosecutorial and judicial bodies including ensuring a more proactive approach and the confidentiality of investigations, providing for training for new and current staff members, improving its witness protection and victim support system and ensuring access to justice for all victims." (IB no. 18)[7]**.** Additionally, under the Subchapter Fundamental Rights, the

[6] Republic of Serbia has taken an obligation to align its legal system with EU *acquis* by opening the accession negotiations in 2015. Anyway, the process of alignments had started much earlier and became very intensive since 2013 after coming-in screening phase. The Screening of Serbian normative and institutional framework with relevant acquis within chapters 23 and 24 started by the end of 2013 with explanatory screening (presentation of the relevant acquis and EU standards to the Serbian institutions). This stage has served as starting point for assessment of an alignment level of the Serbian legislative and institutional framework with the acquis and EU standards, during the bilateral screening in December 2013. The screening process resulted in publishing of the screening reports by European Commission (hereinafter: EC) in 2015 for both chapters that tackle issues related to position of victims. Since Chapter 23 deals with the victims' issue through the organization of judiciary as well as through the protection of fundamental rights (including procedural safeguards and vulnerable groups) and prosecution of war crimes, the Chapter 24 deals with position of victims in criminal proceedings for organized crime, human trafficking, etc. Recommendations given in both screening reports obliged Serbian authorities to draft, (in inclusive and transparent process that assumes inclusion of all relevant stakeholders and CSOs) but also to adopt and implement the detailed action plans that should serve as a "reform road map" and starting point for adoption and implementation of dedicated strategic documents in various fields relevant for treatment of victims in general as well as those coming from vulnerable groups. It is important to notice that several of them have already been drafted and adopted in parallel with the action plans for Chapter 23 and Chapter 24 (e.g. Dedicated Action Plan for national minorities and the Roma Strategy). The all abovementioned policy papers contain numerous activities aimed at improvement of victims' position in Serbian legal and social care system. That is unambiguous indication of Serbian dedication to effectively deal with numerous shortcomings that currently exist.

[7] It's important to notice that IB no. 18 is listed in the context of section dedicated to war crimes issues. However, it shouldn't be considered in such a narrow context, having in mind universal nature of EU standards on victims of crime rights.

issue of child friendly justice is addressed through the interim benchmark which stipulates that Serbia is obliged to step up the respect of rights of the child, with particular attention for socially vulnerable children, children with disabilities and children as victims of crime. Serbia should also actively work on reducing institutionalisation to the benefit of increasing family care solutions; adopt and implement a Strategy and Action Plan for preventing and protecting children from all forms of violence and establish a child friendly justice system, including through amending and implementing the Law on juveniles, improving the work of the Juvenile Justice Council, providing training on dealing with juvenile offenders, improving alternative sanctions for juveniles and measures to reintegrate juvenile offenders back into society. (IB no. 42) The APCH23 addresses these requirements through the comprehensive list of activities that could be considered divided in two groups: The first group of activities refers to improvement of the position of all categories of victims of a crime, regardless their age, gender or type of crime. The second group of activities relevant for achieving abovementioned benchmarks is related to improvement of child/friendly justice.

3.1. Activities needed in order to improve position of victims in general

When it comes to general measures that should be, or have already been taken, the APCH23 provides wide spectrum of planned activities in order to improve normative framework that regulates victims' rights, but also to establish centralized, sustainable, well-coordinated and accessible victims and witnesses support country-wide system. The activities could be divided in three stages: analytical, legislative amendments and building of the new institutional set up.

The first stage is finalized and resulted in comprehensive analysis of the legislative and institutional framework.[8] Results of the analytical process should serve as a base for developing and adoption of an overarching strategy for improvement of the victims' position accompanied with dedicated Action plan during the 2018. These two policy papers shell determine all relevant steps, with precise timeline as well as the subjects in charge of certain activities. After setting up the strategic framework it is necessary to align penal as well as legislation dealing with organization of judiciary and accompanying bylaws with Victims' Directive and other relevant sources of EU standards in this field. The Action Plan for Ch. 23 recognizes (activity 3.7.2.19) that the prerequisite for efficient implementation of the amended normative framework will be strengthening of the existing institutional and administrative capacities in cooperation with relevant and well experienced civil society organizations, academic community and centers for social care and protection. (Kolaković-Bojović, 2018)

Based on all relevant data compiled during the analytical phase, the Ministry of Justice has defined the key principles and steps that should be followed in developing a nationwide victim support network. As the main principles are defined availability, maximum utilization of available resources and sustainability. The MoJ emphasizes that the main steps that should be make are: maximum usage of existing victim support capacities within institutions of state as well as among civil society organizations; definition of the clear and objective criteria that potential providers should fulfil to become members of the network;

[8] For more about results of the Analysis, see: Altan, L. 2016. *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU*. Belgrade: MDTF, World Bank.

linking the all available providers into the unified network for the whole territory of the Republic of Serbia; development and establishment of the referral mechanism at the level of high courts, high prosecutorial offices and police administrations, with the clear plan for network expansion in next few years; introduction of coordination contact points in order to establish formal types of communication between the most important stakeholders; establishment of the central coordination body in charge of coordination, administration and development of the victim support network; establishment of the Fund for periodic allocation of funds to service providers; identification of a sources of inflow of funds into the Fund; establishment of the system of specialized training with the emphasis on ToT. (Kolaković-Bojović 2017, 145-148).

3.2. Measures aimed at improvement of support to the victims coming from vulnerable groups, especially children

Beside abovementioned measures that should establish a new approach in treatment of the victims in general, the Action plan for Ch. 23 contains numerous planned activities related to improvement of the normative and institutional framework as well as implementation of various actions aimed at protection and support to victims belong to vulnerable groups, including child victims.

The Victims Directive recognizes child victims as the one of the most vulnerable categories. Their vulnerability is particularly highlighted when it comes to risk of secondary victimization in criminal proceedings. That the Republic of Serbia also approaches that problem on the same way, it's obvious from developing of a new Strategy dealing with prevention as well as protection of children from violence, that is ongoing. It is well known that the high risk of secondary victimization especially lays in multiple and/or inadequate interviewing. This has been identified as an issue that requires intervention in the Action Plan for Ch. 23 that stipulates several activities aimed at reduction or elimination of negative effects that criminal proceeding could have on child victims. (activities 3.6.2.15.-3.6.2.24.)

Probably the most important is to "define practical guidelines for interviewing children, based on best practices of EU countries and provide conditions for the uniform application of protective measures of child victims and witnesses." Since the efficient implementation of such guidelines is of the key importance the Action Plan envisages "distribution of educational materials and conducting training and informative sessions for police officers, public prosecutors and deputy public prosecutors, judges and employees of Centres for Social Work, on the protection of child victims / witnesses in criminal proceedings in order to avoid secondary victimization." This type of knowledge incensement is precondition for introducing of post-traumatic counselling and support for child victims as well as children witnesses.

The Action Plan for Ch. 23 also recognizes that family support, especially in vulnerable communities might be the right approach to prevent victimization of women and children in family violence but also to prevent discrimination and victimization based on national identity or sexual orientation and gender identity through the strengthening and support to families. Having that in mind it is planned to "establish pilot centres for family support in order to: Target population of multiply deprived communities (paying particular attention to the availability for Roma families and children); Support a parent who suffers domestic violence; Support children at risk of dropping out of school; Support families at risk of

separation (children and parents); Support child victims of crime; Support children with disabilities from vulnerable families and at risk of placement in institution." (activity 3.6.2.3.)

4. RECENT DEVELOPMENTS RELATED TO CHILD VICTIMS IN SERBIA

The most important steps made in order to improve position of child victims in Serbia were implemented within the IPA 2013 Strengthening the justice and social welfare systems to advance the protection of children in Serbia, implemented by UNICEF from 2014 to 2017[9]. The Project included component dedicated to child victims was designed as package of activities starting from the Base-line study on application of legally defined protection measures of child victims/witnesses. The project also included technical assistance to MoJ for defining amendments to the law and by-laws on juvenile justice with aim of accelerating efficiency in proceedings, defining stimulative mechanisms for application of diversionary schemes and resolving financing issues.

In order to secure conditions for uniform application of protection measures for children as victims/witnesses in criminal proceedings, the Project included set of six activities. The all of them were designed on a way that enables measuring the progress made due to implementation of the project. An important activity for measuring the progress was related to commissioning baseline and end-line studies to determine the extent to which preventing secondary victimization is actually respected in the criminal proceedings involving children victims/witnesses after the intervention, based on predefined indicators.[10]

The first of six activities was to define clear and practical guidelines for a child hearing based on good practice examples from EU countries.

This Project segment took into account that though the justice system in Serbia already established Victims support units at courts and prosecutions are dominantly intended for basic support and information sharing, without psychological expertise in working with children. In these conditions, the IPA established four new regional units, envisaged to act as mobile teams for interviewing children in criminal proceedings at the request of a prosecutor or a judge. Units were formed in the cites where the courts of appeal are seated, with a mandate to cover the areas of the courts' jurisdiction. Each of the four Child victim support units was equipped with mobile recording equipment and vehicles with the purpose of conducting child-friendly hearings outside of the courts as much as possible. Professionals for this new service were recruited from the psychologists employed at public institutions within the social system, with extensive previous experience of dealing with children. According to the UNICEF data, from the period of the launching of the new service offered by the Units (from March 2015 to January 2016), until the September 2017,

[9] For more info on Project achievements see: Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), available on: https://www.unicef.org/evaldatabase/files/Summative evaluation-Justice for Children Reform Serbia-ENG.pdf, last accessed on April 25th 2018.

[10] For more info see: Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), available on: https://www.unicef.org/evaldatabase/files/Summative evaluation-Justice for Children Reform Serbia-ENG.pdf, last accessed on April 25th 2018.

the Units conducted 158 interviews with children in criminal proceedings.[11] During the interviews, no standardized monitoring sheets for the Units were prepare to record data cases in which they have provided assistance. Consequently, there is no detailed data on victims and cases. Together with the formal (legal and organizational status of the Units, this issue should be considered in the process of establishing victim support services on the national level.

The project also contributed to strengthening professional capacities for interviewing children in a way which takes into account their age and capacities and avoids secondary victimization. The capacity building included study visit but also comprehensive training sessions with large number of participants. Training sessions also included post-traumatic counselling as a topic.

As a part of capacity building activities, information sessions on the theme in all municipalities for relevant courts, public prosecution offices, CSWs and police were held.[12]. The topics covered international and national policy context on children victims and witnesses, as well as forensic interviewing.

Additionally, the Project provided technical assistance for advancing regulations/ policies for data management in courts so that the application of the principle of respecting the best interests of the child is documented in criminal proceedings.

The Project results were measured based on the baseline study of current practices related to the five main indicators. The all indicators reflect the main principles of criminal proceedings with juvenile participants. These include: labelling the case involving a child as urgent; duration of a trial; location at which a hearing takes place; obligatory legal representation and usage of inappropriate introductory 'warning' before the hearing.

[11] Belgrade (41), Niš (49), Kragujevac (39) and Novi Sad (29).

[12] The agenda included a presentation on the particularities of children in criminal proceedings and their emotional state, as well as a presentation of the new Units, including a Q&A session. In total, 89 info sessions were held, with a total of 1 015 participants - 393 judges, 180 public prosecutors, 247 CSW representatives, 166 police members and 29 representatives of other institutions. (See more in: Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), available on: https://www.unicef.org/evaldatabase/files/Summative evaluation-Justice for Children Reform Serbia-ENG.pdf, last accessed on April 25th 2018.)

Table 1: Achievement of impact indicators concerning children victims/witnesses in criminal proceedings[13]

Baseline	Target	End- study findings
100% of the reviewed cases are not labelled as urgent due to the victim being a child	In over 50% of the reviewed cases, they are labelled as urgent due to victim being a child.	100% of the analysed cases have not been clearly marked as urgent due to the victim being a child
43,3% of cases last over 1 year in 2013	20% cases last over one year	67% cases last over one year
In 20% of the cases the child victim's hearing takes place in child-friendly space in the court	20% cases the child victim's hearings take place outside the court	4,7% of children victims' hearings take place in specially equipped premises adapted to the children's needs, age and maturity
In 63,6% of cases, the judge appoints a representative where this is obligatory by law	In over 80% of cases, the judge appoints a representative where this is obligatory by law	The study does not provide data on the percentage of cases where a representative was timely appointed but implicitly it can be concluded that the situation has not improved since the project beginning
In 100% of the reviewed cases, the judge uses standard/ inappropriate introductory 'warning' which is used for adult victims and is contrary to the procedure defined by law	80% of judges do not give a verbal warning to child witnesses and introduce the hearing in a manner adequate to the child's age/capacity	The study does not provide data on the percentage, but suggests that due to the fact that all Judicial Academy trainings insist on this, it is very rare that the judges give a verbal warning to the child anymore

The results listed in the Table 1 clearly show that well targeted Project activities did not resulted in expected improvements. Only in the case of use of inappropriate introductory 'warning', there were considerable changes registered in the court practice in comparison to the baseline study. In contrast, across all other indicators, no conclusive improvement has been recorded. This data can be considered on a different way. On one side, it could be understood as result of low quality of Project activities. On the other side, it could be just a result of the insufficient understanding of the importance of this topic as well as a lack of motivation and dedication of relevant subjects (judges, prosecutors, police officers).

In favour of the second option goes the data that only 15% of the CSW staff and 24% of judges and public prosecutors included in project activities provided the feedback (or even a contact info) on the influence of the Project on their work. The response rate was a bit higher among police officers (around 40%). The illustrative is also data that significant percentage of respondents were not aware of some Project achievements they should use in every day work- e.g. the Guidelines for Preparing Child Victims and Witnesses of Criminal Offences for Trial and Forensic Questioning. Moreover, 96% of the targeted judges and all of the prosecutors reported that the info sessions cleared-up some of the legal or procedural dilemmas they previously had concerning contact with children victims and witnesses. At the same time, only 27% of the judges reported changes in their practices when dealing with children victims or witnesses as opposed to 80% of the prosecutors. The judges who reported some changes in their practices did not actually specify in which way, while the prosecutors primarily relate their changed practices to the readiness to use the Units. Interestingly, 23% of the police officers stated they had no dilemmas that needed clearing, and as many as 55% stated they have not introduced any changes to their practices whatsoever, as a result of the info sessions. [14] Especially interesting are data on seeking

[13] Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), p. 61, available on: https://www.unicef.org/evaldatabase/files/Summative__evaluation-Justice_for_Children_Reform_Serbia-ENG.pdf, last accessed on April 25th 2018.)

[14] Similarly, in spite of the fact that significant efforts were put in disseminating information about the Units during

assistance from Mobile Units when questioning children victims/witnesses, that shows the very law level of awareness and/or readiness to seek this very useful assistance.[15]

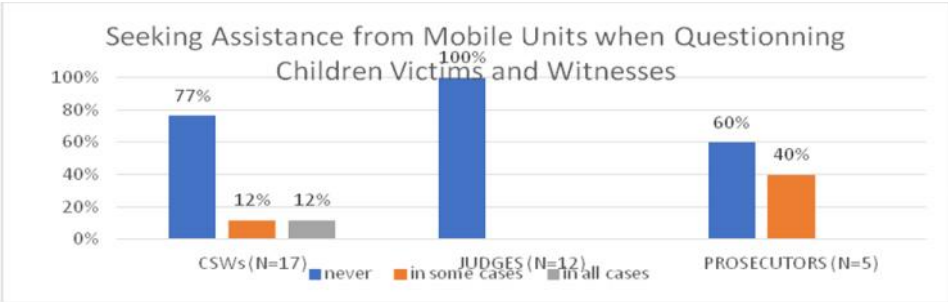

Figure 1: Survey results - Seeking assistance from Mobile Units when questioning children victims/witnesses[16]

Finally, it is pretty challenging to properly understand the data that 42% of CSW staff, 60% of prosecutors and 64% of judges think that the info-sessions contributed to the improved cooperation between the sectors to some extent, while 24% of the responding CSW staff think they have not contributed at all. The assessment of the police is different with as many as 64% stating that the info sessions have contributed or at least to a degree to the improvement of inter-sectoral cooperation.

CONCLUSIONS

Considering significant delays in improving normative framework, but also the limited progress made by implementation of the recent projects in the field, there are still some concerns about truth dedication of Serbian authorities to follow and implement child-friendly justice in developing and implementing normative framework that deals with child-victims. Too condensed specialized training for judges, prosecutors and police officers, without continuity or renewal of knowledge; lack of child-friendly premises in court and prosecutors' offices; lack of adequate mobile equipment for interviewing children; inconsistent implementation of the relevant Law provisions; law awareness among judges, prosecutors and police officers on child-victims vulnerability and needs; obsolete systems of the Social Care Centres, remain just some of numerous obstacles on the way to ensure adequate normative and institutional guaranties for child-victims in criminal proceedings. Based on lessons-learned on other important issues and reform challenges, it is expected that Serbian authorities will find "additional motivation" for changes and improvements in the EU accession processes and the EC expectations in this regard.

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the info-sessions, between 1/4 and 1/5 of the respondents from CSWs, judges and prosecutors have stated they did hear about them, although they have all participated at the sessions. See Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), p. 61-62, available on: https://www.unicef.org/evaldatabase/files/Summative evaluation-Justice for Children Reform Serbia-ENG.pdf, last accessed on April 25th 2018.)

[15] The issue of insufficiently clear legal grounds for engaging the Units

[16] *Ibidem*.

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DECA ŽRTVE U REPUBLICI SRBIJI - NORMATIVNI OKVIR, REFORMSKI KORACI I EU STANDARDI

Uprkos činjenici da je Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica u vreme donošenja predstavljao značajan korak u pravcu uvođenja i oživotvorenja principa pravde po meri deteta u pravni sistem Republike Srbije, njegova primena ali i izostanak neophodnog, kontinuiranog unapređenja na osnovu u praksi uočenih problema u primeni, ali i usklađivanja sa ostalim relevantnim zakonima, a prvenstveno sa novim Zakonikom o krivičnom postupku, govore u prilog zaključka da se u ovom značajnom poslu zastalo na pola puta. Imajući ovo u vidu, autor u radu analizira izazove s kojima se suočava srpski zakonodavac i pravosuđe, u kontekstu unapređenja položaja dece žrtava u krivičnom postupku, a u kontekstu usaglašavanja sa relevantnim međunarodnim standardima i merilima napretka u procesu pristupnih pregovora sa EU.

KLJUČNE REČI: pravosuđe po meri deteta / deca žrtve / međunarodni standardi / EU

BIPOLARNI ODGOVOR REPUBLIKE SRBIJE NA KRIVIČNA DELA I PREKRŠAJE MALOLETNIKA[*]

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U radu je analiziran aktuelni krivičnopravni odgovor na kriminalitet maloletnika i potrebe za njegovom izmenom u segmentima koji ga čine polarizovanim u smislu popuštanja na jednoj strani, kada su u pitanju lakša krivična dela i zaoštravanja u pogledu težih oblika kriminaliteta koje vrše malololetnici. Navedeni predlozi su proistekli prvenstveno iz potreba prakse. Iako je u fokusu rada krivičnopravni odgovor, autorke daju osvrt i na reakciju Republike Srbije na prekršaje maloletnika, imajući u vidu potrebu za jedinstvenim, usklađenim odgovorom na maloletničku delinkvenciju koja ima oblike kažnjivih dela, kao i okolnost da je činjenje prekršaja, naročito sa elementima nasilja, neretko uvod u kriminalnu karijeru, te je neophodno i njima posvetiti pažnju. Na kraju je dat osvrt i na položaj maloletnih lica mlađih od četrnaest godina, imajući u vidu da je prema istraživanjima, njihova aktivnost koja ima obeležja kažnjivih dela u porastu.

KLJUČNE REČI: krivično delo / prekršaj / vaspitni nalozi / vaspitne mere / maloletnički zatvor / deca u sukobu sa zakonom

UVOD

Imajući u vidu (pre)česte reforme krivičnog prava - Krivičnog zakonika (dalje: KZ)[1], ali i drugih akata i to u pravcu za koji se vezuju sledeće odrednice: krivičnopravni ekspanzionizam (inflacija inkriminacija, često nedovoljno i tehnički dobro uređenih, nedovoljno određenih i usklađenih sa drugim inkriminacijama, ekspanzija sporednog krivičnog zakonodavstva i posezanje za krivičnim pravom kao primarnim sredstvom zaštite), represija i punitivni populizam (zadovoljavanje zahteva laičke javnosti u vezi sa oštrom reakcijom na izvršena dela čije su žrtve maloletna lica, s čim je u vezi i povećanje broja onih koji su za povratak smrtne kazne ili za uvođenje doživotnog zatvora,

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[1] Krivični zakonik, "Službeni glasnik RS", br. br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 i 94/2016.

pooštravanje propisanih kazni, zabrana ublažavanja kazne za pojedina dela), pravdanje zahtevima EU i onih poduhvata koji su očigledno neuspeli, odnosno ne odgovaraju na pravi način pomenutim zahtevima, krivičnopravni odgovor na krimnalitet maloletnika je ostao nepromenjen od 2006. godine, kada je na snagu stupio Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica (ZM)[2], a prema kome je koncipiran i odgovor na prekršajne aktivnosti maloletnika u prekršajnom zakonodavstvu.

Više od deset godina primene ZM svakako predstavlja značajan vremenski period za uočavanje problema u praksi i traženja boljih rešenja. Sam sistem odgovora na kriminalitet maloletnika u Republici Srbiji koncipiran po tzv. zaštitničkom modelu odnosno modelu dobrobiti za maloletnog učinioca koji u fokus stavlja (pre)vaspitanje i prevenciju, sa elementma pravosudnog modela (o različitim modelima više u: Škulić, 2015) se može oceniti kao u osnovi dobar sistem, te ga i ne treba napuštati, ali potrebe pravosudne prakse sugerišu određene promene, o kojima će u ovom radu biti reči, a s obzirom na to da je u toku rad na dugo očekivanim izmenama i dopunama ZM.

1. ODGOVOR NA LAKŠA KRIVIČNA DELA

Prema ZM, za dela određene težine (ali i kada su u konkretnom slučaju ispunjeni drugi uslovi koji se odnose, u najkraćem na ličnost maloletnika i uslove u kojima živi) moguća je primena načela bezuslovnog oportuniteta krivičnog gonjenja, odnosno nepokretanja krivičnog postupka prema maloletniku (ili ako je postupak započet, obustava postupka), kao i primena načela uslovljenog oportuniteta krivičnog gonjenja primenom posebnih, diverzionih mera – vaspitnih naloga koji imaju najviše sličnosti sa posebnim obavezama - jednom vrstom vaspitnih mera, koje, za razliku od vaspitnih naloga jesu krivične sankcije, jer podrazumevaju sprovođenje krivičnog postupka, te ih može izreći samo sud, po okončanju postupka. Reč je o delima za koja je propisana novčana kazna ili kazna zatvora do pet godina. U takvom slučaju, moguća su dva rešenja:

1. Javni tužilac za maloletnike može odlučiti da ne zahteva pokretanje krivičnog postupka iako postoje dokazi iz kojih proizlazi osnovana sumnja da je maloletnik učinio krivično delo, ako smatra da ne bi bilo celishodno da se vodi postupak prema maloletniku s obzirom na prirodu krivičnog dela i okolnosti pod kojima je učinjeno, raniji život maloletnika i njegova lična svojstva. Radi utvrđivanja ovih okolnosti javni tužilac za maloletnike može zatražiti obaveštenja od roditelja, usvojioca, odnosno staraoca maloletnika, drugih lica i ustanova, a kad je to potrebno, može ova lica i maloletnika pozvati radi neposrednog obaveštavanja. On može zatražiti mišljenje od organa starateljstva o celishodnosti pokretanja postupka prema maloletniku, a može prikupljanje tih podatka poveriti i stručnom licu (socijalnom radniku, psihologu, pedagogu, specijalnom pedagogu i dr.) ako ga ima u javnom tužilaštvu. Ako je za donošenje odluke potrebno da se ispitaju lična svojstva maloletnika, javni tužilac za maloletnike može, u sporazumu sa organom starateljstva, uputiti maloletnika u prihvatilište za decu i omladinu ili u vaspitnu ustanovu, ali najduže do trideset dana (čl. 58. ZM).

[2] Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, "Službeni glasnik RS", br. 85/2006.

2. Javni tužilac za maloletnike ili sudija za maloletnike može odluku o nepokretanju postupka iz čl. 58. st. 1. ZM usloviti ispunjenjem jednog ili više vaspitnih naloga[3], odnosno javni tužilac za maloletnike ili sudija za maloletnike može primenti vaspitni nalog ako se radi o pomenutom lakšem krivičnom delu, a uslovi za primenu vaspitnog naloga su predviđeni u čl. 5. st. 3. ZM – priznanje dela i njegov odnos prema delu i oštećenom, dok prilikom izbora jednog ili više vaspitnih naloga javni tužilac, odnosno sudija za maloletnike mora uzeti u obzir u celini interes maloletnika i oštećenog, vodeći računa da se primenjivanjem jednog ili više vaspitnih naloga ne ometa školovanje ili zaposlenje maloletnika (čl. 8. st. 1. ZM). I u ovom slučaju nadležni organ sarađuje sa roditeljima, usvojiocem ili staraocem maloletnika i nadležnim organom starateljstva (čl. 8. st. 3. ZM).

Ako bismo napravili paralelu sa "krivičnim pravom za punoletna lica", zaključili bismo da se zaista dela ove težine mogu smatrati lakšim, jer i punoletno lice može izbeći krivični postupak pod određenim uslovima - odbacivanje krivične prijave ukoliko bude ispunjena preuzeta obaveza naložena od strane javnog tužioca (čl. 283. Zakonika o krivičnom postupku[4]); do nedavnih izmena Krivičnog zakonika, delo malog značaja pod određenim uslovima moglo je biti delo za koje je predviđena novčana ili kazna zatvora do pet godina (sada je vraćeno staro rešenje – za delo mora biti predviđena kazna zatvora do tri godine); u slučaju da posle izvršenog krivičnog dela, a pre nego što je saznao da je otkriven, otkloni posledice dela ili nadoknadi štetu prouzrokovanu krivičnim delom, punoletni učinilac se može nadati oslobođenju od kazne (čl. 58. st. 3. KZ). Dakle, za obe kategorije učinilaca – i maloletne i punoletne predviđeni su načini za izbegavanje krivičnog postupka ili pak, za oslobođenje od odgovornosti ili od kazne.

Međutim, sudska praksa je, kada su u pitanju maloletni učinioci, pokazala da bi trebalo pomeriti granicu i po pitanju težine dela za koja se može primeniti vaspitni nalog. Razlog je, najprostije rečeno, struktura maloletničkog kriminaliteta, tačnije dominacija imovinskih krivičnih dela, među kojima se najčešće pojavljuju teške krađe (Republički zavod za statistiku, 2017: 14). Za tešku krađu predviđena je kazna zatvora od jedne do osam godina (čl. 204. st. 1. KZ), zbog čega je isključena primena oportuniteta, odnosno vaspitnih naloga. Međutim, u praksi se često dešava da su maloletnici učinioci imovinskih krivičnih dela nesumnjivo situacionog karaktera, da ranije nisu vršili krivična dela, da posledice dela nisu teške, a što je najvažnije – da s obzirom na uzrast maloletnika, njegovu ličnost, njegov odnos prema delu i oštećenom, uslove u kojima živi, kompetentnost roditelja ili staratelja i sve okolnosti koje se uzimaju u obzir prilikom odlučivanja o sankciji (jer se u takvim slučajevima mora voditi postupak i maloletnik sankconisati, ako su ispunjeni uslovi) nema potrebe za vođenjem krivičnog postupka, odnosno jasno je da se na njegovo delo može odgovoriti i primenom jednog ili više vaspitnih naloga. Tako se u praksi često dešava da više maloletnika (ali ne u smislu grupe iz čl. 112. st. 22. KZ) obiju frižider za sladoled ili rashladnu vitrinu i oduzmu sladoled ili piće, dakle, nekad stvari male vrednosti (u smislu čl. 210. KZ), a delo bude kvalifikovano kao teška krađa iz čl. 204. st. 1. KZ zbog radnje obijanja, koja prethodi oduzimanju.

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[3] Vrste vaspitnih naloga predviđene su u čl. 7 ZM: 1) poravnanje sa oštećenim kako bi se naknadom štete, izvinjenjem, radom ili na neki drugi način otklonile, u celini ili delimično, štetne posledice dela; 2) redovno pohađanje škole ili redovno odlaženje na posao; 3) uključivanje, bez naknade, u rad humanitarnih organizacija ili poslove socijalnog, lokalnog ili ekološkog sadržaja; 4) podvrgavanje odgovarajućem ispitivanju i odvikavanju od zavisnosti izazvane upotrebom alkoholnih pića ili opojnih droga; 5) uključivanje u pojedinačni ili grupni tretman u odgovarajućoj zdravstvenoj ustanovi ili savetovalištu.

[4] "Službeni glasnik RS", br. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 i 55/2014.

S navedenim u vezi, interesantno je, ali i veoma važno skrenuti pažnju na postupanja u praksi baš kada su u pitanju teške krađe stvari male vrednosti, kod kojih je ispunjen uslov subjektivnog karaktera koji se zahteva kod krivičnog dela sitne krađe – potrebno je, naime, da je učinilac u konkretnom slučaju išao za tim da (prilikom krađe) pribavi malu imovinsku korist, s tim što vrednost stvari koja je oduzeta ne sme prelaziti 5.000 dinara (čl. 210. KZ – sitno delo krađe, utaje i prevare). Istraživanja sudske prakse (Trešnjev, 2005: 189-192) pokazuju da preovlađuje mišljenje po kome je presudan umišljaj učinioca, a ne okolnosti koje čine krađu teškom krađom. Kao argument se navodi i to što je odredba stava 1. čl. 204. KZ upućujuća, u smislu da upućuje na tzv. običnu krađu (čl. 203. KZ) od koje jedino može, uz odgovorajuće kvalifikatorne okolnosti, nastati teška krađa. Tek ukoliko se ne bi mogao utvrditi sadržaj umišljaja učinioca koji čini delo privilegovanim (sitnim delom krađe, čl. 210. KZ) delo bi se kvalifikovalo kao teška krađa.

Istina, sud ne bi trebalo da bude vezan tužiočevom pravnom kvalifikacijom, a sam ZM navodi u čl. 74. (pored toga da će se odredbe Zakonika o krivičnom postupku o izmeni i proširenju optužbe primenjivati i u postupku prema maloletniku) da je veće za maloletnike ovlašćeno da i bez predloga javnog tužioca za maloletnike donese odluku na osnovu činjeničnog stanja koje je utvrđeno na glavnom pretresu, ali treba imati u vidu da o primeni načela oportuniteta, odnosno vaspitnih naloga pre svega treba da odlučuje javni tužilac za maloletnike u pretkrivičnom postupku. Dakle, u ovim slučajevima, umišljaj maloletnika koji, istina, nije kategorija koju poznaje ZM, jer se pitanje krivice maloletnika ne postavlja (osim u slučaju starijeg maloletnika kome treba izreći kaznu maloletničkog zatvora) mora biti presudan za kvalifikovanje dela u pitanju.

S napred navedenim u vezi važno je naglasiti i da je u porastu broj odgovora koji se sastoje u nepokretanju postupka, odnosno njegovoj obustavi, te da je u poslednje tri godine veći broj ovakvih okončanja maloletničkih predmeta u odnosu na broj predloga za izricanje krivične sankcije. Tako, 2016. godine u 2.040 slučajeva nije bilo postupka (od toga u 1.720 slučajeva postupak nije pokrenut), dok je u 1.603 podnet predlog za izricanje krivične sankcije (Republički zavod za statistiku, 2017: 30). Jedan od mogućih objašnjenja za ovakvu statističku sliku bi mogao biti zaključak nadležnog organa da se radi upravo o lakšem delu, za koje je propisana novčana kazna ili kazna zatvora do pet godina. Usvajanje rešenja da se vaspitni nalog može primeniti prema maloletnom učiniocu krivičnog dela za koje je propisana kazna zatvora do osam godina bi nesumnjivo povećalo broj primenjenih vaspitnih naloga. Međutim, kako bi se predupredilo posezanje za oportunitetom, odnosno za primenom vaspitnog naloga bez utvrđivanja celishodnosti ovakvog rešenja koje u fokusu ima samog maloletnika i njegove potrebe (a u njegovom interesu može biti i vođenje postupka i sankcionisanje) neophodno bi bilo obavezati javnog tužioca da temeljno ispita slučaj, odnosno ustanoviti njegovu obavezu da zatraži potrebna obaveštenja od roditelja, usvojioca, odnosno staraoca maloletnika, drugih lica i ustanova, te da od organa starateljstva zatraži mišljenje o celishodnosti vođenja postupka (i primene naloga), a ne da on samostalno odlučuje o tome u slučajevima lakših dela. Naime, sada u odredbi čl. 58. ZM stoji da on "može zatražiti obaveštenja od roditelja...", odnosno "može zatražiti mišljenje organa starateljstva...". Pitanje, je naime, da li je javni tužilac (i pored određene specijalizacije) zaista u mogućnosti da sam pravilno odluči o necelishodnosti vođenja postupka, odnosno primeni određenog vaspitnog naloga.

2. ODGOVOR NA TEŽA KRIVIČNA DELA

Kada su u pitanju teška krivična dela *in apstracto* (sudeći prema propisanoj kazni), koja čine maloletnici, a koja dobijaju i *in conreto* na težini (imajuću u vidu ličnost maloletnika, njegov raniji život, pa i njegovu krivicu, kada su u pitanju stariji maloletnici) sudska praksa ukazuje na potrebu za pooštravanjem dosadašnjeg odgovora. Pooštravanje je potrebno naročito u pogledu najteže i najređe, istina, izricane krivične sankcije – kazne maloletničkog zatvora. Naime, istraživanja pokazuju da maloletnici vrše najčešće krivična dela imovinskog karaktera, ali su sve češća dela sa elementima nasilja od kojih pojedina ostavljaju bez reči i iskusne profesionalce, sudije za maloletnike, koji smatraju da bi trebalo promeniti uslove u vezi sa izricanjem kazne maloletničkog zatvora. Prema čl. 28. ZM starijem maloletniku koji je učinio krivično delo za koje je zakonom propisana kazna zatvora teža od pet godina, može se izreći kazna maloletničkog zatvora ako zbog visokog stepena krivice, prirode i težine krivičnog dela ne bi bilo opravdano izreći vaspitnu meru. Trajanje ove kazne ne može biti kraće od šest meseci ni duže od pet godina, a izriče se na pune godine i mesece. Za krivično delo za koje je propisana kazna zatvora dvadeset godina ili teža kazna, ili u slučaju sticaja najmanje dva krivična dela za koja je propisana kazna zatvora teža od deset godina, maloletnički zatvor može se izreći u trajanju do deset godina (čl. 28. ZM). Međutim, u praksi su se pojavljivala krivična dela (npr. ubistvo iz čl. 113. KZ) za koja bi bilo opravdano izreći kaznu maloletničkog zatvora u trajanju dužem od pet godina (imajući u vidu sve okolnosti koje utiču na odmeravanje kazne, naročito visok stepen krivice i potrebu pojačanog uticaja na maloletnika prema kome su ranije izricane vaspitne mere, ali bez uspeha). Stoga je predlog da se sudu ostavi na ocenu odmeravanje kazne maloletničkog zatvora u rasponu od jedne godine do deset godina, i kada se radi o krivičnom delu za koje se može izreći kazna zatvora teža od pet godina. Iako se kazna maloletničkog zatvora retko izriče, smatra se opravdanim ostavljanje samo jedne mogućnosti u pogledu maksimuma kazne maloletničkog zatvora – do deset godina[5], upravo zbog slučajeva koji su se pojavljivali pred sudovima. Takođe, ne bi trebalo zanemariti ni generalno - preventivni učinak ovakvog rešenja, imajući u vidu i to da punoletna lica često podstrekavaju maloletnike da vrše teža krivična dela, upravo zbog toga što se računa na blažu sankciju.

Sledi jedan primer iz prakse koji opravdava pomenuto rešenje.

Maloletni B. S. iz B. je pravnosnažno osuđen na kaznu maloletničkog zatvora u trajanju od 5 godina zbog krivičnog dela ubistva iz čl.113. KZ za koje je propisana kazna zatvora od 5 do 15 godina. On je u vreme izvršenja krivičnog dela bio na uzrastu starijeg maloletnika, s obzirom na to da je navršio 17 godina života. Prema njemu je ranije izrečena vaspitna mera sudski ukor iz čl. 13. ZM zbog krivičnog dela ugrožavanje javnog saobraćaja iz čl. 289. st.3. u vezi sa st.1. KZ.

Utvrđeno je da je lišio života svoju vanbračnu maloletnu suprugu u porodičnoj kući u kojoj su živeli na taj način što ju je u jutarnjim časovima, drškom od lopate, oko sat vremena u kontinuitetu udarao po glavi i telu od kojih udaraca je ona pokušala da se odbrani, nanevši joj povrede usled kojih je postepenim iskrvavljenjem nastupila smrt.

[5] Ovakvo rešenje nije usamljeno u uporednom pravu. Vidi: Jovašević, D. (2012) "Kažnjavanje maloletnika u krivičnom pravu", u: *Maloletničko pravosuđe u Republici Srbiji*, Centar za prava deteta, Beograd, str. 273-282.

U iznetoj odbrani tokom postupka maloletni B. S. je u potpunosti priznao izvršenje krivičnog dela navodeći da je sa suprugom živeo u vanbračnoj zajednici oko godinu dana, da su se dobro slagali, ali da joj je zamerio što je dva puta namerno izazvala pobačaj kada je ostala u drugom stanju i to drugi put mesec dana pre predmetnog događaja, kao i da je sumnjao da ga vara, da ne može da objasni šta ga je tog jutra spopalo i zbog čega je otišao u šupu, uzeo lopatu, skinuo metalni deo i sa drškom od lopate se vratio u kuću i bez ikakvog povoda tom drškom počeo da udara suprugu po glavi i telu, da je to trajalo oko sat vremena, da nije želeo da je ubije, ali mu je "tako došlo" i da se mnogo kaje zbog toga što je učinio.

Iz nalaza i mišljenja sudskih veštaka neuropsihijatra i psihologa utvrđeno je da je maloletni B. S. osoba u fazi razvoja čije su intelektualne sposobnosti ispod proseka, da njegova duševna razvijenost ne odstupa od nivoa za kalendarski uzrast, te da se u vreme izvršenja krivičnog dela nalazio u stanju povišene emocionalne napetosti, pa su njegove sposobnosti shvatanja dela kao i mogućnost upravljanja postupcima bile smanjene, ali ne i bitno. Nadalje je utvrđeno da maloletni B. S. potiče iz višečlane romske porodice niskog socio-ekonomskog statusa koja se izdržava sakupljanjem sekundarnih sirovina, da je odrastao u specifičnim porodičnim uslovima, jer je njegov otac živeo sa dve žene i četrnaestoro dece, da su njegovi roditelji primitivni i bez znanja za uspešno roditeljstvo, da nema usvojene socijalne norme niti ih poznaje, da kod njega postoji visok stepen vaspitne zapuštenosti, da je završio jedan razred osnovne škole, da nije profesionalno osposobljen, te da se kod njega recidiv ne može isključiti.

Prilikom izbora krivične sankcije sud je imao u vidu da se radi o starijem maloletniku koji je učinio krivično delo za koje je propisana kazna zatvora teža od pet godina, kod koga postoji visok stepen krivice, s obzirom na to da je prilikom izvršenja dela ispoljio upornost, bezobzirnost, brutalnost i bezosećajno ponašanje, posebno imajući u vidu brojnost i vrstu nanetih povreda po celom telu oštećene, kao i činjenicu da je maloletnik oštećenoj nanosio povrede u trajanju od jednog sata najmanje, da je pritom oštećena bila svesna, na šta ukazuju odbrambene povrede, te imajući u vidu tešku posledicu krivičnog dela - smrt oštećene, zbog čega ne bi bilo opravdano izreći vaspitnu meru, te da je prema maloletnom B. S. neophodno izreći kaznu maloletničkog zatvora u trajanju od 5 godina, što shodno čl. 29. ZM predstavlja maksimalnu kaznu maloletničkog zatvora za navedeno krivično delo, a za koje je propisana kazna zatvora od 5 do 15 godina.

Naime, sud je prilikom odmeravanja kazne maloletničkog zatvora u smislu čl. 3. ZM imao u vidu težinu izvršenog krivičnog dela i posebno granice propisane zakonom za izricanje kazne za isto, svrhu maloletničkog zatvora, stepen zrelosti maloletnika, vreme koje je potrebno za njegovo vaspitanje i stručno osposobljavanje, kao i sve okolnosti iz čl. 54. st. 1. KZ, koje utiču da kazna bude veća ili manja, pa je od olakšavajućih okolnosti imao u vidu priznanje maloletnika i njegovo iskreno držanje pred sudom, kao i izraženo kajanje, dok je kao otežavajuću okolnost cenio da se maloletnik drugi put nalazi u postupku pred sudom, s obzirom da mu je ranije izrečena vaspitna mera sudski ukor. Takođe je sud prilikom odmeravanja kazne imao u vidu da je maloletnik vaspitno zapušten, da nije usvojio socijalne norme niti socijalno poželjno ponašanje, da je završio samo jedan razred osnovne škole i da nije profesionalno osposobljen, a posebno je imao u vidu način na koji je krivično delo izvršeno kao i da je isto izvršeno prema vanbračnoj supruzi kao i činjenicu da je prilikom izvršenja krivičnog dela pokazao naročitu upornost, što se vidi iz toga koliko je sam događaj trajao.

Međutim, sud u konkretnom slučaju, shodno odredbi čl. 29. ZM, nije imao zakonske mogućnosti da maloletnom B.S. izrekne kaznu maloletničkog zatvora veću od pet godina, iako iz svih napred navedenih okolnosti, po oceni suda, proizlazi da je izrečena kazna preblaga i da bi u konkretnom slučaju kazna maloletničkog zatvora u trajanju od deset godina bila nužna da bi se maloletnik uz kontinuirani i trajni nadzor, izdvajanjem iz dosadašnje sredine i uticajem stručnih lica potpuno prevaspitao, kako bi se kod njega javila lična odgovornost i kako bi se stručno osposobio i reintegrisao ponovo u društvenu zajednicu, te da bi se istom postigla svrha izricanja krivične sankcije i uticalo ne samo na njega već i na druge maloletnike da ne vrše krivična dela, odnosno da bi ova stroža kazna s obzirom na sve okolnosti slučaja i sve ukupne lične i porodične prilike maloletnog B. S. bila nužna i dovoljna da se u konkretnom slučaju ostvari svrha izricanja kazne maloletničkog zatvora, koja se blažom kaznom ili vaspitnom merom ne bi mogla ostvariti.

U pogledu odgovora države na teža dela maloletnika, ne misleći pritom samo na težinu dela izraženu kroz propisanu kaznu za delo, već prevashodno na okolnosti koje su vezane za raniji život i ličnost maloletnika i potrebu neutralizacije određenog "opasnog stanja" u kome se on nalazi (zbog psihofizičkih osobenosti, tačnije poremećaja) važno je skrenuti pažnju na vaspitne mere među kojima posebnu pažnju zavređuje zavodska vaspitna mera upućivanje u posebnu ustanovu za lečenje i osposobljavanje (čl. 134. ZM). Sudska praksa i istraživači (Ilić, Maljković, 2015: 113) konstatuju da je sve veća potreba za primenom ove mere, a primene nema, iz prostog i nezamislivog razloga - nema adekvatne ustanove. Procene su da se u vaspitnim ustanovama nalazi između 30 – 40% maloletnika sa karakterističnim poremećajima i potrebom za posebnim tretmanom, ali pokušaja da se jedna ovakva ustanova oformi nema (*Ibid*), što je nedopustivo. Brisanje ove mere upućivanja u posebnu ustanovu za lečenje i osposobljavanje iz registra vaspitnih mera zbog toga što nema ustanove bi značilo potvrdu odsustva volje države da obezbedi ustanovu koja je od strane stručnjaka ocenjena kao neophodna, te zanemarivanje najboljeg interesa sve brojnije kategorije maloletnika, čiji problemi u ponašanju proističu iz zdravstvenih poremećaja ili problema koji se ne mogu kontrolisati u uslovima otvorene zaštite, a nije indikovano izricanje mere bezbednosti obaveznog psihijatrijskog lečenja i čuvanja u zdrvstvenoj ustanovi.

U pogledu određivanja maksimalne dužine trajanja zavodske vaspitne mere upućivanja u vaspitno-popravni dom prilikom njenog izricanja i povratka na ranije rešenje kojim se trajanje ove mere utvrđuje u rasponu od jedne do pet godina, otvara se pitanje kompetentnosti suda da prilikom izricanja mere odredi vreme koje je potrebno za (pre)vaspitanje maloletnika, dok nije sporna potreba za podzanjem i minimuma i maksimuma trajanja ove mere iz istih onih razloga koji opravdavaju pooštravanje kazne maloletničkog zatvora. U slučaju da se aktuelno rešenje promeni u pogledu određivanja trajanja mere prilikom njenog izricanja, postavlja se pitanje na osnovu kojih kriterijuma će biti određivana maksimalna dužina trajanja ove vaspitne mere, a otvara se i niz problema u vezi sa realizacijom individualnog programa rada i neravnoteže u kolektivu štićenika vaspitno-popravnog doma (npr. da li programi postupanja za maloletnike sa kraćom maksimalnom sankcijom treba da budu intenzivniji, kako motivisati one sa dužom maksimalnom sankcijom da istraju u pozitivnim promenama, kada oni sa kraćom sankcijom odlaze iz doma iako su činili disciplinske prestupe...). Nesumnjivo je da bi u takvom slučaju, prilikom određivanja trajanja ove vaspitne mere, sudu bila neophodna pomoć većeg broja stručnih lica (ne samo organa starateljstva, već i sudskih veštaka i dr.) kako bi se sudu pomoglo da odredi vreme njenog maksimalnog trajanja unapred ili bi se u

protivnom odlučivanje o maksimalnoj dužini trajanja ove vaspitne mere skoro poistovetilo sa odmeravanjem kazne maloletničkog zatvora. Moglo bi se dogoditi i da sudovi u praksi pribegavaju izricanju maksimalne zakonom određene dužine trajanja mere, jer svakako postoji mogućnost obustave izvršenja mere pre isteka njenog trajanja, kada bude ostvarenja njena svrha, kako bi se izbegao rizik pogrešne procene.

3. MALOLETNI UČINIOCI PREKRŠAJA

Kada je u pitanju prekršajna aktivnost maloletnika, najčešći su prekršaji i sa elementima nasilja, recidiv je čest, a upravo ta kategorija maloletnih učinilaca nastavlja dalje – put kriminalne karijere. Istraživanje koje je sprovedeno na tu temu ukazuje i na to da su česti prekršaji koji su na granici sa krivičnim delima, te da bi se njihovi izvršioci mogli naći i pred krivičnim sudom, ali da je odluka javnog tužioca bila da slučaj dobije prekršajnopravni epilog (Jovanović, Pašalić, 2015: 219). O ovoj pojavi – kompenzaciji pada broja krivičnih dela maloletnika sa elementima nasilja rastom broja prekršaja govore i rezultati istraživanja u čijim okvirima je vršeno poređenje ove dve vrste delikata maloletnika (Simeunović-Patić, 2009: 202). I ovaj podatak nas vraća na istaknutu potrebu za saradnjom javnog tužilaštva i onih koji brinu o maloletniku, naročito sa organom starateljstva prilikom odlučivanja o konkretnom slučaju. Porast broja i prekršaja i krivičnih dela sa elementima nasilja, te recidiva maloletnika, sa jedne strane i sa druge strane - porast broja nepokrenutih krivičnih postupaka ili "prebacivanja" krivičnih dela u prekršaje, razlog je za oprez i insistiranje na dobro promišljenoj odluci o najboljem interesu maloletnika. A da se nasilje lako ukorenjuje i da je potrebno na samom početku na pravi način intervenisati, pokazuju i istraživanja koja ukazuju na problem recidivizma kod maloletnika koji su ranije bili osuđeni čak za krivična dela protiv života i tela, koji pokazuje stopu porasta posle 1993. godine (Ljubičić, 2009: 350). Navedeno nesumnjivo ukazuje na značaj adekvatnog odgovora na prekršaje maloletnika, te otvara i pitanje usklađene reakcije na obe vrste kažnjivih dela.

U pogledu maloletnih učinilaca, Zakon o prekršajima (dalje: ZP)[6] predviđa mogućnost novčanog kažnjavanja starijeg maloletnika (što nije predviđeno ZM), s tim što ne postoji mogućnost zamene neplaćene novčane kazne kaznom zatvora, već u obzir dolazi samo prinudna naplata na imovini maloletnika, njegovog roditelja ili drugog lica zaduženog da se o njemu stara (čl. 41. st. 7. ZP). Međutim, novčana kazna retko izriče (Cvjetković, 2013: 60), jer maloletnici obično nemaju novca, pa kaznu u krajnjoj liniji plaćaju roditelji, a (pre)vaspitni dometi u tom slučaju i nisu tako značajni (osim ako se roditelji ne angažuju više u tom smislu, pošto su oni, u krajnjoj liniji, kažnjeni).

Slično je i sa kaznom maloletničkog zatvora koja postoji, ali se gotovo ne izriče za prekršaje (Jovanović, Pašalić, 2015: 222), što je opravdano sa aspekta mogućnosti vaspitnog delovanja na maloletnika, jer za razliku od iste krivične sankcije – maloletnički zatvor u prekršajnom postupku može trajati najduže 30 dana, što se ne smatra dovoljnim za ostvarenje prevaspitnog uticaja na maloletnika koji je u ozbiljnijem sukobu sa zakonom i potreban mu je intenzivniji tretman. U protivnom, primena maloletničkog zatvora bi se pretvorila u punitivno preventivno delovanje od kojeg se u savremenom pristupu maloletničkom prestupništvu (za koji se Srbija opredelila) odustaje. Ova sankcija se smatra spornom imajući u vidu i postojanje maloletničkog zatvora kao krivične sankcije koja se

[6] Zakon o prekršajima, "Službeni glasnik RS", br. 65/2013, 13/2016 i 98/2016 - odluka US.

izuzetno primenjuje i kada su u pitanju najteži oblici teških krivičnih dela (Stevanović, 2014: 105). Ipak, ima mišljenja da, u određenim slučajevima, ne bi trebalo u potpunosti zanemariti primenu ove kazne, jer se i kratkotrajnim lišenjem slobode, u kontaktu sa kvalifikovanim osobama koje će ukazati na društveno neprihvatljivo ponašanje, maloletnik može odvratiti od prestupništva (Milić, 2013: 26).

Kada su u pitanju maloletnici, sistem vaspitnih mera je u osnovi usklađen sa sistemom predviđenim u ZM, osim što su izostavljene zavodske vaspitne mere, jer se zbog vremena trajanja koje bi za njih bilo predviđeno nikakvi (pre)vaspitni rezultati ne bi mogli očekivati. Tako je predviđeno i kraće vreme trajanja vaspitnih mera, za šta je razlog samo težina delikta *in abstracto*, pa tako posebne obaveze ne mogu trajati duže od šest meseci, što je duplo kraće od vremena trajanja posebnih obaveza izrečenih u slučaju krivičnog dela (čl. 14. st. 4. ZM). Među posebnim obavezama za prekršaje nema obaveze iz čl. 14. st. 2. t. 8. ZM koja podrazumeva uključivanje maloletnika u pojedinačni ili grupni tretman u odgovarajućoj zdravstvenoj ustanovi ili savetovalištu, kao ni obaveze redovnog pohađanja škole (čl. 14. st. 2. t. 3. ZM), što su česte posebne obaveze koje se izriču maloletnim učiniocima krivičnih dela. Međutim, u prekršajnom pravu je predviđena jedna obaveza koje nema u krivičnom odgovoru na kriminalitet maloletnika: zabrana posećivanja određenih mesta i izbegavanje lica koja negativno utiču na maloletnika (čl. 76. st. 1. t. 3. ZP). Ova obaveza koja ima obrise obaveze koja može biti obuhvaćena zaštitnim nadzorom uz uslovnu osudu (čl. 73. st. 5. KZ) se čini veoma korisnom, pa bi je trebalo preneti i na polje krivičnog prava. Mere pojačanog nadzora mogu trajati takođe duplo kraće u odnosu na mere krivičnog prava (najmanje tri meseca, a najduže jednu godinu) s tim da nije predviđena mogućnost izricanja jedne ili više posebnih obaveza uz meru pojačnog nadzora (čl. 19. st. 1. ZM), što bi trebalo izmeniti. Trebalo bi izmeniti i odredbu čl. 80. st. 1. ZP u kojoj se pominju vaspitne mere i posebne obaveze odvojeno, kao dve različite vrste sankcija, iako to nije tačno. Posebne obaveze su vrsta vaspitnih mera (mere usmeravanja) što i stoji u čl. 74. ZP i čl. 11. st. 1. t. 1. ZM.

U sferi odgovora na prekršaje maloletnika treba ukazati na potrebu za specijalizacijom sudija. Sudije prekršajnih sudova od 1. januara 2010. godine nisu specijalizovane, odnosno ne sude (određeni pojedinci) samo maloletnicima. Naime, "maloletnički predmeti" su ranije cenjeni kao teža vrsta predmeta i dodeljivani su pojedincima koji su ocenjeni kao senzibilisani za materiju maloletničkog prestupništva (vodilo se računa o afinitetu, godinama, roditeljstvu i dr.). Međutim, s obzirom na to da je uočeno da su sudije koje su postupale u ovako teškim predmetima bile neuspešne u reizboru, odustalo se od prakse tzv. specijalizacije. Takvoj situaciji je doprinelo i neodlučivanje od strane Visokog saveta sudstva u zakonskom roku o kriterijumima i merilima za vrednovanje rada sudija (Jovanović, Pašalić, 2015: 224). Ipak, smatra se da sudije za prekršaje moraju da ostvare vaspitni uticaj na maloletnog učinioca (Tukar, 2009: 153), moraju da deluju preventivno, da kroz razgovor i adekvatnu sankciju odvrate maloletnika od povratka pred sud. Dakle, specijalizacija sudija je neophodna, baš kao i u krivičnom pravosuđu, te je neophodno ove predmete usmeriti ka najprijemčivijima i najsenzibilnijima za materiju maloletničkog prestupništva (Jovanović, Pašalić, 2015: 224) .

4. DECA U SUKOBU SA ZAKONOM

Na kraju, ne treba zaboraviti ni "decu sa problemima u ponašanju", naročito "decu u sukobu sa zakonom" - lica koja su mlađa od 14 godina koja čine protivpravna dela sa

obeležjima krivičnih dela ili prekršaja, a koja se ne mogu sankcionisati. Kako izveštava Republički zavod za socijalnu zaštitu njihov broj je u stalnom porastu (RZSZ, 2016: 30), ali se iz izveštaja ne vidi koje je mere sistem socijalne zaštite preduzimao u tim slučajevima i kakva je evaluacija njihove primene (za razliku od kategorije maloletnika u vezi sa kojom su dati iscrpni podaci u vezi sa primenom vaspitnih naloga i izrečenih krivičnih sankcija za maloletnike). Možda bi ipak trebalo razmotriti i predlog za spuštanje starosne granice za sankcionisanje maloletnih lica imajući u vidu napred iznete podatke, kao i okolnost da je ova granica određena u drugo doba, za maloletnike sa drugačijim načinom života i brzinom sazrevanja (Ignjatović, 2015: 30), a takođe svestrano razmotriti mogućnost primene određenih vaspitnih naloga i prema maloletnim licima starosti 12 i 13 godina.

Ukažimo i na specifičnost prekršajnog prava u pogledu odgovornosti roditelja, usvojitelja, staratelja ili hranitelja deteta ili maloletnika (čl. 72. ZP) u slučaju da se učinjeni prekršaj može pripisati propuštanju dužnog nadzora pomenutih lica, a koja su bila u stanju da ga vrše. Ako je u pitanju dete, roditelji će pod navedenim uslovima odgovarati kao da su sami učinili prekršaj. U pogledu maloletnika situacija je nešto drugačija: zakonom se može propisati da će za prekršaj odgovarati roditelji, usvojitelji, staratelji, pod gore navedenim uslovima, a može se čak ustanoviti i odgovornost drugog lica za koje je propisana obaveza vršenja nadzora nad maloletnikom koji je učinio prekršaj. Moglo bi se zaključiti da je za roditelje bolje da njihova deca vrše protivpravna dela koja će biti kvalifikovana kao krivična, jer oni neće biti pozvani na odgovornost, kao ni dete (koje nije navršilo 14 godina), dok će maloletnik biti sankcionisan najverovatnije istom sankcijom koja bi mu bila izrečena za prekršaj, imajući u vidu sličnosti između sistema prekršajnih i krivičnih sankcija za maloletnike. U vezi sa temom o odgovornosti drugog za prekršajno delanje maloletnika, postavlja se pitanje zašto nije predviđena i odgovornost drugog lica za koje je propisana obaveza vršenja nadzora nad detetom (npr. vaspitčice, nastavnika), dok takva mogućnost postoji kada su u pitanju stariji učinioci prekršaja – maloletnici (čl. 72. st. 3. ZP). Predviđanjem te mogućnosti bila bi i obuhvatnije potencirana obaveza vršenja nadzora nad maloletnim licima i brige o njima (Jovanović, Marinović, 2016: 183). Nema istraživanja koje bi potvrdilo kako se pomenute odredbe primenjuju, te ne možemo ni utvrditi da li kažnjavanje roditelja ima pozitivine preventivne efekte kad je u pitanju prestupničko ponašanje njihove dece, ali nam ova tema daje šlagvort za otvaranje problema roditeljske (ne)brige kao značajnog faktora maloletničkog prestupništva.

S obzirom na to da su roditelji, odnosno njihove kompetencije percipirani kao veliki problem, treba još ukazati na važnost programa koji moraju biti posvećeni upravo njima i razvoju njihovih kompetencija (Jovanović, Sofrenović, 2016: 66-67). I strana iskustva pokazuju da najvažniji napori vezani za prevenciju moraju biti fokusirani na porodicu maloletnih učinilaca, odnosno onih koji bi to mogli postati, obično zbog nebrige, u smislu zanemarivanja, ali i prezaštićivanja od strane roditelja. Evaluacija programa obuke o "roditeljskom menadžmentu" u SAD je pokazala da je program usmeren na roditelje dece starosti od tri do osam godina sa poremećajima u ponašanju dao dobre rezultate, odnosno da je kod između 2/3 i 3/4 dece postignuta značajna promena i povratak urednom bihejvioralnom funckionisanju (UN, 2003: 202).

ZAVRŠNI OSVRT

Važeći ZM se primenjuje duže od jedne decenije, te je bilo dovoljno vremena da praksa ukaže na potrebu za izmenom pojedinih, pre svega materijalnopravnih odredbi. Izmene bi išle u pravcu bipolarnog odgovora države na kažnjiva dela maloletnika. S jedne strane, trebalo bi proširiti mogućnost primene vaspitnih naloga prema maloletnim učiniocima krivičnih dela za koja je propisana kazna zatvora do osam godina, imajući u vidu da se u praksi često sreću maloletni učinioci situacionih dela imovinskog karaktera, sa neznatnim štetnim posledicama, da ranije nisu vršili krivična dela, da izražavaju iskreno kajanje, te da bi s obzirom i na druge okolnosti vezane za lične i porodične prilike najcelishodnije bilo primeniti vaspitni nalog. Sa druge strane, trebalo bi pooštriti kaznenu politiku prema maloletnim učiniocima teških krivičnih dela kako u pogledu izricanja zavodske vaspitne mere upućivanja u vaspitno-popravni dom, tako i u pogledu izricanja maloletničkog zatvora, imajući u vidu da je praksa pokazala da su sve češća krivična dela sa elementima nasilja, od kojih pojedina, po načinu izvršenja i brutalnosti zasenjuju dela punoletnih učininalaca. Ovakvo rešenje bi ostvarilo bolje domete kako na planu specijalne tako i na planu generalne prevencije, naročito imajući u vidu podstrekavanje maloletnika od strane punoletnih lica na vršenje teških dela upravo zbog blažeg sankcionisanja maloletnika.

Ne sme se zanemariti ni prekršajna aktivnost maloletnika koja je neretko uvod u njihovu kriminalnu karijeru, te bi prilikom izmena i dopuna ZM trebalo voditi računa o usklađenosti odredaba ovog i Zakona o prekršajima (npr. uvesti specijalizaciju sudija prekršajnih sudova za postupanje prema maloletnim učiniocima, preispitati mogućnost izricanja novčane kazne za prekršaj i dr.).

Deca koja čine protivpravna dela sa obeležjima krivičnih dela ili prekršaja predstavljaju sve veći problem koji ne može rešiti sistem socijalne zaštite, pa treba razmotriti mogućnost sniženja starosne granice za sankcionisanje maloletnih lica i/ili mogućnost primene određenih vaspitnih naloga prema maloletnim licima starosti od 12 i 13 godina.

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BIPOLAR RESPONSE OF THE REPUBLIC OF SERBIA TO CRIMINAL OFFENCES AND MISDEMEANORS OF JUVENILES

The paper analyzes the current criminal justice response to juvenile crime and the necessity of its polarization in terms of widening the scope of diversion orders for less serious criminal offences, and more severe response to serious offences committed by juveniles. The judicial practice has primarily suggested abovementioned amendments to the juvenile justice law. Although the criminal response is in the focus of this paper, the authors have also reviewed the reaction of the Republic of Serbia to misdemeanors committed by juveniles, having in mind the need for a comprehensive, coordinated response to juvenile delinquency which has forms of punishable offences, as well as the fact that the commission of misdemeanors, especially with elements of violence, makes very often an introduction to a criminal career. At the end, the authors take into consideration the position of children under the age of fourteen, having in mind that according to the research their delinquency with the characteristics of punishable offences is on the rise.

KEYWORDS: criminal offence / misdemeanor / diversion order / educational measures / juvenile detention / children in conflict with the law

IZVRŠENJE ZAVODSKIH VASPITNIH MJERA I KAZNE MALOLJETNIČKOG ZATVORA U BOSNI I HERCEGOVINI

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Sistem alternativnih mjera i krivičnih sankcija koje propisuju sva tri tzv. maloljetnička zakona u Bosni i Hercegovini (zakoni o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske, Federacije BiH i Brčko distrikta BiH) identičan je i čine ga: a) alternativne mjere, i to: 1) policijsko upozorenje i 2) vaspitne preporuke i b) krivične sankcije za maloljetne učinioce krivičnih djela, i to: 1) vaspitne mjere, 2) mjere bezbjednosti i c) kazna maloljetničkog zatvora.

U ovom radu biće govora o izvršenju krivičnih sankcija institucionalnog karaktera koje su predviđene za izricanje maloljetnim učiniocima krivičnih djela u navedenim zakonima, odnosno o vaspitnim (odgojnim) mjerama zavodskog karaktera (i to upućivanju u vaspitnu ustanovu, upućivanju u vaspitno-popravni dom ili upućivanju u posebnu ustanovu za liječenje i osposobljavanje) i kazni maloljetničkog zatvora.

KLJUČNE RIJEČI: maloljetnik u sukobu sa zakonom / krivične sankcije za maloljetnike / vaspitne mjere / kazna maloljetničkog zatvora.

UVODNI DIO

Krivičnopravni položaj maloljetnih učinilaca krivičnih djela u Bosni i Hercegovini regulisan je odredbama tri posebna zakona koji nose identičan naziv: *Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku*[1](s tim da svaki od ovih zakona ima ograničenu teritorijalnu primjenu: na Republiku Srpsku, Federaciju Bosne i Hercegovine i Brčko distrikt Bosne i Hercegovine). U poglavlju trećem ovih zakona koje nosi naslov "Mjere, vaspitne preporuke i krivične sankcije koje se preduzimaju

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[1] Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku najprije je usvojen u Republici Srpskoj, početkom 2010. godine, a počeo se primjenjivati 1. januara 2011. godine (Službeni glasnik Republike Srpske, broj 13/2010, mijenjan i dopunjavan - Službeni glasnik Republike Srpske, broj 61/2013), potom u Brčko distriktu gdje je usvojen u novembru 2011. godine, a počeo se primjenjivati krajem 2012. godine (Službeni glasnik Brčko distrikta Bosne i Hercegovine, broj 44/2011), te naposljetku u Federaciji Bosne i Hercegovine, gdje je usvojen 2014. godine, a čija je primjena otpočela 2015. godine (Službeni glasnik Federacije Bosne i Hercegovine, broj 7/2014).

prema maloljetniku" propisan je sistem alternativnih mjera, odnosno krivičnih sankcija koje se primjenjuju prema maloljetnicima u sukobu sa zakonom.

Na ovom mjestu, kao sasvim nove oblike reagovanja našeg društva na izvršenje krivičnog djela od strane maloljetnog lica koji su u krivična zakonodavstva većine savremenih zemalja uvedeni u posljednjih desetak godina (u Republici Srpskoj od 2003. godine), uz vaspitne naloge ili vaspitne preporuke (entitetski maloljetnički zakoni predviđaju po šest vaspitnih, odnosno odgojnih preporuka) treba posebno istaći i tzv. policijsko upozorenje. S druge strane, sva tri zakonodavca u Bosni i Hercegovini su propisala i posebne krivične sankcije za maloljetnike koje se razlikuju od krivičnih sankcija za punoljetne učinioce krivičnih djela, a osnovna vrsta, odnosno grupa krivičnih sankcija koja je namijenjena maloljetnim učiniocima krivičnih djela jesu vaspitne mjere (vaspitne mjere upozorenja ili usmjeravanja, vaspitne mjere pojačanog nadzora i zavodske vaspitne mjere). Osim njih, maloljetniku se mogu izricati i pojedine mjere bezbjednosti (ukupno ih je zakonima propisano po pet) a pod određenim uslovima starijem maloljetniku se može izreći i maloljetnički zatvor.

Maloljetnički zatvor predstavlja najtežu krivičnu sankciju maloljetničkim zakonima predviđenu za maloljetne učinioce najtežih krivičnih djela. To je posebna vrsta kazne koja se sastoji u oduzimanju slobode kretanja starijem maloljetnom učiniocu težeg krivičnog djela za, u sudskoj odluci, određeno vrijeme i njegovom smještanju u određenu ustanovu (Simović i dr., 2013: 244-245). Svrha izricanja ove jedine kazne u sistemu krivičnih sankcija propisanih prema maloljetnicima jeste vršenje pojačanog uticaja na maloljetnog učinioca krivičnog djela kako on ubuduće ne bi vršio krivična djela, kao i uticaj na druge maloljetnike da ne vrše krivična djela (Selman i dr., 2012:163).

Kazna maloljetničkog zatvora može se izreći isključivo krivično odgovornom starijem maloljetniku koji je počinio krivično djelo za koje je propisana kazna zatvora teža od pet godina, a zbog teških posljedica djela i visokog stepena krivične odgovornosti ne bi bilo opravdano izreći vaspitnu mjeru (Selman i dr., 2012:164). Kazna maloljetničkog zatvora koja se izriče maloljetnom učiniocu krivičnog djela ne može biti duža od pet godina, a izriče se na pune godine ili na mjesece. Ukoliko stariji maloljetnik izvrši krivično djelo za koje je propisana kazna dugotrajnog zatvora ili se radi o sticaju najmanje dva krivična djela za koja je propisana kazna zatvora teža od deset godina, maloljetnički zatvor može trajati i do deset godina (Selman i dr., 2012:164). Pri odmjeravanju kazne starijem maloljetniku za krivično djelo, sud ne može izreći kaznu maloljetničkog zatvora u trajanju dužem od kazne zatvora propisane za to krivično djelo, a nije vezan za najmanju propisanu mjeru te kazne, pri čemu uzima u obzir sve okolnosti koje utiču da kazna bude manja ili veća, u skladu sa odredbama krivičnog zakona, imajući posebno u vidu stepen zrelosti maloljetnika i vrijeme potrebno za njegovo vaspitanje i stručno osposobljavanje.[2]

Kazna maloljetničkog zatvora izvršava se u posebnom kazneno-popravnom zavodu za maloljetnike koji ne može imati dodira sa kazneno-popravnom ustanovom u kojoj kaznu zatvora izdržavaju odrasla lica (Selman i dr., 2012:164). Takođe, kazna maloljetničkog zatvora izrečena licima ženskog pola izvršava se u posebnom kazneno-popravnom zavodu za maloljetnice ili u posebnom odjeljenju kazneno-popravnog zavoda za maloljetnike. Maloljetnici koji za vrijeme izvršenja kazne maloljetničkog zatvora postanu punoljetni i dalje nastavljaju da borave u zavodu za maloljetnike ili u odjeljenju za mlađa punoljetna

[2] Član 51 stav 2 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku.

lica, osim ako njihova društvena reintegracija neće imati veći efekat ako se smjeste u zavod za odrasle (Selman i dr., 2012:164).

1. IZVRŠENJE INSTITUCIONALNIH MALOLJETNIČKIH KRIVIČNIH SANKCIJA U BOSNI I HERCEGOVINI

Ustanove u kojima se izvršavaju krivične sankcije zavodskog, odnosno institucionalnog karaktera na području Republike Srpske i Federacije Bosne i Hercegovine jesu: Maloljetnički zatvor Istočno Sarajevo, Odjeljenje maloljetničkog zatvora pri Kazneno-popravnom zavodu Zenica, Vaspitno-popravni dom pri Kazneno-popravnom zavodu Banja Luka, Odgojno-popravni dom pri Kazneno-popravnom zavodu Tuzla, Javna ustanova Zavod za vaspitanje muške djece i omladine Sarajevo, Kantonalna javna ustanova Disciplinski centar za maloljetnike Sarajevo, Odgojni centar Tuzlanskog kantona, Pritvorska jedinica Kazneno-popravnog zavoda Sarajevo i Odgojno-popravni dom u Orašju.

Izvršenje zavodskih maloljetničkih krivičnih sankcija zasniva se na primjeni, uz već navedena tri tzv. maloljetnička krivična zakona kao primarnog izvora, i niza drugih opštih principa i instituta krivičnog prava (materijalnog, procesnog i izvršnog) pod uslovom da nisu u suprotnosti sa navedenim maloljetničkim zakonima. Stoga, normativnu osnovu uređenja krivičnopravnog statusa maloljetnika čine i entitetski krivični zakoni, zatim entitetski zakoni o krivičnom postupku i zakoni o izvršenju krivičnih sankcija. Poseban značaj imaju i sljedeći podzakonski akti, i to: Uredba o primjeni odgojnih preporuka prema maloljetnicima[3], Pravilnik o disciplinskoj odgovornosti maloljetnika koji se nalaze na izvršenju zavodskih odgojnih mjera ili izdržavanju kazne maloljetničkog zatvora[4], Pravilnik o primjeni odgojnih mjera posebnih obaveza prema maloljetnim učiniocima krivičnih djela[5], Pravilnik o primjeni vaspitnih mjera posebnih obaveza prema maloljetnim učiniocima krivičnih djela[6], Pravilnik o primjeni vaspitnih preporuka prema maloljetnim učiniocima krivičnih djela[7], Pravilnik o disciplinskoj odgovornosti maloljetnika koji se nalaze na izvršenju zavodskih vaspitnih mjera i izdržavanju kazne maloljetničkog zatvora[8], Pravilnik o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora[9], Pravilnik o kaznenoj evidenciji[10], Uputstvo o načinu vođenja evidencije o izrečenim vaspitnim mjerama[11], Uredba o primjeni vaspitnih preporuka prema maljetnicima[12] i Program edukacije o sticanju posebnih znanja i kontinuiranom stručnom osposobljavanju i usavršavanju lica koja rade na poslovima prestupništva mladih i krivično-pravne zaštite djece i maloljetnika[13].

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[3] Službene novine Federacije Bosne i Hercegovine, broj 11/2015.
[4] Službene novine Federacije Bosne i Hercegovine, broj 10/2015.
[5] Službene novine Federacije Bosne i Hercegovine, broj 10/2015.
[6] Službeni glasnik Republike Srpske, broj 101/2010.
[7] Službeni glasnik Republike Srpske, br. 101/2010 i 52/2015.
[8] Službeni glasnik Republike Srpske, broj 101/2010.
[9] Službeni glasnik Republike Srpske, broj 52/2015.
[10] Službeni glasnik Republike Srpske, broj 6/2015.
[11] Službeni glasnik Republike Srpske, broj 66/2012.
[12] Službeni glasnik Republike Srpske, broj 10/2010.
[13] Službeni glasnik Republike Srpske, broj 101/2010. Programom edukacije o sticanju posebnih znanja i kontinuiranom stručnom osposobljavanju i usavršavanju lica koja rade na poslovima prestupništva mladih i krivičnopravne zaštite djece i maloljetnika utvrđuju se tematski ciklusi koji se odnose na stručno usavršavanje lica koja rade na poslovima prestupništva mladih i krivičnopravne zaštite djece i maloljetnika (obavezna edukacija), odnosno ovlašćenih službenih lica – policijskih službenika, socijalnih radnika,

2. IZVRŠENJE KAZNE MALOLJETNIČKOG ZATVORA

Specifična priroda kazne maloljetničkog zatvora nameće i posebne principe u njenom izvršenju (Soković, Bejatović, 2009:200). Naime, sam postupak izvršenja kazne maloljetničkog zatvora ne svodi se na puku internaciju maloljetnika, već u znatnoj mjeri uključuje i primjenu institucionalnih mjera (pre)vaspitanja i stručnog osposobljavanja, odnosno primjenu institucionalnog tretmana (Gurda, 2013:356). Ova kazna predstavlja mjeru dugotrajnog institucionalnog tremana[14] kojom se trebaju ostvariti ciljevi kako specijalne, tako i generalne prevencije, pri čemu specijalnopreventivni ciljevi ipak imaju primarni značaj (Gurda, 2013:356).

Sva tri zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku u Bosni i Hercegovini određuju da se izrečena kazna maloljetničkog zatvora izvršava u posebnim kazneno–popravnim zavodima za maloljetnike, što podrazumijeva da nema mogućnosti za alternative u pogledu izbora ustanove u kojoj se ova kazna može izvršiti. Radi se o zavodskim ustanovama u sklopu penitensijarnih sistema Republike Srpske, odnosno Federacije Bosne i Hercegovine koje su potpuno odvojene od kazneno–popravnih zavoda u kojima odrasla (punoljetna) lica izdržavaju izrečenu kaznu zatvora ili dugotrajnog zatvora. Pod istim uslovima, i mlađa punoljetna lica kojima je izrečena kazna maloljetničkog zatvora smještaju se u posebna odjeljenja ovih zavoda, kao i maloljetnici koji za vrijeme izvršenja kazne maloljetničkog zatvora postanu punoljetni. Pri tome je maloljetničkim zakonima izričito određeno da lica koja su osuđena na kaznu maloljetničkog zatvora, ovu kaznu izdržavaju, po pravilu, zajedno (dakle, grupno). No, kada to nalažu ovim zakonima predviđeni razlozi, kao što su zdravstveno stanje osuđenog lica, zatim potreba obezbjeđenja bezbjednosti ili potreba održavanja reda i discipline u kazneno–popravnom zavodu – osuđena lica mogu da izdržavaju i odvojeno izrečenu kaznu maloljetničkog zatvora (Simović i dr., 2013:426). Kazna maloljetničkog zatvora koja je izrečena licima ženskog pola izvršava se u posebnom kazneno–popravnom zavodu za maloljetnice ili odvojenom, odnosno posebnom odjeljenju kazneno–popravnog zavoda za maloljetnike[15].

Prilikom izvršenja kazne maloljetničkog zatvora, na pitanja prijema maloljetnika na izdržavanje kazne maloljetničkog zatvora, zatim prava maloljetnika, pogodnosti, disciplinske prekršaje, postupak i disciplinske mjere, zabranu nošenja i upotrebe oružja i ograničenja upotrebe sile i prinude, obilazak maloljetnika smještenog u kazneno-popravnom zavodu za maloljetnike, prekid izvršenja kazne maloljetničkog zatvora i odlaganje izvršenja kazne maloljetničkog zatvora primjenjuju se odredbe entitetskih zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku, odnosno odredbe istovjetnog zakona Distrikta Brčko koje se odnose na izvršenje zavodskih vaspitnih mjera. S druge strane, na ostala pitanja u vezi sa izvršenjem kazne maloljetničkog zatvora shodno se primjenjuju odredbe entitetskih zakona o izvršenju krivičnih sankcija, uz uslov

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medijatora, advokata i radnika zaposlenih u kazneno-popravnim zavodima i zavodskim ustanovama, u smislu njihove specijalizacije za postupanje sa maloljetnim učiniocima krivičnih djela, kao i za njihovo postupanje sa djecom i maloljetnim licima kada se pojavljuju kao oštećeni u krivičnom postupku.

[14] Članom 42 Krivičnog zakona Federacije Bosne i Hercegovine je propisano da se maloljetnicima ne može izricati kazna zatvora, već samo kazna maloljetničkog zatvora, te da kazna maloljetničkog zatvora po svojoj svrsi, prirodi, trajanju i načinu izvršenja predstavlja posebnu kaznu lišenja slobode.

[15] U sistemu izvršenja krivičnih sankcija u Republici Srpskoj, Odjeljenje maloljetničkog zatvora postoji od oktobra 2008. godine i funkcioniše kao posebno odjeljenje u okviru Kazneno-popravnog zavoda Istočno Sarajevo.

da nisu u suprotnosti sa odredbama zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku.[16]

2.1. Maloljetnički zatvor u Istočnom Sarajevu

U Republici Srpskoj kazna maloljetničkog zatvora se izvršava u Maloljetničkom zatvoru Istočno Sarajevo koji se nalazi u krugu Kazneno-popravnog zavoda Istočno Sarajevo. Sa radom, ovaj Zatvor je počeo 2008. godine i on je jedina ustanova za izvršenje kazne maloljetničkog zatvora u Republici Srpskoj. U ovu ustanovu upućuju se maloljetnici kojima nadležni sudovi na teritoriji Republike Srpske izreknu kaznu maloljetničkog zatvora. Predviđeni kapacitet ustanove je 20 osuđenika.[17]

U radu sa maloljetnicima angažovana su dva vaspitača i rukovodilac Maloljetničkog zatvora Istočno Sarajevo, s tim da su specijalni pedagog, psiholog i socijalni radnik na raspolaganju maloljetnicima svaki radni dan od 07:00 do 15:00 časova, uz napomenu da su istovremeno angažovani i u Odjeljenju za žene Kazneno-popravnog zavoda Istočno Sarajevo[18].

Maloljetnici koji izdržavaju kaznu maloljetničkog zatvora u ovoj ustanovi imaju na raspolaganju učionicu sa računarima u prizemlju objekta, te višekrevetne spavaonice, sobu za rekreaciju i dnevni boravak na spratu objekta. Objekat nema opremljenu kuhinju, pa maloljetnici u tačno utvrđenom terminu imaju obezbijeđene obroke u restoranu Kazneno-popravnog zavoda Istočno Sarajevo. Dnevni boravak je prostran i adekvatno opremljen, ali maloljetnici tokom zime u njemu ne borave jer se on ne grije, pa najveći dio dana provode u informatičkoj sali i spavaonicama.

Svaki maloljetnik se prilikom prijema u ustanovu upoznaje sa svojim pravima i obavezama, te odredbama Pravilnika o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora[19].

Prijedlog individualnog, odnosno pojedinačnog programa postupanja sa maloljetnikom (član 165 stav 1 Zakona) sačinjava stručni tim ustanove (koji svakako čine ljekar, specijalni pedagog, psiholog i socijalni radnik) a zatim plan usvaja direktor ustanove. Individualni planovi, odnosno programi postupanja ili tretmana obuhvataju: ciljeve tretmana, sredstva za njihovu realizaciju, prioritetni plan, radnu terapiju, održavanje kontakata s porodicom itd. Osoblje ustanove nastoji, kada god je to moguće i u što većoj mjeri, uključiti roditelje maloljetnika u kreiranje i realizaciju individualnih planova, iako su odnosi između maloljetnika i njihovih roditelja često poremećeni pa se na punu podršku porodice, nažalost, ne može računati. Kada je riječ o organizovanju i provođenju tretmana maloljetnika, otežavajuća okolnost za organizovanje grupnih aktivnosti i angažovanje

[16] Član 178 stav 2 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske i član 179 stav 2 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Federacije Bosne i Hercegovine.

[17] Posjeta ovoj ustanovi obavljena je 27. januara 2016. godine.

[18] Stanje u Maloljetničkom zatvoru u Istočnom Sarajevu i Odjeljenju maloljetničkog zatvora pri Kazneno-popravnom zavodu Zenica prezentovano je u publikaciji koja nosi naziv "Analiza stanja u ustanovama u kojima su smješteni maloljetnici u sukobu sa zakonom u Bosni i Hercegovini". Ova publikacija je nastala u prvoj polovini 2016. godine, a kao rezultat saradnje Institucije ombudsmana za ljudska prava Bosne i Hercegovine i UNICEF-a u Bosni i Hercegovini. Najveći dio autorskog tima koji je radio na njenoj izradi činili su predstavnici Institucije ombudsmana, odnosno postupajući pravnici iz Odjela za prava djece ove institucije. U daljem tekstu ovog referata biće prezentovano zatečeno stanje.

[19] Član 150 st. 2 i 3 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske.

instruktora za određene radne aktivnosti, kao i prilikom organizovanja programa asertivnih treninga i programa nenasilne komunikacije, jeste mali broj osuđenih lica koja izdržavaju kaznu maloljetničkog zatvora u ovoj ustanovi.

U neposrednom razgovoru sa maloljetnicima koji se trenutno nalaze na izdržavanju kazne maloljetničkog zatvora u ovoj ustanovi potvrđena su zapažanja iz ranijih monitoringa da se njihove dnevne aktivnosti svode uglavnom na gledanje televizije, rad na računaru, uz psihoterapijske razgovore i povremenu rekreaciju u teretani.

Procedura klasifikacije maloljetnika u klasifikaciono-stimulativne grupe, pored zakona[20], podrobnije je propisana Pravilnikom o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora. Naime, maloljetnici se klasifikuju u klasifikaciono-stimulativne grupe na osnovu praćenja njihovog ponašanja i vladanja u kolektivu, te zalaganja i rezultata u radnom i obrazovnom programu, učešća u kulturno-obrazovnim, sportskim i drugim aktivnostima u odjeljenju, te postignutog stepena prevaspitanja.[21] Shodno tome, nakon stručne obrade u prijemnom odjeljenju, maloljetnici se raspoređuju u polaznu P grupu, a nakon tri mjeseca provedena u P grupi, maloljetnici se reklasifikuju u jednu od klasifikaciono-stimulativnih grupa, i to: A, B, C i D[22].

Obaveza obilaska maloljetnika koju imaju sudovi i centri za socijalni rad ispunjava se sporadično premda je takva obaveza propisana maloljetničkim zakonom[23].

U svakodnevnom tretmanu maloljetnika u sukobu sa zakonom primjenjuju se modeli njihovog nagrađivanja i modeli kažnjavanja, svakako u skladu sa odredbama Pravilnika o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora. Tako, ovaj pravilnik propisuje odgovarajuće pogodnosti[24] koje se ostvaruju unutar same kazneno-popravne ustanove (npr. korištenje vlastitog elektronskog uređaja za reprodukciju zvuka, uređenje životnog prostora ličnim stvarima, dodjeljivanje nagrade u novcu ili stvarima, prijem posjete bez nadzora u prostorijama za posjete u odjeljenju, češće primanje posjeta i paketa, prošireno pravo na prijem posjeta i boravak sa bračnim ili vanbračnim drugom u namjenskoj prostoriji[25]) kao i pogodnosti koje se realizuju van kruga zavodske ustanove, i to: slobodan izlazak u grad sa porodicom, slobodan samostalan izlazak u grad, posjeta sportskim, kulturnim i drugim

[20] Član 165 stav 3 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske.
[21] Član 51. stav 1. Pravilnika o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora.
[22] U tzv. A grupu raspoređuju se maloljetnici koji se naročito ističu po vladanju i ponašanju, a koji su proveli u odjeljenju najmanje šest mjeseci, odnosno dva klasifikaciona perioda. U B grupu raspoređuju se maloljetnici koji se pozitivno ističu po svim elementima praćenja. U C grupu raspoređuju se maloljetnici koji postižu zadovoljavajuće rezultate i kod kojih se tretman sprovodi bez naročitih poteškoća. U D grupu raspoređuju se maloljetnici kod kojih se tretman otežano sprovodi i koji ne zadovoljavaju utvrđene kriterije.
[23] Član 120. stav 2. Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske predviđa: Obilazak maloljetnika smještenih u zavode i ustanove iz stava 1 ovog člana (ustanove u kojima se izvršavaju kazna maloljetničkog zatvora i zavodske vaspitne mjere) stručni savjetnici, odnosno sudija i tužilac obavljaju najmanje dva puta u toku godine. Za vrijeme izvršenja zavodskih mjera, zakonom je propisana aktivna uloga sudije i tužioca, koja se ogleda i kroz njihovu obavezu da najmanje dva puta u toku godine obilaze maloljetnika smještenog u ustanovi za izvršenje zavodskih mjera, gdje u neposrednom kontaktu sa maloljetnikom i stručnim licima koja se staraju o izvršenju mjere, kao i uvidom u odgovarajuću dokumentaciju, utvrđuju zakonitost i pravilnost postupanja i cijene uspjeh postignut u vaspitanju i pravilnom razvoju ličnosti maloljetnika.
[24] Član 152 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske.
[25] Član 99. Pravilnika o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora.

prikladnim događajima izvan odjeljenja u ustanovi, posjeta porodici, srodnicima i drugim bliskim licima za vrijeme vikenda i praznika i dodatna odsustva iz odjeljenja do 15 dana.[26]

Primjetno je da se osoblje ustanove teško odlučuje za odobravanje vanzavodskih pogodnosti zbog bojazni da će one biti zloupotrijebljene (da će maloljetnik pobjeći, da se neće vratiti na vrijeme ili će negativno uticati na okolinu u kojoj bude boravio). S druge strane, da se primijetiti da rukovodioci u ustanovi najčešće odobravaju samo dvije ili tri propisane pogodnosti, iako Pravilnik o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora nudi širok izbor pogodnosti unutar ustanove i van kruga ustanove (do sada je odobren samo slobodan izlazak u grad sa porodicom i izlazak u grad u pratnji).

Disciplinske mjere koje su propisane za slučajeve nedoličnog ponašanja, odnosno povrede odredaba maloljetničkog zakona i odgovarajućeg pravilnika (tzv. disciplinski prekršaji) prema Pravilniku o disciplinskoj odgovornosti maloljetnika koji se nalaze na izvršenju zavodskih vaspitnih mjera i izdržavanju kazne maloljetničkog zatvora[27] jesu opomena i oduzimanje dodijeljenih pogodnosti.[28] Pored njih, svakako s ciljem sankcionisanja nedozvoljenog ponašanja maloljetnici na izdržavanju kazne maloljetničkog zatvora podvrgavaju se i drugim ograničenjima kao što su oduzimanje televizora iz spavaonice ili uskraćivanje sportskih aktivnosti (što apsolutno nije na zakonu zasnovano).[29]

Premda je uslovni otpust važan krivičnopravni institut predviđen odredbom člana 177 Zakona o zaštiti i postupanju s djecom i maloljetnicima u krivičnom postupku u Republici Srpskoj, skoro da se i ne primjenjuje u praksi (naime, prema podacima uprave ove ustanove, od formiranja ove ustanove u samo jednom slučaju odobren je uslovni otpust).

Kontakt sa vanjskim svijetom (prije svega sa porodicom) je svakako izuzetno važan u procesu vaspitanja, prevaspitanja i pravilnog razvoja maloljetnog lica. Tako i u ovoj ustanovi maloljetnici imaju mogućnost primanja posjeta, i to četiri posjete mjesečno po dva časa. Pogodnost unutar ustanove omogućava veći broj i produženje posjeta bližih srodnika, a vanredne pogodnosti omogućavaju i posjete ostalih srodnika. S druge strane, maloljetnicima je omogućen i telefonski kontakt sa članovima porodice putem telefonske govornice. Maloljetnicima je dostupan i internet, uz dodatnu superviziju vaspitača.

Zdravstvenoj zaštiti maloljetnika koji se nalaze na izdržavanju kazne maloljetničkog zatvora mora se posvetiti naročita pažnja. Obavljanje ljekarskog pregleda odmah, a najkasnije u roku od 24 časa po prijemu maloljetnika u ustanovu je izuzetno važna ativnost, dok se jednom godišnje u ovoj ustanovi vrši i sistematski pregled u lokalnoj bolnici, odnosno domu zdravlja[30]. U razgovoru sa maloljetnicima takvi navodi osoblja su

[26] Član 100. Pravilnika o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora.
[27] Pravilnikom o disciplinskoj odgovornosti maloljetnika koji se nalaze na izvršenju zavodskih vaspitnih mjera i izdržavanju kazne maloljetničkog zatvora propisuju se postupak prema maloljetnicima koji se nalaze na izvršenju zavodskih vaspitnih mjera i izdržavanju kazne maloljetničkog zatvora u vaspitnim i kazneno-popravnim ustanovama Republike Srpske u vezi sa disciplinskim prekršajima i disciplinskim mjerama, način pokretanja disciplinskog postupka i organi koji vode taj postupak, žalbeni postupak, izvršenje, odgađanje izvršenja i zastarjelost disciplinskih mjera, kao i druga pitanja u vezi sa disciplinskom odgovornošću maloljetnika.
[28] Član 155 stav 1 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske.
[29] Prema odredbi člana 154 Zakona zabranjene su disciplinske mjere koje uključuju uskraćivanje rada, smanjenje hrane, ograničenje komunikacije maloljetnika sa članovima porodice, zatvaranje u mračne prostorije i samice, kolektivno kažnjavanje maloljetnika, kao i druge disciplinske mjere koje degradiraju i ugrožavaju fizičko ili mentalno zdravlje maloljetnika.
[30] Član 127 Zakona o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupku Republike Srpske.

opovrgnuti informacijom da je posljedni sistematski pregled obavljen 2013. godine. Osoblje ustanove prilikom redovnog dvomjesečnog izvještavanja, sudiji za maloljetnike, tužiocu i centru za socijalni rad dostavlja i izvještaj o vladanju i psihičkom stanju maloljetnika.

U razgovoru sa maloljetnicima koji se nalaze na izdržavanju kazne maloljetničkog zatvora u ovoj ustanovi utvrđeno je da su oni upoznati sa mogućnošću upućivanja žalbi na uslove smještaja i tretmana. Posebne evidencije o broju i vrsti pritužbi koje su podnijeli maloljetnici u okviru Maloljetničkog zatvora nema, ali takve se evidencije vode na nivou Kazneno-popravnog zavoda Istočno Sarajevo. Prema podacima kojima raspolaže uprava, u 2015. godini je zaprimljen jedan prigovor maloljetnika upućen sudiji. Prema navodima uprave, maloljetnik je izjavio prigovor zbog toga što je uprava zatvora, u postupku odlučivanja o uslovnom otpustu, negativno ocijenila ponašanje i napredak maloljetnika u sukobu sa zakonom. Maloljetnik je to saznao prilikom dostavljanja sudske odluke o odbijanju zahtjeva za uslovni otpust, s obzirom da je u obrazloženju odluke jasno navedeno da je negativno mišljenje zatvora/stručnog osoblja o opravdanosti uslovnog otpusta.

2.2. Odjeljenje maloljetničkog zatvora pri Kazneno-popravnom zavodu Zenica[31]

U Federaciji Bosne i Hercegovine kazna maloljetničkog zatvora se izvršava u Odjeljenju maloljetničkog zatvora pri Kazneno-popravnom zavodu Zenica.[32] Odjeljenje maloljetničkog zatvora namijenjeno je samo za osobe muškog pola, dok posebnog odjeljenja za smještaj maloljetnica kojima je izrečena kazna maloljetničkog zatvora u Federaciji Bosne i Hercegovine nema.

U radu sa maloljetnicima koji se nalaze na izdržavanju kazne maloljetničkog zatvora u ovoj ustanovi angažovani su jedan vaspitač, zatim stručni saradnik za kulturno-prosvjetni rad i po potrebi, socijalni radnik i psiholog. Zaposleni Odjeljenja maloljetničkog zatvora ukazuju na poteškoće i probleme sa kojima se susreću u radu, a koji se prvenstveno odnose na nedostatak osoblja s obzirom na to, da vaspitač istovremeno radi sa maloljetnicima u ustanovi i grupom od pedeset punoljetnih zatvorenika. Maloljetnici u neposrednom razgovoru navode da ih "*vaspitač posjećuje dva puta sedmično po deset minuta*", a sa psihologom i drugim stručnim osobama vrlo rijetko razgovaraju.

Smještajni kapacitet Odjeljenja maloljetničkog zatvora iznosi 15 osoba, a kaznu maloljetničkog zatvora je u vrijeme posjete predstavnika Institucije Ombudsmena izdržavalo osam maloljetnika (od kojih je samo jedan od njih mlađi od osamnaest godina) i to za sljedeća krivična djela: ubistvo, pokušaj ubistva, silovanje, razbojništvo i druga krivična djela s obilježjem nasilja.[33] Dužina izrečenih kazni je, prema navodima uprave, od jedne godine do devet godina, s tim da se kazna maloljetničkog zatvora najčešće izriče u trajanju od jedne godine.

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[31] Odjeljenje maloljetničkog zatvora pri Kazneno-popravnom zavodu u Zenici formirano je po završetku ratnih djelovanja u Bosni i Hercegovini. Odjeljenje se nalazi na kraju kruga KPZ Zenica i zatvorenog je tipa (tzv. kolektiv 5 KPZ Zenica ili Paviljon 5). Objekat Odjeljenja maloljetničkog zatvora sastoji se iz dvije etaže (prizemlja i prvog sprata). Maloljetnici koji izdržavaju kaznu maloljetničkog zatvora smješteni su na prvom spratu, dok su u prizemlju objekta smješteni punoljetni zatvorenici koji su zbog dobrog ponašanja izdvojeni u poseban kolektiv, te zatvorenici sa invaliditetom. Smještajni kapacitet maloljetničkog zatvora je 15 maloljetnika.

[32] U vrijeme pisanja ovog referata započela je aktivnost preseljenja ovog Odjeljenja iz Kazneno-popravnog zavoda Zenica u Kazneno-popravni zavod Orašje.

[33] Posjeta ovoj ustanovi obavljena je 29. januara 2016. godine.

Tek krajem 2013. godine odrasli zatvorenici koji se nalaze na izdržavanju kazne zatvora, odnosno kazne dugotrajnog zatvora u KPZ Zenica izmješteni su iz objekta u kojem su trenutno smješteni maloljetnici (tzv. Petog paviljona) a u dvorištu je istovremeno postavljena limena ograda radi fizičkog i vizuelnog odvajanja kruga namijenjenog za boravak maloljetnika, te su na taj način osuđene osobe koje izdržavaju kaznu maloljetničkog zavora sada potpuno fizički odvojene od ostalih osuđenika. Maloljetnici tokom razgovora ističu da postavljenu limenu pregradu doživljavaju klaustrofobično zbog ograničenog prostora u dvorištu koji im je na raspolaganju, iako iz njihovih odgovora takođe jasno proizlazi da im nedostaje kontakt sa starijim osuđenicima.

Maloljetnici borave u jednokrevetnim sobama koje su prostorno male, ali ipak, one sadrže sve ono što im je potrebno, a što su maloljetnici u razgovoru potvrdili.

Po dolasku u ustanovu maloljetnici koji se nalaze na izdržavanju kazne maloljetničkog zatvora se smještaju u tzv. Prijemno odjeljenje u kojem se zadržavaju najduže 48 časova. Tokom boravka u ovom odjeljenju, uz obavljanje osnovnih ljekarskih pregleda, maloljetnik se upoznaje sa pravilima kućnog reda i pravima i obavezama koje se od njega očekuju.

U izradi individualnih planova tretmana učestvuje multidisciplinarni tim sastavljen od osoblja koje direktno učestvuje u njegovoj realizaciji (svaki član tima definiše planirane zadatke u radu sa maloljetnikom). Sami maloljetnici nisu uključeni u izradu individualnih planova i programa tretmana, kao ni njihove porodice. Osoblje ustanove treba da uloži veće napore u kreiranje i realizaciju individualnih planova postupanja prilagođenih osobinama i potrebama svakog maloljetnika pojedinačno, te uključivanje roditelja i zakonskih staratelja u proces izvršenja kazne maloljetničkog zatvora kada god je to moguće. Roditelji treba da prihvate i preuzmu vlastitu odgovornost u pogledu prestupničkog ponašanja svoje djece, te da prisustvuju savjetovanjima za roditelje i posebno pruže pomoć stručnom osoblju prilikom izvršenja kazne maloljetničkog zatvora.

Osoblje Zavoda ukazuje da je u tretmanu maloljetnika evidentan nedostatak osoblja, ali i adekvatnih prostorija za održavanje sekcija koje bi na maloljetnike imale stimulirajući i edukativan uticaj.

Maloljetnici na otvorenom provode tri časa dnevno (ponekad i duže) s tim da vanjski prostor ne zadovoljava njihove potrebe. Na raspolaganju im je informatička sala (bez mogućnosti pristupa internetu) i teretana koju koriste u periodu od 10:00 do 13:00 časova. Izleti, kao i posjete sportskim, kulturnim i zabavnim manifestacijama u gradu Zenici za maloljetnike koji se nalaze na izdržavanju kazne maloljetničkog zatvora se ne organizuju, a maloljetnici navode da nisu zadovoljni ni hranom i ne učestvuju u sastavljanju jelovnika.

Ono što svakako ocjenjujemo pozitivnim i ističemo jeste da su skoro svi maloljetnici u ovoj ustanovi radno angažovani. Iako prilikom takvog angažmana ostvaruju kontakt s punoljetnim osuđenicima, mišljenja smo da se radi i o dozvoljenom izuzetku od zahtjeva za odvojeni smještaj.

Maloljetnicima koji se nalaze na izdržavanju kazne maloljetničkog zatvora u ovoj ustanovi nije omogućeno srednjoškolsko obrazovanje iz prostog razloga: zbog nedostatka novčanih sredstava za tu namjenu.

Maloljetnici ostvaruju pogodnosti u zavisnosti od grupe u koju su klasifikovani: A, B i C grupa (početna je grupa B)[34] s tim da klasifikacija zavisi od vladanja, postignutih radnih rezultata i uspjeha u sprovođenju tretmana. Trenutno niti jedan maloljetnik ne koristi vanzavodske pogodnosti, i to zbog vođenja drugih krivičnih postupaka protiv njih ili neispunjavanja formalnih uslova (omjer izdržane kazne, negativni policijski izvještaji). Prema navodima tretmanskog osoblja ustanove, maloljetnici se nagrađuju i drugim modelima nagrađivanja, a na prijedlog vaspitača (npr. prošireno pravo na prijem posjeta).

Disciplinski postupak provodi se u skladu s Pravilnikom o disciplinskoj odgovornosti maloljetnika koji se nalaze na izvršenju zavodskih odgojnih mjera ili izdržavanju kazne maloljetničkog zatvora[35] koji propisuje prava i obaveze maloljetnika u vezi s disciplinskim prekršajima i disciplinskim mjerama, pokretanjem disciplinskog postupka i organima koji vode taj postupak, žalbenom postupku, izvršenju, odgađanju izvršenja i zastarjelosti disciplinskih mjera i druga pitanja u vezi s disciplinskom odgovornošću maloljetnika i vođenjem disciplinskog postupka.

Maloljetnicima je omogućeno održavanje kontakta s porodicom putem telefona (od 08:00 do 22:00 časa) po principu uređenom na način da svaki maloljetnik ima pravo na sedam brojeva telefona koje može zvati. Iako brojeve, u pravilu, mogu mijenjati svaka tri mjeseca, iz uprave ukazuju da se maloljetnicima po njihovom zahtjevu odobravaju i češće izmjene telefonskih brojeva i dodaju da maloljetnici nemaju prigovore na cijenu poziva, a što je potvrđeno i u razgovoru s maloljetnicima koji navode da mogu telefonirati neograničeno. Maloljetnici ne ističu ni druge primjedbe u pogledu komunikacije s vanjskim svijetom koju, pored telefona, ostvaruju putem redovnih i vanrednih posjeta i pisama.

Prema navodima uprave, sudije i tužioci ne ispunjavaju svoju zakonsku obavezu obilaska maloljetnika, sa izuzetkom sudije za maloljetnike iz Zenice.

U roku od 24 časa od prijema maloljetnika u ustanovu vrši se njegov medicinski pregled tokom kojeg se evidentiraju njegovi eventualni zdravstveni problemi. Zdravstvena zaštita je maloljetnicima obezbijeđena unutar Zavoda putem usluga stalno zaposlenih, i to ljekara, stomatologa i medicinskih tehničara. Međutim, maloljetnici navode da pruženom zdravstvenom zaštitom nisu zadovoljni ističući: "*Za bilo koji zdravstveni problem daju nam brufen*". Za ovisnike o narkotičkim sredstvima ustanova ima obezbijeđenu metadonsku terapiju koja se realizuje sa Centrom za mentalno zdravlje u Zenici, ali prema navodima uprave, nijedan maloljetnik koji trenutno izdržava kaznu nije ovisan o psihoaktivnim supstancama. Iz uprave ustanove navode da nisu imali registrovanih ovisnika o alkoholu.

Maloljetnici u razgovoru navode da su upoznati s trostepenim sistemom upućivanja žalbi[36], ali smatraju da su žalbeni mehanizmi neefikasni i nepravedni, te ističu: "*ne isplati*

[34] Broj posjeta zavisi o klasifikacionoj grupi. Maloljetnicima koji su klasifikovani u A grupu dozvoljena je dva puta mjesečno redovna posjeta, dva puta mjesečno vanredna posjeta, dva puta mjesečno restoranska posjeta i dva puta mjesečno slobodna posjeta (bračne posjete). Maloljetnicima klasifikovanim u B grupu omogućena je jedna redovna posjeta, jedna vanredna posjeta, jedna restoranska posjeta i jedna slobodna posjeta mjesečno. Maloljetnicima koji su klasifikovani u A i B grupe dozvoljena je još jedna mjesečna restoranska obaveza. Tzv. C grupa predviđa jednu redovnu i jednu slobodnu posjetu u mjesec dana. Federalno ministarstvo pravde radi na izradi Pravilnika o režimu boravka u Federaciji Bosne i Hercegovine kojim će se detaljno urediti pitanje klasifikacije maloljetnika. Do donošenja novog podzakonskog propisa, na snazi je Pravilnik o kućnom redu Kazneno-popravnog zavoda Zenica koji je donesen uz saglasnost Federalnog ministarstva pravde.

[35] Službene novine Federacije BiH, broj 10/2015.

[36] Postupak ulaganja pritužbi uređen je Uputstvom o postupanju po pritužbama osuđenih lica koje predviđa trostepenost rješavanja pritužbi. Prvi nivo rješava službeno osoblje, u drugom nivou to čine pomoćnici direktora,

se". Tako, tokom 2014. i 2015. godine uprava ustanove nije dobila niti jednu njihovu pisanu žalbu, a maloljetnici se žalbama nisu obraćali ni sudu ili nekoj drugoj instituciji.

ZAKLJUČNI DIO

Izvršenju krivičnih sankcija institucionalnog karaktera koje su predviđene za izricanje maloljetnim učiniocima krivičnih djela u maloljetničkim zakonima u Bosni i Hercegovini, odnosno izvršenju vaspitnih (odgojnih) mjera zavodskog karaktera (i to upućivanja u vaspitnu ustanovu, upućivanja u vaspitno-popravni dom ili upućivanja u posebnu ustanovu za liječenje i osposobljavanje) i kazne maloljetničkog zatvora posvećuje se značajna pažnja. Tome u prilog jeste i činjenica izuzetne normiranosti ove oblasti kao rijetko koje u našoj pravnoj praksi, i to sa nizom zakonskih tekstova, ali i ogromnim brojem podzakonskih akata. Namjera nam je bila da u prvom dijelu ovog referata prikažemo samo dio ovih pravnih propisa, odnosno da u drugom dijelu referata prikažemo trenutno stanje u ustanovama u kojima se izvršava kazna maloljetničkog zatvora kao najteža krivična sankcija za maloljetne učinioce krivičnih djela u Bosni i Hercegovini. U referatu su prezentovani i posebno zanimljivi stavovi i izjave maloljetnih učinilaca krivičnih djela koji se nalaze na izdržavanju kazne maloljetničkog zatvora.

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dok u trećem nivou po žalbi odlučuje direktor Zavoda. Međutim, navedena procedura podnošenja pritužbi od strane osuđenih lica se najčešće ne poštuje i najveći broj osuđenika direktno se obraća direktoru Ustanove.

Zakoni i podzakonski akti:

11. Zakon o zaštiti i postupanju s djecom i maloljetnicima u krivičnom postupku, Službeni glasnik Republike Srpske, br. 13/2010 i 61/2013.
12. Zakon o zaštiti i postupanju s djecom i maloljetnicima u krivičnom postupku, Službeni glasnik Brčko distrikta Bosne i Hercegovine, broj 44/2011.
13. Zakon o zaštiti i postupanju s djecom i maloljetnicima u krivičnom postupku, Službeni glasnik Federacije Bosne i Hercegovine, broj 7/2014.
14. Uredba o primjeni odgojnih preporuka prema maloljetnicima, Službeni glasnik Federacije Bosne i Hercegovine, broj 11/2015.
15. Uredba o primjeni vaspitnih preporuka prema maloljetnicima Službeni glasnik Republike Srpske, broj 10/2010.
16. Pravilnik o disciplinskoj odgovornosti maloljetnika koji se nalaze na izvršenju zavodskih odgojnih mjera ili izdržavanju kazne maloljetničkog zatvora, Službeni glasnik Federacije Bosne i Hercegovine, broj 10/2015.
17. Pravilnik o primjeni odgojnih mjera posebnih obaveza prema maloljetnim učiniocima krivičnih djela, Službeni glasnik Federacije Bosne i Hercegovine, broj 10/2015.
18. Pravilnik o primjeni vaspitnih mjera posebnih obaveza prema maloljetnim učiniocima krivičnih djela, Službeni glasnik Republike Srpske, broj 101/2010.
19. Pravilnik o primjeni vaspitnih preporuka prema maloljetnim učiniocima krivičnih djela, Službeni glasnik Republike Srpske, br. 101/2010 i 52/2015.
20. Pravilnik o disciplinskoj odgovornosti maloljetnika koji se nalaze na izvršenju zavodskih vaspitnih mjera i izdržavanju kazne maloljetničkog zatvora, Službeni glasnik Republike Srpske, broj 101/2010.
21. Pravilnik o organizaciji rada i načinu života maloljetnih i mlađih punoljetnih lica koja se nalaze na izvršenju kazne maloljetničkog zatvora, Službeni glasnik Republike Srpske, broj 52/2015.
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23. Uputstvo o načinu vođenja evidencije o izrečenim vaspitnim mjerama, Službeni glasnik Republike Srpske, broj 66/2012.
24. Program edukacije o sticanju posebnih znanja i kontinuiranom stručnom osposobljavanju i usavršavanju lica koja rade na poslovima prestupništva mladih i krivično-pravne zaštite djece i maloljetnika, Službeni glasnik Republike Srpske, broj 101/2010.

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EXECUTION OF INSTITUTIONAL SECURITY MEASURES AND JUVENILE IMPRISONMENT IN BOSNIA AND HERZEGOVINA

A system of alternative measures and criminal sanctions prescribed by all three so-called juvenile laws in Bosnia and Herzegovina (laws on the protection and treatment of children and juveniles in criminal proceedings: the Republika Srpska, the Federation of Bosnia and Herzegovina and the Brcko District of B&H) are identical and include: a) alternative measures, such as: 1) police warning and 2) Educational recommendations; and b) Criminal sanctions for juvenile offenders, as follows: 1) educational measures, 2) security measures, and c) juvenile imprisonment.
This paper deals with the execution of criminal sanctions of an institutional nature that are intended for juvenile offenders in the above-mentioned laws. In other words, the paper examines the educational measures of the institutional character (referral to the educational institution, referral to the correctional facility or referral to a special facility for treatment and training) and juvenile imprisonment.

KEYWORDS: juvenile in conflict with law / criminal sanctions for juveniles / educational measures / juvenile imprisonment

PRIMENA KAZNI PREMA MALOLETNICIMA U UPOREDNOM KRIVIČNOM PRAVU[*]

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Od najstarijih vremena, pa do današnjih dana, pored punoletnih lica se, kao učinioci krivičnih dela, javljaju i maloletna lica. Sve do 20.veka prema maloletnicima su primenjivane iste vrste i mere kazni koje su zakonom bile propisane za punoletne učinioce krivičnih dela. Pri tome su uzrast maloletnika, stepen njihove zrelosti i psihološke karakteristike njihove ličnosti uzimani u obzir kao olakšavajuća ili ublažavajuća okolnost prilikom odmeravanja kazne. Pod uticajem međunarodnih standarda univerzalnog i regionalnog karaktera, u drugoj polovini 20. veka, se razvija posebno maloletničko krivično pravo koje propisuje specifične vrste krivičnih sankcija za maloletnike. Ovo pravo se javlja u dva oblika: a) u okviru posebnih "maloletničkih" krivičnih zakona i b) kao deo "klasičnih" krivičnih zakona (zakonika) koji se primenjujue prema svim učiniocima krivičnih dela – punoletnim i maloletnim fizičkim i pravnim licima. U okviru sistema maloletničkog krivičnog prava osnovnu vrstu krivičnih sankcija čine vaspitne mere. No, sva zakonodavstva, izuzetno propisuju mogućnost primene kazni (jedne ili više) prema maloletnim učiniocima krivičnih dela. Tu se razlikuju dva sistema: a) specifične kazne maloletničkog zatvora i b) kazne zatvora, novčane kazne, rad u javnom interesu i druge vrste kazni (koje se izriču punoletnim učiniocima krivičnih dela), s tim što pojedina zakonodavstva poznaju i različite forme uslovne osude za maloletnike. Upravo o pojmu, karakteristikama, vrstama, trajanju i uslovima za primenu kazni prema maloletnim učiniocima krivičnih dela u savremenom krivičnom pravu govori ovaj rad.

KLJUČNE REČI: maloletnik / učinilac / krivično delo / odgovornost / kazna / uporedno pravo

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UVOD

Iako sva savremena krivična zakonodavstva u sistemu krivičnih sankcija predviđaju više različitih vrsta vaspitnih mera koje se primenjuju prema maloletnim učiniocima krivičnih dela, time ipak nije isključena potreba za kažnjavanjem maloletnika (Simović et al., 2015: 167-171). Uostalom, dugi istorijski pregled razvoja maloletničkog krivičnog prava pokazuje da su od najstarijih vremena prema maloletnicima primenjivane različite vrste i mere kazni (Jovašević, 2016: 267-273). Takva je situacija i danas. Te kazne su u početku bile iste one kazne koje je krivično zakonodavstvo propisivalo za punoletna lica kao učinioce krivičnih dela, da bi se tek kasnije prema maloletnicima primenjivale posebne vrste kazni koje su specifične samo za ovu kategoriju učinilaca krivičnih dela (Jovašević, 2011:173-176).

U sistemu savremenog maloletničkog krivičnog prava se razlikuju dva sistema kažnjavanja maloletnih učinilaca krivičnih dela (Škulić, 2011: 67-71). Prema prvom sistemu prema maloletnicima se za učinjeno krivično delo mogu izreći kazne koje se inače izriču i punoletnim licima. Pri tome se "maloletnički uzrast" učinioca dela ceni kao olakšavajuća ili kao ublažavajuća okolnost (fakultativnog karaktera). Ovakvo rešenje danas usvajaju krivična zakonodavstva: Austrije, Ruske federacije, Švedske, Norveške, Finske, Ukrajine. No, takvo rešenje je poznavalo i naše ranije krivično zakonodavstvo koje je bilo u primeni do 1959. godine kada je noveliran Krivični zakonik FNRJ iz 1951. godine[1]. Prema drugom sistemu prema maloletnicima se primenjuju posebne vrste kazne – kazna maloletničkog zatvora. Ovakvo je rešenje danas u primeni u zakonodavstvu: Bosne i Hercegovine, Srbije, Crne Gore, Hrvatske, Švajcarske, Austrije.

Primena kazni prema maloletnim učiniocima krivičnih dela je opravdana, pravična i logična. Naime, i među maloletnim licima javljaju takva lica koja pokazuju visok i kontinuiran stepen vaspitne zapuštenosti, koji često, obično u dužem vremenskom periodu, u povratu vrše teška krivična dela, često sa elementima nasilja, sa prouzrokovanim teškim posledicama (Perić, 1982: 297-300). Tako danas brojna krivična zakonodavstva poznaju u strukturi krivičnih sankcija, kojima se nastoji postići efikasna, kvalitetna i zakonita zaštita i obezbeđenje najznačajnijih društvenih dobara i vrednosti, i kazne (u prvom redu kazna zatvora) koje se primenjuju prema maloletnicima (Grozdanić, Škorić, 2009: 175). Istina, u teoriji (Horvatić, 2003: 174) se mogu naći i takva shvatanja prema kojima postoji samo jedna kazna zatvora kao vrsta krivičnih sankcija koja se javlja u više oblika (formi): a) kazna zatvora, b) kratkotrajna kazna zatvora, c) kazna dugotrajnog (ili doživotnog) zatvora i d) kazna maloletničkog zatvora (Selinšek, 2007: 264-266).

Kazne su u svakom slučaju najteža vrsta krivičnih sankcija za maloletnike, koje se izuzetno izriču, u posebnim slučajevima izvršenja teških ili ponovljenih krivičnih dela kada maloletnik pokazuje visok stepen krivice. Njima se teži ostvarenju ciljeva i specijalne, ali i generalne prevencije. Upravo različiti sistemi kažnjavanja maloletnika koje poznaje savremeno evropsko krivično pravo jesu predmet dalje analize.

[1] Službeni list FNRJ broj 30/1959.

1. SKANDINAVSKE DRŽAVE

1.1. Finska

Položaj maloletnih učinilaca krivičnih dela i društvena reakcija prema njima je u Republici Finskoj uređena odredbama Zakona o mladim prestupnicima[2] iz 1940. godine, Eksperimentalnog zakona o maloletničkoj kazni[3] iz 1996. godine i Zakona o maloletničkoj kazni[4] iz 2004. godine. Ovim zakonskim rešenjima je određeno da se krivična odgovornost maloletnika (a time i mogućnost njihovog kažnjavanja) stiče sa navršenih petnaest godina života u vreme izvršenja krivičnog dela, pri čemu se uzrast od petnaest do sedamnaest godina uzima kao olakšavajuća okolnost od značaja prilikom odmeravanja kazne u konkretnom slučaju.

Posebna vrsta kazne – maloletnička kazna je u finsko krivično pravo uvedena relativno kasno – tek 1996. godine. Ova se kazna izriče maloletniku koji je učinio krivično delo u uzrastu od petnaest do osamnaest godina pod uslovom da težina učinjenog dela, potreba maloletnika za rehabilitacijom i njegova sposobnost socijalne adaptacije ukazuju da je primena ove najteže krivične sankcije prema njemu opravdana. Ova se kazna sastoji iz dva dela.

To su: a) posebne obaveze maloletnika – one se sastoje u obavezi maloletnika da obavlja određeni rad bez naknade u trajanju od deset do šezdeset časova. Na ovaj način se obavljanjem različitih poslova i izvršavanjem postavljenih obaveza i zadataka omogućava maloletniku da unapredi svoje socijalno prilagođavanje i osećaj odgovornosti i b) nadzor nad maloletnikom, njegovim životom i radom u trajanju od četiri meseca do jedne godine sa ciljem pružanja podrške i usmeravanja maloletnika. Ovaj nadzor sprovodi posebna služa za nadzor u saradnji sa nadležnim centrom za socijalni rad.

Prema članu 10a. maloletniku uzrasta do osamnaest godina se može umesto kazne zatvora izreći: a) novčana kazna ako je ona s obzirom na težinu krivičnog dela i stepen krivice učinioca dovoljna kazna, a nema razloga koji opravdavaju izricanje bezuslovne kazne zatvora i b) uslovna osuda sa nadzorom ako se primena ove mere smatra dovoljnom da se promoviše socijalno prilagođavanje učinioca krivičnog dela i sprečavanje vršenja novih krivičnih dela.

Takođe je Zakon predvideo (član 11.) da se maloletniku koji je osuđen na kaznu zatvora do osam meseci može odrediti da vrši određeni rad u zajednici, osim ako neizvršenje bezuslovne kazne zatvora daje osnova za pretpostavku da će takvo lice nastaviti sa vršenjem krivičnih dela ili ako to zahtevaju drugi važni razlozi. Za određivanje rada u zajednici potrebna je prethodna saglasnost maloletnika.

[2] Young Offenders Act No. 262/1940.
[3] Experimental Juvenile Punishment Act No. 1058/1996.
[4] Government regulation on juvenile punishment No. 1284/2004 and Juvenile Punishment Act No.1196/2004.

1.2. Norveška

Krivični zakonik Kraljevine Norveške[5] iz 1902. godine sa više izmena i dopuna do 2005. godine u članu 46. određuje da se kao maloletnik smatra lice koje je u vreme izvršenja krivičnog dela navršilo petnaest godina, ali još uvek nije navršilo osamnaest godina. Ovim se licima izriče ista kazna koja je inače u Zakoniku propisana za punoletne učinioce krivičnog dela.

Dakle, i maloletnim učiniocima krivičnih dela se, po pravilu, izriče kazna zatvora u trajanju od četrnaest dana do petnaest godina (član 17. stav 1. tačka a. KZ), pri čemu je prema ovim licima isključena primena najteže kazne – kazne dugotrajnog zatvora do 21 godine (osim ako se radi o najtežim krivičnim delima kao što su: a) dela protiv nezavisnosti i bezbednosti države iz glave osam, b) dela protiv ustavnog uređenja i državne vlasti iz glave devet, c) dela protiv službene dužnosti iz glave jedanaest, d) dela protiv javne bezbednosti iz glave četrnaest i e) dela protiv života i tela iz glave dvadeset druge).

Pri odmeravanju kazne, maloletniku se uzrast uzima kao ublažavajuća okolnost, pa se propisana kazna može u konkretnom slučaju ublažiti po vrsti ili meri kada se umesto propisane kazne zatvora takvom licu mogu izreći: a) novčana kazna (član 26a. KZ) i b) kazna rada u javnom interesu (član 28a. KZ).

1.3. Švedska

Krivični zakonik Kraljevine Švedske[6] iz 1962. godine u poglavlju 29. koje se odnosi na odmeravanje kazne govori i o kažnjavanju maloletnih učinilaca krivičnih dela. Pri tome sam Zakonik ne pravi razliku u kažnjavanju s obzirom na uzrast učinioca krivičnog dela, što znači da se i prema maloletnicima primenjuju iste kazne koje su u Zakoniku propisane i za punoletna lica (Bishop, 1999: 145-147).

U članu 6. poglavlja prvog, Krivični zakonik određuje da se kao maloletnici smatraju lica koja su u vreme izvršenja krivičnog dela navršila petnaest godina života, a nisu navršila osamnaest godina. Takvom se učiniocu krivičnog dela može izreći kazna zatvora ako u konkretnom slučaju nije moguće izreći vaspitnu meru upućivanja u zatvorenu ustanovu za brigu o maloletnicima (*sentence to closed juvenile care*), a uzrast učinioca u vreme suđenja ili druge okolnosti ukazuju na opravdanost primene ove najteže kazne. Maloletniku se u tom slučaju izriče zakonom propisana kazna za učinjeno krivično delo, ali se ona može i ublažiti (član 7. poglavlja 27).

2. SREDNJOEVROPSKE DRŽAVE

2.1. Austrija

U Austriji je položaj maloletnika u krivičnom pravu uređen odredbama posebnog zakona – Zakona o maloletnicima[7] iz 1988. godine. Kao maloletnici u smislu ovog zakona

[5] The General Civil Penal Code of the Kingdom of Norway, Act No. 10. of 22. May 1902. and Act No. 131. of 21. December 2005.
[6] The Swedish Penal Code from 1962. and 1999.
[7] Jugendgerichtsgesetz – JGG, Bundesgesetzblatt (BGBl) No. 599/1988.

smatraju se lica koja su u vreme izvršenja krivičnog dela bila u uzrastu od četrnaest do osamnaest godina (član 1.). Takav maloletnik je, po pravilu, odgovoran za učinjeno krivično delo, osim ako iz određenih razloga nije dovoljno zreo da shvati nedopuštenost (protivpravnost) svog dela i da prema svom rasuđivanju postupa (član 4.). Takvo shvatanje odgovara propisanoj svrsi primene krivičnih sankcija – a to je sprečavanje maloletnika da ponovo učini krivično delo (specijalna prevencija).

Prema ovim učiniocima se i u austrijskom krivičnom pravu (Kimmel, 1954: 74-78) izriču iste kazne koje su inače propisane u zakonu za punoletna lica kao učinioce krivičnih dela. Pri tome se uzrast maloletstva smatra osnovom za blaže kažnjavanje takvih lica (fakultativna ublažavajuća okolnost).

Naime, prema maloletnim licima uzrasta od šesnaest do osamnaest godina u vreme izvršenja krivičnog dela se umesto propisane kazne doživotnog zatvora ili kazne zatvora u trajanju od deset do dvadeset godina može izreći kazna zatvora (*Freiheitsstrafe)* u trajanju od jedne do petnaest godina (član 5. stav 2. tačka a.). Ako se pak radi o izvršenju krivičnog dela za koje je u zakonu propisana kazna zatvora od deset do dvadeset godina, tada se maloletniku za isto delo može izreći kazna zatvora od šest meseci do deset godina (član 5. stav 3.). Zakonom je dalje propisano da se maksimum propisanih kazni zatvora maloletnom učiniocu takvog krivičnog dela pri izricanju smanjuje na polovinu, pri čemu sud nije vezan za minimum propisane kazne za to delo. Maloletniku uzrasta od četrnaest do šesnaest godina se za učinjeno krivično delo može izreći kazna zatvora u trajanju od jedne do deset godina.

No, austrijski zakonodavac predviđa sledeća specifična rešenja postupanja prema maloletnim učiniocima krivičnih dela (Bachner Foregger, 2001: 161-165). To su: a) javni tužilac se shodno članu 6.može uzdržati od krivičnog gonjenja za krivično delo za koje je propisana novčana kazna ili kazna zatvora do pet godina ako primena sankcija prema maloletniku nije neophodna za sprečavanje ponovnog vršenja krivičnog dela, b) sud se shodno članu 12.može uzdržati od izricanja kazne ako pretpostavi na osnovu svih okolnosti konkretnog slučaja da primena kazne nije dovoljna da spreči maloletnika da ponovo izvši krivično delo i c) sud je ovlašćen da izrečenu kaznu zatvora odloži (uslovna osuda) u smislu člana 13.za period probacije u trajanju od jedne do tri godine ako dođe do uverenja da je sama pretnja kaznom ili u kombinaciji sa drugim merama dovoljna da spreči maloletnika u ponovnom vršenju krivičnih dela. U tom slučaju sud obaveštava maloletnika o značaju takve osude, nalaže mu određene obaveze za vreme perioda probacije i ukazuje na razloge zbog kojih se izrečena kazna ipak može izvršiti.

2.2. Francuska

Maloletničko krivično pravo Republike Francuske je od 1945. godine sadržano u Ordonansi za decu i maloletnike[8]. Ova Uredba u članu 20-2.predviđa kaznu zatvora (*peine privative de liberte)*. Prema ovom rešenju maloletnom učiniocu krivičnog dela uzrasta od trinaest godina se može izreći polovina zakonom propisane kazne za izvršeno krivično delo, a najviše do dvadeset godina, pod uslovom da je za konkretno krivično delo propisana kazna doživotnog zatvora.

Prema maloletniku uzrasta od šesnaest do osamnaest godina se može izreći čak i kazna doživotnog zatvora: a) ako je učinjeno teško krivično delo i b) ako okolnosti pod

[8] Ordonnance No. 45-174 du 2.fevrier 1945.

kojima je delo izvršeno, odnosno ocena ličnosti učinioca ukazuju na opravdanost njene primene. Pri tome je Uredba isključila mogućnost ublažavanja kazne maloletniku uzrasta od šesnaest godina u dva slučaja: a) ako se radi o povratniku i b) ako su bile prisutne teške okolnosti prilikom izvršenja krivičnog dela sa elementima nasilja.

2.3. Mađarska

Mađarski Krivični zakonik[9] iz 2012. godine u glavi sedam, u odredbi člana 108. propisuje da je svrha kažnjavanja maloletnika da se obezbedi pravilno vaspitanje maloletnika kako bi postao koristan član društva u slučajevima kada se takva svrha ne može ostvariti primenom vapsitnih mera. Kao najteže vrste krivičnih sankcija koje se uopšte mogu izreći maloletnom učiniocu krivičnog dela predviđeno je više vrsta kazni.

Najteža je kazna maloletničkog zatvora (član 110. KZ). Ona se sastoji u oduzimanju slobode kretanja maloletnika koji je navršio šesnaest godina u vreme izvršenja krivičnog dela u trajanju od mesec dana do deset godina, odnosno izuzetno do petnaest godina u slučaju kada se radi o izvršenju krivičog dela za koje je propisana kazna doživotnog zatvora. U ovom drugom slučaju se maloleniku koji nije navršio šesnaest godina u vreme izvršenja krivičnog dela ipak ne može izreći kazna u trajanju do petnaest godina. Ovako odmerena kazna maloletničkog zatvora se u smislu člana 111. Krivičnog zakonika izvršava u posebnoj ustanovi za maloletnike. No, osuđeni maloletik se može i uslovno otpustiti od daljeg izdržavanja kazne zatvora (član 112. KZ) pod uslovom da je izdržao najmanje trećinu izrečene kazne zatvora (Molnar, 2013: 189-193).

Druga vrsta kazne za maloletnike je društveno koristan rad (član 113. KZ). Ova se kazna izriče maloletnom učiniocu krivičnog dela koji je navršio osamnaest godina u vreme pravnosnažnosti donete sudske odluke. Inače ona se sastoji u radu koji maloletnik vrši u korist lokalne zajednice, uz njegovu saglasnost (Karsai, Szomora, 2016: 178-181).

Novčana kazna (član 114. KZ) se izriče maloletniku samo u slučaju ako ima sopstveni prihod ili imovinu.

Poslednja vrsta kazne za maloletnog učinioca krivičnog dela je zabrana obavljanja određenih javnih poslova (član 115. KZ). To je sporedna kazna koja se izriče supsidijarno samo u slučaju ako je maloletniku za učinjeno krivično delo izrečena kazna lišenja slobode u trajanju dužem od jedne godine. Primenom ove kazne maloletniku se zabranjuje obavljanje određenog u sudskoj odluci naznačenog javnog posla.

2.4. Nemačka

U Nemačkoj, Zakon o maloletničkom pravosuđu (iz 1974. godine sa izmenama do 2008. godine)[10] koji se primenjuje na lica izrasta od 14 do 21 godine (član 1. stav 1.) predviđa tri vrste maloletničkih krivičnih sankcija (Weigend, 2012: 195-206). To su: a) vaspitne mere, b) disciplinske mere i c) kazna za maloletnike (Cohen, 1961: 118-126).

U članu 16. je predviđena najteža vrsta disciplinskih mera (*Jugendarrest*) koje se izvršavaju na dva načina i to kao: a) zatvor u slobodno vreme i b) zatvor u vreme vikenda i to najduže do dva vikenda (*Freizeitarrest).* Pored toga, Zakon, na ovom mestu, razlikuje i

[9] Act C of 2012.on Criminal Code.
[10] Jugendgerischtsgesetz, BGBl. I S. 3427. Vom 11. Dezember 1974.

dve vrste kazne zatvora. To su: a) zatvor u kratkom trajanju (*Kurzarrest)* - izriče se ako je zbog potrebe za vaspitanjem maloletnika potrebno njegovo kratkotrajno zatvaranje do šest dana, s tim da se ne ometa njegovo školovanje i rad i b) zatvor u dugom trajanju (*Dauerarrest)* koji se izriče u trajanju od jedne do četiri sedmice.

Najteža vrsta maloletničkih krivičnih sankcija je kazna maloletničkog zatvora – *Jugendstrafe* (član 17.). Ova se kazna lišenja slobode sastoji u smeštaju maloletnog učinioca krivičnog dela u posebnu ustanovu kada zbog sklonosti koje je on pokazao prilikom izvršenja krivičnog dela mere pojačanog nadzora i disciplinske mere nisu dovoljne za njegovo nadziranje čime bi se otklonile štetne posledice u vaspitanju ili ukoliko je takva kazna opravdana s obzirom na ozbiljan stepen krivice takvog lica (Schaffstein, Beulke, 1998: 178-183). Ova se kazna izriče maloletniku uzrasta od četrnaest do osamnaest godina u trajanju od šest meseci od pet godina, a samo izuzetno u trajanju do deset godina u slučaju ako je maloletnik učinio teže krivično delo za koje je u zakonu zaprećena kazna zatvora preko deset godina (član 18.). Pri tome je Zakon izričito odredio da se ova kazna odmerava maloletniku tako da se omogući ostvarivanje željene svrhe koja se sastoji u njegovom pojačanom nadzoru od strane ovlašćenih posebnih državnih organa.

2.5. Švajcarska

Zakon o maloletničkom krivičnom pravu (Maloletnički krivični zakon) – *Bundesgesetz uber das Jugendstrafrecht (Jugendstrafgesetz, JStG)*[11] Švajcarske konfederacije u trećem poglavlju, u trećem odeljku propisuje kazne za maloletnike *(Strafen*). One se izriču supsidijarno, ako u konkretnom slučaju primena zaštitnih mera ne može, prema oceni suda, da ostvari Zakonom proklamovanu svrhu (cilj)[12]. Dva su uslova potrebna za izricanje kazne prema maloletniku (član 11.). To su: a) da je maloletnik izvršio krivično delo i b) da je maloletnik kriv za učinjeno krivično delo, odnosno da je maloletnik "sposoban za krivično delo i da je svestan svog pogrešnog dela, ali da on i nakon te spoznaje nastavlja da deluje".

Švajcarsko krivično pravo predviđa četiri kazne za maloletne učinioce krivičnih dela. To su (Decker, Marteache, 2017: 289-293): a) opomena – član 22., b) lični rad – član 23., c) novčana kazna – član 24.i d) lišenje slobode (zatvor) – član 25. Pri tome je Zakon u odredbi člana 21.izričito propisao mogućnost oslobođenja od kazne (*Strafbefreiung*). To je izuzetno zakonsko ovlašćenje suda kojim se krivično odgovoran maloletnik može osloboditi od zakonom propisane kazne za krivično delo (Hirsch, 2016: 278-281).

Pored potpunog oslobođenja od primene kazne, sud je shodno odredbi člana 35.ovlašćen da u slučaju izricanja maloletniku: a) novčane kazne, b) ličnog rada i c) lišenja slobode u trajanju do trideset meseci uslovno odloži njihovo izvršenje (Meiner, Rossner, 2012: 89-93) ukoliko se primena bezuslovne kazne u konkretnom slučaju ne smatra neophodnom (celishodnom) u cilju odvraćanja maloletnika od ponovnog vršenja novih krivičnih dela ili drugih prestupa. Ovo je specifičan oblik uslovne osude koja se javlja u dva vida i to kao: a) potpuna i b) delimična (parcijalna) suspenzija izvršenja izrečene kazne, pod određenim uslovima i za određeno vreme.

[11] BBl 1999 vom 20. Juni 2003. (Stand am 1. Januar 2013.).
[12] StGB, Schweizerisches Strafgesetzbuch, Aktuell geltende Fassung 2013.

Prva i najblaža vrsta maloletničke kazne jeste opomena (*Verweis*) - članu 22. Ona se sastoji u prekoru, upozorenju maloletnika od strane suda kojim mu se ukazuje na "neodobravanje" izvršenog krivičnog dela. Ova se kazna sastoji u socijalno-etičkoj oceni ponašanja maloletnika koje sa stanovišta pravnog poretka sud ne odobrava. Tada mu sud izriče opomenu ako je došao do uverenja da je samo upozorenje dovoljno da se krivično odgovoran (kriv) maloletni učinilac krivičnog dela odvrati od daljeg vršenja istog ili drugih krivičnih dela.

Lični rad iz člana 23. (*Personliche Leistung*) se sastoji u upućivanju maloletnika da obavi lični rad, bez naknade, u korist društvene zajednice: socijalnih ustanova, fabrika od javnog značaja, lica sa posebnim potrebama ili oštećenog (ali samo uz njegovu pismenu saglasnost). Zakon je izričito odredio da se rad maloletnika mora prilagoditi njegovim godinama (uzrastu) i sposobnostima. No, sud je ovlašćen da lični rad izrekne i u formi (obliku) učešća maloletnika na odgovarajućim stručnim kursevima ili drugim sličnim manifestacijama. Prilikom izricanja kazne ličnog rada maloletnika, sud određuje i konkretno vreme njegovog trajanja - najviše do deset dana. Za maloletnike koji su u vreme izvršenja krivičnog dela navršili petnaest godina života, kazna ličnog rada se može izreći i u trajanju do tri meseca uz obavezu zadržavanja na određenom mestu (lokaciji) u cilju sprečavanja, predupređivanja ponovnog vršenja krivičnih dela.

Novčana kazna *(Busse)* iz člana 24. se izuzetno može izreći maloletniku koji je u vreme izvršenja krivičnog dela navršio petnaest godina života. Pri izricanju ove kazne, sud vodi računa o ličnim (u prvom redu, imovinskim) prilikama maloletnika. Tako sud može maloletniku da izrekne novčanu kaznu u iznosu do 2.000 franaka (novčana kazna u određenom-fiksnom iznosu), određujući i rok njenog plaćanja (odnosno produženje roka) u celosti ili u ratama, zavisno od mogućnosti maloletnika (Dupuis et al., 2017:375-379).

Najteža je kazna lišenja slobode – zatvor *(Freiheitsentzug*) – član 25. Sastoji se u oduzimanju slobode kretanja maloletniku za presudom određeno vreme i smeštanju u posebnu zavodsku ustanovu. Ona se može izreći ako su ispunjeni sledeći kumulativni uslovi (Donatsch, Tag, 2007: 145-151): a) da je maloletnik u vreme izvršenja krivičnog dela navršio petnaest godina i b) da je maloletnik izvršio krivično delo (zločin ili prestup) predviđen zakonom. Tada mu sud zavisno od okolnosti objektivnog i subjektivnog karaktera izriče kaznu lišenja slobode u određenom trajanju koje se kreće od jednog dana do godinu dana, odnosno do četiri godine ako se radi o maloletniku uzrasta od šesnaest godina koji je izvršio krivično delo za koje je propisana kazna zatvora od najmanje tri godine. Na zahtev maloletnika u smislu člana 26.sud koji je izrekao kaznu lišenja slobode može da izrečenu kaznu u trajanju do tri meseca preinači u kaznu ličnog rada u istom trajanju.

3. ISTOČNOEVROPSKE DRŽAVE

3.1. Letonija

Krivični zakonik Republike Letonije[13] iz 1998. godine sa novelama do 2013. godine u glavi sedam: "Specijalna priroda krivične odgovornosti maloletnika" utvrđuje sistem sankcija za maloletnike (lica uzrasta do osamnaest godina – član 64.) kao učinioce krivičnih dela (Lukashov, Sarkisova, 2001: 89-91).

[13] Kriminallikums, Latvias Vestnesis No.199/200 from 8.7.1998.....No.61/4867 from 27.3.2013.

Shodno članu 65. za maloletnike su propisane sledeće kazne: a) lišavanje slobode, b) rad u zajednici i c) novčana kazna (Clarita Pettai, Pettai, 2015: 176-181).

Maloletniku se može izreći kazna zatvora zavisno od vrste, prirode i težine krivičnog dela u trajanju do: a) deset godina - za naročito ozbiljna krivična dela, b) pet godina - za teška krivična dela koja su povezana sa nasiljem, pretnjom nasilja ili su izazvala ozbiljne posledice i c) dve godine - za druge teške zločine.

Novčana kazna se može izreći maloletniku koji ima sopstvene prihode (Pettai, Ziekinka:2003: 278-281). U tom slučaju se ova kazna izriče u rasponu od jednog do pedeset puta minimum mesečne zarade u Republici Letoniji.

3.2. Ruska federacija

Krivični zakonik Ruske federacije iz 1996. godine sa novelama do 2015. godine (Fedosova, Skuratova, 2005: 65-71) u glavi četrnaest: "Krivična odgovornost i kažnjivost maloletnika" predviđa dve vrste krivičnih sankcija koje se mogu izreći maloletnim učiniocima krivičnih dela (lica uzrasta od četrnaest do osamnaest godina – član 7.). To su: a) kazne i b) vaspitne mere prinudnog karaktera.

Naime, prema maloletnicima kao učiniocima krivičnih dela se može izreći čak šest vrsta različitih kazni (što predstavlja izuzetno rešenje u savremenom maloletničkom krivičnom pravu). Tako u smislu člana 88. Krivičnog zakonika Ruske Federacije maloletnom učiniocu krivičnog dela mogu izreći sledeće kazne (Raroga et al., 2007: 182-185):

1) novčana kazna (*štraf)* se izriče ako su ispunjena dva uslova: a) ako se sa tim saglasi roditelj ili zakonski zastupnik maloletnika i b) ako maloletno lice raspolaže samostalno svojom zaradom ili imovinom koja se može naplatiti. U tom slučaju se maloletnom učiniocu krivičnog dela može izreći ova imovinska kazna u iznosu od 1.000 do 50.000 rubalja ili srazmerno visini zarađene plate ili drugih prihoda u periodu od dve nedelje do šest meseci,

2) lišenje prava na bavljenje određenom delatnošću u državnim organima, organima lokalne (mesne) samouprave ili druge profesionalne službe u trajanju od jedne do pet godina,

3) obavezni rad u slobodno vreme trajanju od 40 do 160 sati tokom slobodnog vremena van školovanja ili posla uz sledeća ograničenja: a) za lica uzrasta do 15 godina ova kazna može da traje najviše dva sata tokom dana i b) za lica u uzrastu od petnaest do šesnaest godina najviše do tri sata tokom dana,

4) popravni (korektivni) rad – u trajanju do jedne godine,

5) izolacija (*arest*) – koja se može izreći samo maloletniku koji je uzrasta od šesnaest godina u trajanju od dva meseca do dve godine i

6) lišenje slobode u određenom trajanju do šest godina, osim u u slučaju izvršenja težeg krivičnog dela kada lišenje slobode može da traje do deset godina (Raroga, 2008: 428-433).

Prilikom izricanja kazne maloletniku (član 89.KZ) sud uzima u obzir, osim olakšavajućih i otežavajućih okolnosti, i: uslove života maloletnika, njegovo obrazovanje, nivo njegovog mentalnog razvoja i druge karakteristične osobine, kao i uticaj starijih ljudi na njega.

3.3. Ukrajina

Krivični zakonik Ukrajine[14] iz 2001. godine sa izmenama i dopunama iz 2009. godine takođe u sistemu krivičnih sankcija za maloletnike predviđa kazne. No, za primenu kazne je prema ovim zakonskim rešenjima potrebno postojanje krivične odgovornosti na strani maloletnog učinioca krivičnog dela koja se stiče sa navršenih šesnaest godina (član 22. stav 1.KZ). Samo izuzetno, krivičnu odgovornost može da stekne i maloletnik uzrasta od četrnaest godina ako je izvršio sledeća krivična dela: ubistvo; pokušaj ubistva; napad na sudiju, sudiju porotnika, vojno lice ili advokata; tešku telesnu povredu; sabotažu, terorizam; uzimanje talaca; silovanje; huliganstvo; oštećenje važnih privrednih objekata, magistralnih gasovoda i naftovoda i to ako je delo izvršeno pri otežavajućim okolnostima (Bažanova, Stašisa, Tacia, 2007: 212-214).

Član 94. KZ Ukrajine predviđa sledeće kazne za maloletnike. To su (Koržanskij, 2011: 178-182):

1) novčana kazna (član 99.KZ) koja se može izreći samo maloletniku koji ima sopstvene finansije ili imovinu. U tom slučaju ova imovinska kazna se može odrediti u visini do 500 minimalnih iznosa u Republici,

2) rad u javnom interesu (član 100. KZ) ili "služba za građane" se može izreći u trajanju od dva časa dnevno i to u periodu od 30 do 120 časova. Ova se kazna može izreći samo starijem maloletniku (licu uzrasta od šesnaest do osamnaest godina). Ona se sastoji u obavljanju određenog posla ili u pružanju usluga građanima od strane osuđenog maloletnika u slobodno vreme u trajanju od dva meseca do jedne godine,

3) popravni rad (član 101. KZ) se sastoji u izolaciji maloletika u specijalnoj ustanovi za maloletnike u trajanju od petnaest do 45 dana,

4) ograničenje slobode (član 102. KZ) se sastoji u oduzimanju slobode maloletnika u trajanju od šest meseci do deset godina. No, ova se kazna ne može izreći primarnom učiniocu i

5) maloletnički zatvor kao najteža vrsta maloletničke krivične sankcije se sastoji u oduzimanju slobode kretanja maloletniku u trajanju do deset godina (član 102. KZ). Izuzetno se ova kazna može izreći i u trajanju do petnaest godina. Zakonik je postavio i određena pravila za odmeravanje ove kazne, pa se tako ova kazna može izreći u sledećim rasponima i to: a) do dve godine – ako je maloletnik izvršio krivično delo male težine (krivično delo za koje je u zakonu propisana kazna zatvora do dve godine – član 12. stav 2. KZ), b) do četiri godine - ako je maloletnik izvršio krivično delo srednje težine (krivično delo za koje je u zakonu propisana kazna zatvora do pet godina – član 12. stav 3. KZ, c) do sedam godina – ako je maloletnik izvršio teško krivično delo (krivično delo za koje je u zakonu propisana kazna zatvora do deset godina – član 12. stav 4. KZ), d) do deset godina – ako je maloletnik izvršio posebno teško krivično delo (krivično delo za koje je u zakonu propisana kazna zatvora preko deset godina – član 12. stav 5. KZ) i e) do petnaest godina – ako je maloletnik izvršio posebno teško krivično delo koje uključuje ubistvo.

[14] Criminal code of the Ukraine, Verkhovna rada Ukrajini No. 25-26/2001 and No. 2556/2010.

ZAKLJUČAK

Na bazi univerzalnih i regionalnih međunarodnih standarda zasnovanih, u prvom redu, na Konvenciji o pravima deteta iz 1989. godine, sva savremena krivična zakonodavstva u Evropi poznaju razuđeni sistem krivičnih sankcija kao mera društvene reakcije na kriminalitet maloletnika. Među ovim sankcijama na prvom mestu se ističu vaspitne (zaštitne, popravne) mere. To je osnovna vrsta sankcija za maloletnike čiji je cilj vaspitanje, popravljanje i prevaspitanje maloletnika i uticanje na njegovo ponašanje i pravilan razvoj.

No, time ipak nije isključena potreba za kažnjavanjem maloletnika na što inače ukazuje i dugi istorijski pregled razvoja maloletničkog krivičnog prava. Te kazne su u početku bile iste kazne po vrsti i težini koje je krivično zakonodavstvo propisivalo za punoletna lica kao učinioce krivičnih dela, da bi se tek kasnije prema maloletnicima primenjivale posebne vrste kazni koje su specifične samo za ovu kategoriju učinilaca krivičnih dela.

U sistemu savremenog maloletničkog krivičnog prava se razlikuju dva sistema kažnjavanja maloletnih učinilaca krivičnih dela.

Prema prvom sistemu prema maloletnicima se za učinjeno krivično delo mogu izreći kazne koje se inače izriču i punoletnim licima. Pri tome se "maloletnički uzrast" učinioca dela ceni kao olakšavajuća ili kao ublažavajuća okolnost (fakultativnog karaktera). Ovakvo rešenje danas usvajaju krivična zakonodavstva: Austrije, Ruske federacije, Švedske, Norveške, Finske, Ukrajine. No, takvo rešenje je poznavalo i naše ranije krivično zakonodavstvo koje je bilo u primeni do 1959. godine.

Prema drugom sistemu prema maloletnicima se primenjuju posebne vrste kazne. U uporednom zakonodavstvu smo videli različita rešenja u pogledu vrste, sadržine, uslova za primenu i trajanja pojedinih kazni kao što su: opomena, lični (popravni ili korektivni rad), rad u korist zajednice, novčana kazna, razni oblici ograničenja ili lišenja slobode.

No, mnoga zakonodavstva poznaju i uslovnu osudu kao poseban oblik uslovnog odlaganja izvršenja izrečene kazne (zatvora, novčane kazne, rada u korist zajednice) za određeno vreme i pod određenim uslovima, a često i pod nadzorom određenih lica ili ustanova.

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APPLICATION OF THE PENALTY TO THE JUVENILES IN THE CONTEMPORARY CRIMINAL LAW

From ancient times up to nowadays, not only that adults could commit a crime, but also the juveniles could do so. Until the 20th century against minors are applied the same type and extent of penalties that have been prescribed by law for adult offenders. However, it has to be said that the age of minors, the degree of their maturity and psychological characteristics have been taken into consideration as a mitigating or aggravating factor in determining the sentence. Under the influence of international standards of universal and regional character in the second half of the 20th century, a special juvenile criminal law was developing which prescribes specific types of criminal sanctions for minors. This specific juvenile criminal law occurs in two forms: a) in the context of the specific 'juvenile' criminal laws and b) as part of a 'classical' criminal laws (Codes) applicable to all. Within the system of juvenile criminal law the basic type of criminal sanctions make corrective measures. However, all of the legislation created the possibility of applying criminal punishment (one or more) in special cases to the juvenile offenders. There are two different systems: a) specific juvenile detention and b) fines, imprisonmnets and community services and other types of sanctions (to be imposed on adult perpetrators). It needs to be underlined that certain jurisdictions define various forms of suspended sentence for minors. This papaer is about the concept, characteristics, types, terms and conditions for the application of penalties to the juvenile offenders in contemporary criminal law.

KEY WORDS: juvenile / offender / criminal act / responsibility / penalty / contemporary law

ULOGA ORGANA STARATELJSTVA U IZVRŠENJU VASPITNIH MERA (POGLED JEDNOG SUDIJE)

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Sistem maloletničkog pravosuđa u Republici Srbiji je povezan sa sistemom socijalne zaštite u svim kaznenim postupcima prema maloletnicima u sukobu sa zakonom. Po završetku krivičnog postupka kada je prema maloletnicima od strane nadležnog višeg suda pravnosnažno izrečena neka od vaspitnih mera organi starateljstva imaju izuzetno značajnu ulogu u pogledu izvršenja vaspitne mere. Iz ugla sudije za maloletnike predstavili smo ulogu organa starateljstva u izvršenju vaspitnih mera, probleme sa kojima se susrećemo da bi se u toku ograničenog trajanja izvršenja vaspitne mere mogli postići što bolji rezultati. A krajnji cilj izvršenja vaspitne mere je da se maloletni izvršilac krivičnog dela ponovo ne pojavi u sukobu sa zakonom. Ukazali smo na pojedine podatke iz zvanične statistike maloletničkog pravosuđa sa posebnim akcentom na vaspitne mere. Predstavili smo i određene podatke koji se odnose na postupanje organa starateljstva na području nadležnosti Višeg suda u Valjevu.

KLJUČNE REČI: organi starateljstva / izvršenje vaspitne mere / sudija za maloletnike

UVOD

U maloletničkom pravosuđu pored policije, javnih tužilaca i sudija za maloletnike izuzetno značajnu ulogu imaju organi starateljstva. Njihova uloga se pominje u brojnim odredbama Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica (dalje: ZM)[1]. Ovaj Zakon prvi put na jedinstven način reguliše celokupnu materiju koja se odnosi na maloletnike ali i određene kategorije punoletnih lica. U svim delovima ZM pominju se i organi starateljstva, njihova uloga, prava i obaveze.

O ulozi organa starateljstva u kaznenim postupcima prema maloletnicima (krivičnom i prekršajnom postupku) najčešće se govori u toku trajanja postupka, do pravnosnažnosti postupka. Vrlo retko se o njihovoj ulozi govori, bar sa aspekta pravosuđa, u postupku izvršenja krivičnih sankcija, pre svega izrečenih vaspitnih mera prema maloletnicima. U

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[1] Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica ("Sl.glasnik RS" br. 85/2005 počeo sa primenom od 1.1. 2006. godine).

ovom radu ograničenog obima pokušaćemo da ukažemo, upravo iz ugla pravosuđa – sudije za maloletnike, na značaj postupanja organa strateljstva u odnosu na izvršenje pojedinih vaspitnih mera u krivičnom postupku.

U radu smo ukazali i na određene podatke koji se odnose na postupanje organa starateljstva prilikom izvršenja vaspitnih mera na području nadležnosti Višeg suda u Valjevu.

1. ULOGA ORGANA STARATELJSTVA U POJEDINIM FAZAMA KRIVIČNOG POSTUPKA PREMA MALOLETNICIMA

Organi starateljstva imaju aktivnu ulogu u svim fazama postupka prema maloletnicima, počev od izbora i primene vaspitnog naloga koju vrši javni tužilac pored ostalih lica i sa nadležnim organom starateljstva[2]. Potom, u toku pripremnog postupka prema maloletnicima organi starateljstva imaju obavezu da dostave odgovarajuće mišljenje o maloletnicima koje sadrže brojne činjenice: koje se odnose na krivično delo, na osnovu kojih će se utvrditi uzrast maloletnika, činjenice potrebne za ocenu njegove zrelosti, koje se odnose na sredinu u kojoj i prilike pod kojima maloletnik živi i druge okolnosti koje se tiču njegove ličnosti i ponašanja[3]. U postupku po predlogu za izricanje krivičnih sankcija – bez razlike da li se održava sednica veća ili glavni pretres, predstavnici organa starateljstva su takođe, obavezno prisutni, izjašnjavaju se povodom mišljenja koji su dostavili u toku pripremnog postupka, svoje mišljenje eventualno dopunjuju sa novim podacima pribavljenim u periodu od kada su dostavili mišljenje do dana kada u sudu prisustvuju sednici veća – glavnom pretresu, odgovaraju na postavljena pitanja. Po pravnosnažnosti odluke koja je doneta prema licima na koja se primenjuju odredbe III odeljka (čl.87 ZM i sl.) a to su oni maloletni i punoletni učinioci krivičnih dela kojima je izrečena neka vaspitna mera ili kazna maloletničkog zatvora (Perić, 2005:211) organima starateljstva se obavezno dostavlja primerak pravnosnažne odluke – najčešće rešenja kojim se prema nekom maloletniku izriče vaspitna mera – iz sistema otvorene ili zatvorene zaštite. Jer, u sistemu krivičnih sankcija koje se izriču maloletnicima vaspitne mere su tradicionalno primarnog karaktera u odnosu na kazne koje se primenjuju izuzetno (Soković, 2008:252). Potvrda toga su i zvanični podaci o kojima će biti više reči u daljem tekstu. Takođe, organima starateljstva se dostavljaju i presude kada se prema maloletniku izriče kazna maloletničkog zatvora.

Njihova uloga posebno dolazi do izražaja u postupku izvršenja pojedinih vaspitnih mera otvorene zaštite u zavisnosti od odluke suda, bez obzira kojoj kategoriji učinilaca je izrečena pojedina vaspitna mera - da li maloletnim ili punoletnim učiniocima[4] i to:

- kod pojedinih oblika vaspitne mere **posebne obaveze**;
- kod vaspitne mere **pojačanog nadzora od strane roditelja, usvojioca ili staraoca**;
- kod vaspitne mere **pojačan nadzor od strane organa starateljstva**.

Vaspitne mere pojačan nadzor u drugoj porodici gde organi starateljstva imaju takođe svoju ulogu odnosno vaspitne mere pojačan nadzora uz obavezu dnevnog

[2] Čl.8.st.3. Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica.
[3] Čl.64.st.3. u vezi sa st.1. Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica.
[4] Čl.40. Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica.

boravaka u ustanovi za vaspitavanje i obrazovanje maloletnika nisu zaživele u praksi. Na to su ukazali pojedini autori u svojim istraživanjima koja su obavljena tokom 2008.godine (Perić, Milošević, Stevanović, 2008-131). Ti navodi pomenutih autora su i danas aktuelni.

Vaspitna mera pojačan nadzor u drugoj porodici nije zaživela jer još uvek na državnom nivou ne postoji spisak porodica u kojima bi se realizovala ova vaspitna mera. Osim toga i pored nekih pokušaja ne radi se dovoljno na razvoju specijalizovanog hraniteljstva, s tim da u ovom radu nećemo ulaziti zašto je to tako. Pojedinačni slučajevi izricanja ove vaspitne mere na godišnjem nivou uglavnom su posledica slučaja da je neko od članova šire porodice preuzeo brigu o maloletnim učiniocima krivičnih dela prema kojima je izrečena takva vaspitna mera.

2. ZAKONODAVNE REFORME U SISTEMU SOCIJALNE ZAŠTITE

U vreme početka primene ZM od 1.1.2006.godine u sistemu socijalne zaštite na snazi je bio stari Zakon o socijalnoj zaštiti (dalje: stari ZSZ)[5]. Organi starateljstva su u radu bili upućeni i na Pravilnik o organizaciji, normativima i standardima rada centra za socijalni rad (dalje: Pravilnik)[6].

Do 2011.godine i početka primene novog Zakona o socijalnoj zaštiti (dalje: ZSZ)[7] sistem socijalne zaštite bio je ustrojen tako da su u organima starateljstva u postupcima prema maloletnicima u sukobu sa zakonom u tim predmetima postupali tzv.stručni timovi sastavljeni od tri stručna lica, po pravilu, i to: socijalni radnik, pedagog i psiholog. To je bio nastavak prakse iz perioda važenja Zakona o krivičnom postupku SFRJ (dalje: ZKP SFRJ)[8]odnosno prethodnog Zakonika o krivičnom postupku (dalje: prvi Zakonik)[9]. Na osnovu novog ZSZ donet je i novi podzakonski propis o organizaciji rada organa starateljstva – Pravilnik o stručnim poslovima u socijalnoj zaštiti (dalje: novi Pravilnik)[10] kojim su delimično zamenjene pojedine odredbe Pravilnika. A jedna od značajnih novina u tim novim propisima iz oblasti socijalne zaštite je da su umesto stručnog tima tokom 2011.godine počeli da se pojavljuju tzv. voditelji slučaja.

3. POSTUPANJE PREMA MALOLETNICIMA U SUKOBU SA ZAKONOM I PROBLEMI U RADU ORGANA STARATELJSTVA U TOKU POSTUPKA

Sa pojavom voditelja slučaja počinju i prvi problemi u praksi od značaja za postupanje organa starateljstva u svim fazama postupka prema maloletnicima. Problemi se ogledaju u tome što se kao tzv.voditelji slučaja pored lica koja su u ranijem periodu godinama bili članovi stručnog tima u postupcima prema maloletnicima u sukobu sa zakonom pojavljuju nova stručna lica iz organa starateljstva koja do tada nikada nisu postupali u ovim

[5] Zakon o socijalnoj zaštiti ("Sl.glasnik RS" br. 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/2001, 84/2004, 101/2005, 115/2005).
[6] Pravilnik o organizaciji, normativima i standardima rada centra za socijalni rad ("Sl.glasnik RS" br. 59/2008, 37/2010, 39/2011, 1/2012).
[7] Zakon o socijalnoj zaštiti ("Sl.glasnik RS" br. 24/2011).
[8] Zakon o krivičnom postupku ("Sl.list SFRJ" br. 4/77, 36/77, 14/85, 26/86 (prečišćen tekst), 74/87, 57/89, 3/90, "Sl.list SRJ" br. 27/92, 24/94, (21/99, 44/99), 71/2000, 13/2001).
[9] Zakonik o krivičnom postupku ("Sl.glasnik RS" br. 46/2006, 49/2007, 122/2008).
[10] Pravilnik o stručnim poslovima u socijalnoj zaštiti ("Sl.glasnik RS" br. 1/2012, 42/13).

predmetima – lica koja su radila na poslovima porodično pravne zaštite, materijalnog obezbeđenja, itd. Pojedina od tih lica nikada nisu bila u kontaktu sa maloletnikom, odnosno sa maloletnikom koji se nalazi u pritvoru, pa se plaše – imaju strah da obave razgovor sa takvim maloletnikom u pritvorskim prostorijama, gde se maloletnici nalaze po rešenju sudije za maloletnike nadležnog višeg suda. Na to su u pojedinim istraživanjima ukazivali i predstavnici pojedinih organa starateljstva (Satarić, N., Obradović, D., 2011 - 40). Pojedini autori ukazuju i da je primetno i da "novi" stručnjaci koji se pojavljuju kao voditelji slučaja nemaju dovoljna znanja o krivičnom postupku prema maloletnicima, ulozi organa starateljstva u tom postupku, te opštem kontekstu u kojem se njihovo postupanje odvija kako u domenu sudskog postupka, tako i porodično pravne zaštite, za čije su realizovanje nadležni (Stevanović i dr, 2012).

Pojava voditelja slučaja dovodi i do slabijeg kvaliteta - nepotpunih izveštaja koji oni dostavljaju nadležnom sudiji za maloletnike na njegov zahtev u pokrenutim krivičnim postupcima. Posebno, u njihovim izveštajima – mišljenjima koje dostavljaju u toku pripremnog postupka retko se, uz časne izuzetke, pominje zrelost maloletnika, pojam koji je prvi put unet u odredbe ZM kao jedna od okolnosti na koje sud treba da obrati pažnju prilikom izricanja vaspitne mere[11]. A u pojedinim slučajevima kada se radi o maloletniku u sukobu sa zakonom koji osnovnu školu pohađa u okviru procesa inkluzije i koji je izvršio krivično delo dostavlja se od strane voditelja slučaja izveštaj kao da se radi o najzdravijoj osobi – maloletniku, tako da se ne može na bilo koji način zaključiti da taj maloletnik ima neki zdravstveni problem (Obradović, 2015: 391-392). Jedan od izuzetaka, kada se organ starateljstva izjasnio o zrelosti mlađe punoletne osobe optužene u krivičnom postupku je posledica izveštaja u kome je izričito navedeno da optužena nije dovoljno socijalno i emocionalno zrela za svoj uzrast na osnovu zapisanih podataka koji su dobijeni od roditelja optužene te sagledavanja celokupne porodične situacije. Veštak neuropsihijatar je na glavnom pretresu prihvatila te podatke i dopunila pismeni nalaz i mišljenje[12].

Nisu retke situacije da predstavnici organa starateljstva i dalje postupaju po navici, pa daju predlog koje vaspitne mere treba eventualno da nadležni sud izrekne maloletniku u sledećoj fazi postupka, posle saslušanja maloletnika u toku pripremnog postupka. Osim toga, njihovi izveštaji postaju u velikoj meri stereotipni. To se odnosi na sve faze postupka – do pravnosnažnosti a takođe i u postupku izvršenja vaspitne mere posle pravnosnažnosti rešenja kojim je prema nekom maloletniku izrečena vaspitna mera – bilo otvorene ili zatvorene zaštite.

Međutim, realnost je da postoje i objektivni problemi u radu organa starateljstva kao što su nedovoljan broj stručnih radnika u organima starateljstva i preopterećenost poslom, na šta su ukazivali i pojedini autori iz sistema socijalne zaštite pre više godina (Vukotić, Grmuša, 2012). Na smanjenje broja stručnih radnika – ljudskih resursa u organima starateljstva kao objektivan problem ukazuju i drugi autori (Stevanović, 2014: 361). To pokazuju i podaci do kojih smo došli kroz jedno istraživanje na području u nadležnosti Višeg suda u Valjevu, ali i van tog područja.

[11] Čl.12. Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica.
[12] Pravnosnažna presuda Višeg suda u Valjevu K.br. 15/16 od 29.7.2016. – neobjavljeno

Tabela 1: Broj zaposlenih u pojedinim organima starateljstva

Organ starateljstva	Valjevo	Ljig (Ub i Lajkovac)	Ub	Trstenik
Broj zaposlenih	38	16	10	18
Nedostaje zaposlenih	2	1	2	1
Ukupan broj voditelja slučaja	18	9	5	6
Koliko voditelja trenutno radi sa decom u sukobu sa zakonom	7	8	3	5
Da li ti voditelji rade i druge poslove	Da	Da	Da	Da

Ovi podaci pokazuju da u svim ovim organima starateljstva nedostaje zaposlenih. To se odražava i na postupanje voditelja slučaja u postupku izvršenja vaspitnih mera jer rade i druge poslove.

Osim toga, voditelji slučaja suočavaju se i sa dodatnim teškoćama kada su maloletnici u sukobu sa zakonom u pitanju. Naime, mnogi od tih voditelja nikada nisu pisali izveštaje za sud, imaju obavezu da rade i sa krivično neodgovornom decom, da sarađuju sa roditeljima – starateljima maloletnika koji su u sukobu sa zakonom, te da motivišu i ta lica na saradnju, na šta su takođe ukazivali drugi autori iz sistema socijalne zaštite pre više godina (Đolović, Dumnić, 2012). To je posledica i izostanka zajedničke obuke predstavnika organa starateljstva sa ostalim službenim licima koja učestvuju u postupku prema maloletnicima pred početak primene ZM krajem 2005.godine i nakon početka primene ZM. A tu obuku su prošli pripadnici MUP RS u saradnji sa Pravosudnim centrom za obuku i stručno usavršavanje, a takođe sudije i javni tužioci za maloletnike u okviru pomenute institucije. Na to su ukazali pre deset godina pojedini autori koji su naveli da proces reforme sistema socijalne zaštite još uvek nije usklađen sa reformom u sistemu maloletničkog pravosuđa, tako da i pored široke lepeze koje stoje na raspolaganju sudu, u praksi se neke od njih ograničeno primenjuju (Perić, Milošević, Stevanović, 2008 -152). Obuka sudija, javnih tužilaca, pripadnika policije, ali i advokata u saradnji sa nadležnim advokatskim komorama sa različitih područja u Republici Srbiji kontinuirano traje i od početka rada nove mreže sudova od 2010.godine, koji datum je i istovremeno datum početka rada Pravosudne akademije. Suštinski, sva službena lica koja učestvuju u postupku prema maloletnicima u sukobu sa zakonom prošla su ili prolaze pojedine obuke u saradnji sa Pravosudnom akademijom. Svi osim predstavnika sistema socijalne zaštite – predstavnika organa starateljstva, koji su tesno povezani u svom radu sa svim ovim službenim licima, kako u krivičnom postupku tako i u prekršajnim postupcima prema maloletnim izvršiocima prekršaja.

4. PODACI O IZREČENIM KRIVIČNIM SANKCIJAMA PREMA MALOLETNICIMA

Vaspitne mere su godinama dominanatna krivična sankcija koja se izriče prema maloletnim učiniocima krivičnih dela, što potvrđuju zvanični podaci o izrečenim krivičnim sankcijama prema maloletnicima u periodu 2007-2016, a što se uočava iz sledeće tabele.[13]

[13] Republika Srbija Republički zavod za statistiku, Bilten 630, Beograd, 2017, Maloletni učinioci krivičnih dela u Republici Srbiji, 2016, - Prijave, optuženja i osude –.

Tabela 2: Maloletnici – izrečene krivične sankcije, prema izrečenim krivičnim sankcijama, 2007.–2016. godine

	2007	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
Republika Srbija	1996	2229	1902	1640	2290	**2302**	**2648**	**2034**	**1926**	**2032**
Mlađi maloletnici	**830**	**992**	**791**	**670**	**979**	**984**	**1094**	**825**	**744**	**783**
Vaspitne mere	830	992	791	670	979	984	1094	825	744	783
Mere upozorenja i usmeravanja	405	468	363	316	452	460	471	428	386	406
Mere pojačanog nadzora	385	460	387	320	467	472	559	362	320	327
Zavodske mere	40	64	41	34	60	52	64	35	38	50
Stariji maloletnici	**1166**	**1237**	**1111**	**970**	**1311**	**1318**	**1554**	**1209**	**1182**	**1249**
Maloletnički zatvor	30	17	19	5	13	2	8	6	9	9
Vaspitne mere	1136	1220	1092	965	1298	1316	1546	1203	1173	1240
Mere upozorenja i usmeravanja	481	479	471	431	562	535	651	576	594	639
Mere pojačanog nadzora	614	684	573	509	692	728	818	573	543	550
Zavodske mere	41	57	48	25	44	53	77	54	36	5

Prilikom izricanja, od strane nadležnih viših sudova, dominantne su vaspitne mere iz otvorene zaštite, dok se zavodske vaspitne mere retko izriču i u poslednjih pet godina to je u proseku 4-5% sa izuzecima 2013.godine kada ih je bilo oko 6% odnosno 2016.godine kada je izrečeno oko 2,5% zavodskih vaspitnih mera. A jedina kazna koja se može izreći starijim maloletnicima – maloletnički zatvor se na godišnjem nivou izriče u proseku u poslednjih pet godina (period od 2012-2016) do maksimalno 0,5%. Ovi podaci se sagledavaju iz prethodno navedene tabele.

Naš fokus u radu usmeren je na dominantne vaspitne mere iz otvorene zaštite: na vaspitne mere iz grupe upozorenja i usmeravanja odnosno vaspitne mere pojačanog nadzora. S tim u vezi su i podatci o izricanju tih vaspitnih mera u proteklom periodu.

Na osnovu zvaničnih podataka u poslednje tri godine (period od 2014-2016) između ove dve grupe vaspitnih mera češće se izriču vaspitne mere upozorenja i usmeravanja, s tim da se uočava da su vaspitne mere posebne obaveze preuzele primat u odnosu na drugu vaspitnu meru iz te grupe – sudski ukor. Konkretni podaci se utvrđuju na osnovu sledeće tabele[14].

[14] Republika Srbija Republički zavod za statistiku, Bilten 630, Beograd, 2017, Maloletni učinioci krivičnih dela u Republici Srbiji, 2016, - Prijave, optuženja i osude; Republika Srbija Republički zavod za statistiku, Bilten 618, Beograd, 2016, Maloletni učinioci krivičnih dela u Republici Srbiji, 2015, - Prijave, optuženja i osude –.

Tabela 3: Maloletnici – izrečene krivične sankcije prema vrsti sankcije – posebne obaveze, 2015. i 2016. godina

Maloletnici – izrečene krivične sankcije prema vrsti sankcije – posebne obaveze, 2016.

	UKUPNO	SVEGA	TAČKA									
			1	**2**	**3**	**4**	**5**	6	7	**8**	9	10
Mere upozorenja i usmeravanja – posebne obaveze (član 14, stav 2)	**2032**	**705**	37	16	**138**	**62**	**399**	5	5	**77**	11	-

Maloletnici – izrečene krivične sankcije prema vrsti sankcije – posebne obaveze, 2015.

	UKUPNO	SVEGA	TAČKA									
			1	**2**	**3**	**4**	**5**	6	7	**8**	9	10
Mere upozorenja i usmeravanja – posebne obaveze (član 14, stav 2)	**1926**	**608**	35	12	**86**	**81**	**399**	6	10	**63**	11	1

Kod vaspitnih mera pojačanog nadzora u posmatranom periodu dominantne su vaspitne mere pojačan nadzor od strane roditelja, usvojioca ili staraoca odnosno pojačan nadzor od strane organa starateljstva. Ostale dve vaspitne mere iz ove grupe se izriču na nivou statističke greške.

5. POVEZANOST ORGANA STARATELJSTVA I SUDIJA ZA MALOLETNIKE U POSTUPKU IZVRŠENJA VASPITNIH MERA

Osim organa starateljstva čija uloga se nastavlja posle izricanja pojedine vaspitne mere iz otvorene zaštite prema maloletniku u sukobu sa zakonom, izricanjem odgovarajaće krivične sankcije – vaspitne mere - pre svega, kazne maloletničkog zatvora ili mere bezbednosti medicinskog karaktera ne završava se ni uloga suda u postupku prema maloletnicima. Naprotiv, sudija za maloletnike i dalje je uključen u predmet, u postupku izvršenja vaspitne mere i po pravnosnažnosti odnosno izvršnosti rešenja dostavlja isto nadležnom organu starateljstva i vrši nadzor nad sprovođenjem mere. Nadležni organ starateljstva dužan je da svakih šest meseci dostavlja sudu i javnom tužiocu za maloletnike izveštaj o toku izvršenja vaspitnih mera pojačanog nadzora koje su relativno neodređenog trajanja (od 6 meseci do 2 godine) prema maloletniku prema kome su pojedine vaspitne mere izrečene, a na zahtev sudije za maloletnike ovaj izveštaj dostavlja i u kraćem vremenskom roku[15]. Osim toga, organ starateljstva shodno odredbama Pravilnika o izvršenju vaspitnih mera posebnih obaveza (dalje: Pravilnik p.o.)[16] izveštava nadležni sud o toku i rezultatima izvršenja pojedinih od izrečenih vaspitnih mera posebne obaveze. Takođe, organ starateljstva kome je poveren nadzor nad maloletnikom ovlašćen je, kada su ispunjeni uslovi predviđeni u ZM za izmenu ili obustavu odluke o izrečenoj vaspitnoj meri, da to predloži sudu koji je u prvom stepenu doneo rešenje o vaspitnoj meri. U tim slučajevima predstavnik organa starateljstva obavezno prisustvuje sednici veća za maloletnike, ;ime se zaokružuje procesna uloga organa starateljstva u postupku izvršenja vaspitnih mera.

Naglašena fleksibilnost i izvesna neformalnost u postupanju u toku izvršenja treba da obezbedi da se u svakom pojedinačnom slučaju postupak prilagodi uzrastu i zrelosti maloletnika. ... Nužno je aktivnije postupanje sudija, javnih tužilaca, i centara za socijalni

[15] Čl.84 st.2. Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica.
[16] Pravilnik o izvršenju vaspitnih mera posebne obaveze ("Sl.glasnik RS" br. 94/2006).

rad u toku izvršenja, u smislu praćenja rezultata i kontrole izvršenja vaspitnih mera. Praćenje i analiziranje prakse izvršenja sankcija prema maloletnicima treba da ukaže na teškoće u primeni i razdvoji problem koji nastaju zbog nejasnih ili nefunkcionalnih normativnoih rešenja, sa jedne strane, i problem koji su posledica neadekvatnih uslova za primenu (Soković, 2008: 262)

6. IZVRŠENJE VASPITNIH MERA I ULOGA ORGANA STARATELJSTVA

ZM sadrži opšte odredbe koje se odnose na izvršenje svih vaspitnih mera i posebne odredbe za izvršenje pojedinih vaspitnih mera – posebnih obaveza odnosno pojačanog nadzora, gde se posebno navode odredbe koje se odnose na svaku od vaspitnih mera. U okviru izvršenja vaspitnih mera pažnju smo usmerili na tri vaspitne mere koje se najčešće izriču u sudskoj praksi – posebne obaveze, pojačan nadzor od strane roditelja, usvojioca ili staraoca odnosno pojačan nadzor od strane organa starateljstva.

Izvršenje vaspitnih mera posebne obaveze propisuje i ulogu organa starateljstva da na zahtev sudije za maloletnike nadležnog prvostepenog suda koji je doneo odluku dostavi izveštaj o toku i rezultatima izvršenja izrečene mere posebne obaveze.

U odredbama materijalnopravnog dela ZM predviđeno je 10 posebnih obaveza koje se mogu izreći prema maloletnim odnosno pojedinim kategorijama punoletnih izvršilaca tih krivičnih dela. Ova vaspitna mera izriče se pojedinačno (pri čemu se može izreći jedna ili više posebnih obaveza prema jednom licu) ili zajedno i sve češće sa nekom od vaspitnih mera pojačanog nadzora. Pravilnik p.o. predstavlja normativni okvir za realizaciju posebnih obaveza. S tim u vezi su i problemi koje smo uočili u sudskoj praksi. Naime, u praksi se pojavila neusklađenost u vezi sa izveštavanjem suda o izvršenju ove vaspitne mere od strane organa starateljstva. Njihova uloga u tom delu nije potpuno precizna jer je odredbama Pravilnika p.o. propisano da o sprovođenju posebne obaveze predstavnik organ starateljstva najmanje jednom mesečno izveštava sudiju za maloletnike[17]. Nije nam poznato da je u bilo kojoj izreci prvostepenog rešenja sudija za maloletnike nadležnog suda kada je izrekao vaspitnu meru posebne obaveze u izreci rešenja naveo da je organ starateljstva u obavezi da redovno, svakih mesec dana, dok posebna obaveza traje, dostavi izveštaj sudu. Ni autor ovog rada to nikada nije naveo u bilo kom rešenju kada je prema maloletniku izrekao vaspitnu meru posebne obaveze. To se odnosi kako na situacije kada se ove vaspitne mere izriču samostalno tako i na situacije kada se ove vaspitne mere izriču kumulativno uz neke vaspitnu meru pojačanog nadzora. A takvih je situacija sve više u praksi, što pokazuju i zvanični podaci u sledećoj tabeli[18].

[17] čl. 13, 16, 24, 27, 30, 33 i 36 Pravilnika o izvršenju vaspitnih mera posebne obaveze

[18] Republika Srbija Republički zavod za statistiku, Bilten 630, Beograd, 2017, Maloletni učinioci krivičnih dela u Republici Srbiji, 2016, - Prijave, optuženja i osude; Republika Srbija Republički zavod za statistiku, Bilten 618, Beograd, 2016, Maloletni učinioci krivičnih dela u Republici Srbiji, 2015, - Prijave, optuženja i osude –.

Tabela 4: Mere pojačanog nadzora – posebne obaveze uz meru pojačanog nadzora (član 19)

	2015	2016
Mere pojačanog nadzora – posebne obaveze uz meru pojačanog nadzora (član 19)	**34**	**52**

Osim toga, u izvršenju pojedinih posebnih obaveza i danas, posle duže od 10 godina od početka primene ZM postoje problemi koje organi starateljstva ne mogu da adekvatno prevaziđu zbog nedostatka sredstava, ali i nedovoljnog broja zaposlenih, naročito u poslednje vreme od kada u Republici Srbiji postoji ograničenje u zapošljavanju u državnom sektoru[19]. To pokazuje i analiza podataka Republičkog zavoda za statistiku. To se pre svega odnosi na posebne obaveze iz tačke 6 (da se uključi u određene sportske aktivnosti) i 9 (da pohađa kurseve za stručno osposobljavanje ili da se priprema i polaže ispite kojima se proverava određeno znanje) ZM, a u nešto manjoj meri i na posebne obaveze iz tačke 2 (da u okviru sopstvenih mogućnosti naknadi štetu koju je prouzrokovao) odnosno tačke 7 (da se podvrgne odgovarajućem ispitivanju i odvikavanju od zavisnosti izazvane upotrebom alkoholnih pića ili opojnih droga). Na to ukazuju i poslednji zvanični podaci[20]. Na identične odnosno slične probleme u primeni pojedinih posebnih obaveza ukazivali su pre više godina i drugi autori iz redova sudija (Simonović, 2012:301). Osim toga, u odnosu na pojedine posebne obaveze ne zna se ni posle celokupnog dosadašnjeg perioda ko treba da snosi troškove realizacije tih posebnih obaveza.

I dalje se u praksi svih viših sudova najčešće od posebnih obaveza izriče bilo samostalno ili zajedno sa nekom vaspitnom merom iz grupe pojačanog nadzora posebna obaveza iz tačke 5 (da

se bez naknade uključi u rad humanitarnih organizacija ili u poslove socijalnog, lokalnog ili ekološkog sadržaja) koja se izriče u više od 50% od svih izrečenih posebnih obaveza na godišnjem nivou tokom 2015. odnosno 2016.godine, što pokazuju zvanični podaci[21].

U postupku izvršenja vaspitne mere pojačan nadzor od strane roditelja, usvojioca ili staraoca organ starateljstva ima kontrolnu ulogu - vrši proveru izvršenja vaspitne mere od strane roditelja, usvojioca ili staraoca i ovim licima po potrebi pruža pomoć u cilju njenog izvršenja. Kontrolna uloga sastoji se i u obavezi da obaveštava sud koji je sudio u prvom stepenu o toku i rezultatima izvršenja vaspitne

[19] Odluka o maksimalnom broju zaposlenih na neodređeno vreme u sistemu državnih organa, sistemu javnih službi, sistemu APV i sistemu lokalne samouprave za 2015.godinu – "Sl.glasnik RS", br.101/2015, 114/2015, 10/2016, 22/2016, 45/2016, 43/2017, 61/2017

[20] Republika Srbija Republički zavod za statistiku, Bilten 630, Beograd, 2017, Maloletni učinioci krivičnih dela u Republici Srbiji, 2016, - Prijave, optuženja i osude –: Tokom 2016.godine izrečeno je 5 posebnih obaveza iz tačke 6 a 11 posebnih obaveza iz tačke 9. Još dve posebne obaveze se ne primenjuju dovoljno. Naime, tokom 2016.godine izrečeno je 16 posebnih obaveza iz tačke 2 i 5 posebnih obaveza iz tačke 7.

[21] Republika Srbija Republički zavod za statistiku, Bilten 630, Beograd, 2017, Maloletni učinioci krivičnih dela u Republici Srbiji, 2016, - Prijave, optuženja i osude – :Tokom 2016.godine izrečeno je ukupno 705 vaspitnih mera posebnih obaveza, a od tog broja je 399 posebnih obaveza iz tačke 5. Isti broj posebnih obaveza iz tačke 5 – 399 je izrečeno i tokom 2015.godine kada je izrečeno ukupno 608 svih posebnih obaveza – videti Tabelu 3. Republika Srbija Republički zavod za statistiku, Bilten 618, Beograd, 2016, Maloletni učinioci krivičnih dela u Republici Srbiji, 2015, - Prijave, optuženja i osude –.

mere u rokovima propisanim u odredbama ZM – na svakih 6 meseci, a bez odlaganja i o razlozima koji otežavaju izvršenje mere.

U postupku izvršenja vaspitne mere pojačan nadzor organa starateljstva u odredbama ZM propisane su obaveze organa starateljstva - dužan je da po prijemu izvršne odluke kojom je vaspitna mera pojačanog nadzora izrečena, odredi službeno lice organa starateljstva ili drugo stručno lice koje će meru sprovoditi i o tome odmah obavesti sudiju za maloletnike suda koji je sudio u prvom stepenu. Stručno lice kome je povereno sprovođenje vaspitne mere sačinjava program rada sa maloletnikom, u skladu sa uputstvima suda i nadležnog organa starateljstva. Državni organi, vaspitne, obrazovne i druge ustanove dužni su da stručnom licu koje sprovodi ovu vaspitnu meru pruže pomoć, a roditelj, usvojilac ili staralac dužan je da obavesti stručno lice o prilikama koje otežavaju izvršenje mere. U svemu ostalom na izvršenje vaspitne mere pojačanog nadzora od strane organa starateljstva shodno se primenjuju odredbe ZM kojima se uređuje izvršenje vaspitne mere pojačanog nadzora od strane roditelja, usvojioca ili staraoca.

Prilikom izvršenja ove vaspitne mere organi starateljstva dostavljaju i dalje, posle duže od deset godina od početka primene ZM često i neblagovremeno, stereotipne planove izvršenja ovih vaspitnih mera. U mnogim slučajevima stručna lica organa starteljstva ne poštuju princip individualizacije u odnosu na pojedine maloletnike, pa planovi izvršenja liče jedni na druge po sistemu "copy paste". Na to su takođe, ukazivali pre više godina pojedini autori iz redova sudija (Simonović, 2012:302). A na to je tokom početnog perioda primene ZM takođe, ukazivao i sudija Nikola Milošević, koji je ceo svoj radni vek posvetio maloletničkom pravosuđu, koji pored ostalog navodi da programi rada u cilju izvršenja vaspitnih mera uopšte nisu sačinjavani, ili su, ako su i sačinjavani, bili formalizovani, šturi i "prazni" uz rečenicu ili dve da će se raditi sa maloletnikom u saniranju dotadašnjeg ponašanja, ili su bili "uniformisani" ličili jedan na drugi kao "jaje jajetu" iz čega bi se moglo zaključiti da su sačinjavani da se zadovolji forma, zahtevi pravosuđa ili stručnog i upravnog nadzora a ne da se ispuni suštinska obaveza, u odnosu na dalji tretman maloletnika (Milošević, 2007: 11).

Evidentno je i da organi starateljstva u nedostatku kadrova ne koriste ili ne koriste u dovoljnoj meri mogućnosti koje im pružaju odredbe ZM - da angažuju drugo stručno lice koje će sprovoditi vaspitnu meru pojačan nadzor od strane organa starateljstva.

7. IZVRŠENJE VASPITNIH MERA NA PODRUČJU VIŠEG SUDA U VALJEVU

U sudskim postupcima prema maloletnicima na teritoriji u nadležnosti Višeg suda u Valjevu izveštaje dostavljaju organi starateljstva iz Valjeva, Uba, Osečine i zajednički CSR "Solidarnost"Ljig za teritorije opština Ljig, Mionica i Lajkovac. Za proveru prethodnih navoda koji se odnose na pojedine uočene probleme izvršili smo kratko istraživanje postupanja pojedinih organa starateljstva u tom pogledu na području koje je u nadležnosti Višeg suda u Valjevu.

Obzirom na zanemarljiv broj maloletnika u sukobu sa zakonom sa teritorije opština Osečina u prethodnom periodu, umesto podataka koje se odnose na to područje u radu smo analizirali određene podatke koji se odnose na organ starateljstva sa područja Višeg suda u Kruševcu - iz Trstenika, da pokušamo da proverimo da li se isti ili slični problemi pojavljuju i na tom području. Uočili smo da kod posmatranih organa

starateljstva pored već uočenih nedostataka u pogledu broja zaposlenih primetan je rast broja svih predmeta u radu u poslednje tri godine, odnosno postoji razlika u pojedinim opštinama kada su u pitanju maloletnici u sukobu sa zakonom razlikuje što se uočava u sledeće dve tabele [22].

Tabela 5: Broj predmeta u radu u pojedinim organima starateljstva

Broj predmeta u radu po godinama	Valjevo	Ljig (Ub i Lajkovac)	UB	Trstenik
2015	5680	1624	2061	265
2016	4900	1718	2416	289
2017	6722	1925	2570	314

Tabela 6: Broj predmeta maloletnici u sukobu sa zakonom u pojedinim organima starateljstva

Broj predmeta maloletnici u sukobu sa zakonom	Valjevo	Ljig (Ub i Lajkovac)	UB	Trstenik
2015	330	312	198	18
2016	263	324	28	17
2017	223	356	58	28

Posmatrajući sa aspekta sudije za maloletnike rad organa starateljstva u postupku izvršenja pojedinih vaspitnih mera, pre svega pojačanog nadzora, značajno je bilo proveriti u kom periodu se posle pravnosnažnosti rešenja kojim je izrečena pojedina vaspitna mera i dostavljanja izvršnog rešenja nadležnom organu starateljstva na području Višeg suda u Valjevu dostavljaju plan realizacije vaspitne mere odnosno pojedinačni izveštaji od strane organa starateljstva što se uočava u sledeće dve tabele [23].

Tabela 7: Vreme dostavljanje plana realizacije vaspitnih mera sudu

Godina	ukupno v.m.	do mesec dana	1-3 meseca	urgencija sudije	posle urgencije	ostalo
2016	27	16	9	1	1	1 VPD
2017	20	8	7	3	3	1 MZ

Tabela 8: Dostavljanje pojedinačnih izveštaja u toku izvršenja vaspitne mere

Godina	ukupno v.m.	do 6 m.	preko 6 m.	urgencija sudije	posle urgencije	ostalo
2016	27	6	19	1	1	1 VPD 1 nije dostavljen
2017	20	9	8	4	4	2 MZ 1 zamena v.m.

Na osnovu navedenih podataka možemo zaključiti da se plan realizacije vaspitnih mera dostavlja u najvećem broju slučajeva u periodu do mesec dana odnosno do tri meseca od dana prijema izvršnog rešenja u nadležni organ starateljstva. Naravno bio je i pojedinačnih slučaja da je sudija za maloletnike morao da urgira za dostavu plana realizacije vaspitne mere. Kada je u pitanju dostavljanje pojedinačnih izveštaja u toku

[22] Podaci o radu CSR "Kolubara" Valjevo, CSR Ub, Zajednički CSR "Solidarnost"Ljig i CSR "Trstenik" za 2015,2016, 2017.godinu - neobjavljeno

[23] Podaci o radu CSR "Kolubara" Valjevo, CSR Ub, Zajednički CSR "Solidarnost"Ljig i CSR "Trstenik" za 2015,2016, 2017.godinu - neobjavljeno

izvršenja vaspitnih mera uočavamo veći broj predmeta u kojima se ovi izveštaji dostavljaju posle proteka vremena propisanog odredbama ZM.

ZAKLJUČAK

Organi starateljstva su nezaobilazni deo svakog kaznenog (krivičnog ali i prekršajnog) postupka prema maloletnicima u sukobu sa zakonom. Njihova uloga se ne završava donošenjem odluke kojom se izriče pojedina vaspitna mera, izuzetno i kazna maloletničkog zatvora od strane nadležnog suda, već je izuzetno značajna i u postupku izvršenja tih odluka. Smatramo da postoje objektivni problemi koji otežavaju rad organa starateljstva koji se ogledaju u nedovoljnom broju zaposlenih, povećanom broju predmeta iz svih oblasti u njihovom radu.

Uvođenje voditelja slučaja umesto dotadašnjih stručnih timova koji su radili sa maloletnicima u sukobu sa zakonom od 2011.godine nije dovelo do poboljšanja kvaliteta rada u predmetima maloletnika u sukobu sa zakonom. Po pravilu, voditelji slučaja postupaju u svim materijama iz nadležnosti organa starateljstva, a samo izuzetno isključivo u predmetima maloletnika u sukobu sa zakonom. Sve to utiče i na kvalitet rada, na dostavljanje plana realizacije vaspitne mere, sadržaj tog plana kao i blagovremeno u skladu sa Zakonom dostavljanje pojedinačnih izveštaja u toku izvršenja vaspitnih mera.

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THE ROLE OF GUARDIANSHIP AUTHORITY IN ENFORCEMENT OF EDUCATIONAL MEASURES (VIEW OF ONE JUDGE)

The system of juvenile justice in the Republic of Serbia is linked to the system of social protection in all criminal proceedings against juveniles in conflict with the law. Upon completion of the criminal proceedings when some juvenile offenders have been legally pronounced to juveniles by the competent higher court, the guardianship authorities have an extremely important role in the execution of the educational measure. From the perspective of the juvenile judge, we presented the role of the guardian in the execution of educational measures, problems encountered to a limited duration during the execution of educational measures could achieve better results. And the ultimate goal of enforcing the educational measure is that the juvenile perpetrator of the crime does not appear again in conflict with the law. We pointed out some data from the official statistics of juvenile justice with special emphasis on educational measures. We also presented certain data related to the treatment of the guardianship authority in the field of jurisdiction of the Higher Court in Valjevo.

KEY WORDS: guardianship authority / enforcement of educational measures / juvenile judge

POST-INSTITUTIONAL CARE OF JUVENILE PERPETRATORS OF CRIMINAL OFFENCES IN SERBIA-KEY PROBLEMS IN LEGISLATION AND PRACTICE[*]

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The lack of adequate, prompt and comprehensive post-institutional care of juvenile perpetrators of criminal offences after the execution of custodial educational measures or juvenile prison sentence is a serious obstacle for the accomplishment of their essential goal- re-education of juveniles and prevention of their recidivism. Therefore, the authors of this paper analyse legal provisions that regulate the imposing and enforcement of custodial educational measures and juvenile prison sentence as well as those that are relevant to the application of post-institutional care in the Republic of Serbia. Moreover, current state in our country in this field is presented from the standpoint of experts working with juveniles who have left institutions for the enforcement of custodial sanctions. The examples of successful social reintegration of juveniles who have been included in post-institutional care but also numerous practical problems regarding post-institutional care of juveniles are also highlighted. Finally, the steps that need to be made at normative and practical level in order to facilitate the application of post-institutional treatment of juveniles are suggested.

KEY WORDS: post-institutional care / juveniles / recidivism / reintegration / juvenile prison / correctional-institution

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1. INTRODUCTION: THE POSITION OF JUVENILE PERPETRATORS OF CRIMINAL OFFENCES IN CURRENT LEGISLATION OF THE REPUBLIC OF SERBIA

The prevention and suppression of juvenile delinquency and social reintegration of young offenders is a serious challenge for all contemporary legal systems (Stevanović, Batrićević, Milojević, 2016: 309). Moreover, finding an appropriate response to cases involving the commission of the most serious criminal offences by juveniles, when custodial sanctions are imposed, represents a particularly difficult and complex issue. Strictly interpreted, the term "juvenile perpetrator of a criminal offence" is not an appropriate one since criminal offence cannot exist without the guilt of its perpetrator (in accordance with objective-subjective theory of criminal offence from Article 14 of Criminal Code of the Republic of Serbia)[1] (hereinafter: CCRS). (Jovašević, 2008: 469). It is much more suitable to use the term "juvenile in conflict with the law" instead.

The position of juvenile perpetrators of criminal offences in the Republic of Serbia is regulated by the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles[1] (hereinafter: LJCOCPJ) that came into force on January 1st 2006. By adopting LJCOCPJ, Serbia regulated the position of juveniles in criminal law in one legal document for the first time and in a much more comprehensive manner in comparison to previous periods (Ćopić, 2014: 216-217). In that way, a complete body of juvenile criminal law with an array of exceptions and solutions that differ from those designed for adult perpetrators of criminal offences was created (Soković, 2008: 251).

The provisions of LJCOCPJ regulate: substantial criminal law, bodies in charge of its application, criminal procedure and the enforcement of criminal sanctions for juvenile perpetrators of criminal offences, as well as the protection of children and juveniles as damaged parties in criminal procedure. Its provisions are also applied on adults during the trial for criminal offences they have committed as juveniles (provided that other conditions prescribed by the law are fulfilled) as well as on the persons who committed criminal offences as young adults (Article 1 LJCOCPJ). Other laws such as: CCRS, Criminal Procedure Code[2] (hereinafter: CPC), Law on the Execution of Criminal Sanctions[3] (hereinafter: LECS) are applied on juveniles only if they are in accordance with LJCOCPJ (Article 4 LJCOCPJ).

LJCOCPJ excludes the possibility of children (persons who were under the age of 14 at the time of commission of an illegal act that is incriminated by the law as a criminal offence) to be subject to criminal liability and criminal sanctions (Article 2 LJCOCPJ). According to Article 3. Paragraph 1 of LJCOCPJ, a juvenile is a person who at the time of commission of the criminal offence has attained 14 years of age and has not attained 18 years of age. A younger juvenile is a person who at the time of commission of the criminal offence has attained 14 and is under 16 years of age. An elder juvenile is a person who at the time of commission of the criminal offence has attained 16 and is

[1] Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, Official Gazette of the Republic of Serbia, No. 85/2005.
[2] Criminal Procedure Code, Official Gazette of the Republic of Serbia, No.72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.
[3] Law on the Execution of Criminal Sanctions, Official Gazette of the Republic of Serbia, No.55/2014.

under 18 years of age (Article 3, Paragraph 2 LJCOCPJ). A young adult is a person who at the time of commission of the criminal offence has attained 18 but has not reached 21 at the time of the trial, and who meets other conditions set forth by Article 41 of LJCOCPJ[4] (Article 3, Paragraph 3 LJCOCPJ).

An adult who is over 21 years old cannot be tried for a criminal offence he or she has committed as a younger juvenile (Article 40, Paragraph 1 LJCOCPJ). Nevertheless, in some situations, legal provisions pertinent to juveniles can also be applied on adults. An adult who committed a criminal offence as a juvenile and who at time of trial is not yet 21 years old, may be ordered an educational measure and under provisions specified in Article 28 hereof juvenile prison sentence. When deciding which of the abovementioned sanctions to impose, the Court has to take into consideration all circumstances of the case, and particularly the gravity of the offence, time elapsed from its commission, character and behaviour of the offender as well as the purpose of the sanctions (Article 40, Paragraph 2 LJCOCPJ).

Moreover, the Court may impose special obligations, intense supervision by the social welfare centre or remand to correctional institution on the perpetrator who has committed a criminal offence as an adult but is not more than 21 years old at the time of trial, if his or her personal characteristics and the circumstances under which the criminal offence has been committed imply that these educational measures are suitable for the accomplishment of the purpose of punishment (Article 41, Paragraph 1 LJCOCPJ).

2. CUSTODIAL SANCTIONS FOR JUVENILE PERPETRATORS OF CRIMINAL OFFENCES IN CURRENT LEGISLATION OF THE REPUBLIC OF SERBIA

2.1. Criminal sanctions for juveniles - general remarks

Criminal sanctions for juveniles primarily consist of measures of assistance and socialisation with minimal amount of repression and limitation of rights and freedoms, including: help, care, supervision, removal and prevention of disturbances and creating conditions for normal and undisturbed development and maturation of a juvenile (Jovašević, 2008: 470). In the Republic of Serbia, the following sanctions can be imposed on juvenile perpetrators of criminal offences: 1) educational measures, 2) juvenile prison sentence and 3) security measures prescribed by Article 79 of CCRS, apart from security measure of restraint to be engaged in his or her occupation, business activities or duties. Educational measures can be imposed on both - young as well as elder juveniles, whereas juvenile prison sentence can be imposed only on elder juveniles. Under circumstances prescribed by the law, security measures can also be imposed on juvenile perpetrators of criminal offences (Article 9 LJCOCPJ). The application of criminal sanctions for juveniles is based upon is "the principle of gradual application" (Soković, 2008: 253), which means that less severe sanctions are applied rather than stricter ones whenever it is possible as

[4] This refers to the situation when the court may impose special obligations, intense supervision by the social welfare centre or remand to correctional institution on the person who committed a criminal offence as an adult but is under 21 years of age at the time of trial if, the characteristics of his personality and the conditions under which the criminal offence has been committed suggest that the purpose of punishment will be achieved through these educational measures (Article 41, Paragraph 1 LJCOCPJ).

well as that custodial educational measures and juvenile prison sentence are the ultimate means of reaction (Ćopić, 2014: 218).

The purpose of criminal sanctions for juveniles is defined within the general purpose of criminal sanctions, which, according to Article 4 of CCRS, comprises the suppression of acts by which the values protected by criminal legislations are harmed or threatened. But, the purpose of criminal sanctions for juveniles also includes influencing juvenile's development and strengthening his or her personal responsibility as well as the education and proper development of juvenile's personality through supervision, protection, assistance, general and expert education in order to facilitate his or her social reintegration (Article 10, Paragraph 1 LJCOCPJ). The purpose of juvenile prison sentence also includes intense influencing on juvenile perpetrator of criminal offence not to reoffend as well as influencing other juveniles not to repeat the commission of criminal offences (Article 10, Paragraph 2).

2.2. Custodial educational measures

Educational measures comprise measures of social reaction to juvenile perpetrators of criminal offences, which are prescribed by the law and imposed by relevant state bodies with the purpose to protect the society from criminality through education, re-education and regular development of juveniles (Jovašević, 2006: 303). They include: 1) educational measures of warning and guidance, 2) educational measures of intense supervision and 3) custodial educational measures (Article 11, Paragraph 1 LJCOCPJ).

When choosing an educational measure, the Court particularly takes into consideration: juvenile's age and maturity, other characteristics of juvenile's personality and the degree of deviation of his or her social behaviour, the gravity of the offence committed, the motives for the commission of the offence, juvenile's environment and the circumstances under which the juvenile has been living, juvenile's behaviour after the commission of the offence, in particular whether the juvenile subsequently prevented or attempted to prevent the consequences of the offence, compensated or attempted to compensate the damage, whether the juvenile has previously been subject to a criminal or administrative sanction, as well as all other circumstances that may have an impact on choosing the measure that would be the most suitable to achieve the purpose of educational measures (Article 12 LJCOCPJ).

Custodial educational measures are imposed on juveniles when more permanent measures of education, treatment and acquiring of social skills are required, accompanied by juvenile's complete separation from his previous environment for the purpose of influencing the juvenile in a more intense manner. Custodial measures are imposed as the last means and can last, within the limits determined by the law, only as long as it is necessary to accomplish the purpose of educational measures (Article 1, Paragraph 4 LJCOCPJ). They include: 1) remand to educational institution (Article 20 LJCOCPJ), 2) remand to correctional institution (Article 21 LJCOCPJ) and 3) remand to special institution for treatment and acquiring of social skills (Article 23).

Educational measure of remand to educational institution is imposed in the cases when a juvenile needs to be se separated from his previous environment and provide him or her with assistance and permanent supervision by professionals (Article 20, Paragraph 1 LJCOCPJ). The juvenile can stay in the educational institution for a minimum of six months and a maximum of two years. But, every six months the Court reconsiders whether

there are grounds to suspend the enforcement of this measure or to replace it with another educational measure (Article 20, Paragraph 2 LJCOCPJ). Remand to educational institution is enforced within an institution that provides accommodation and fulfils educational, medical, didactic, sportive and other developmental needs of juveniles (Article 120, Paragraph 1 LJCOCPJ). The person who has been subject to custodial educational measure of remand to educational institution can stay in this institution until he or she is 21 years old (Article 120, Paragraph 4 LJCOCPJ).

Educational measure of remand to correctional institution is imposed on a juvenile who has to be subject to intense measures of supervision and special educational programmes, along with being separated from his or her previous environment. (Article 21, Paragraph 1 LJCOCPJ). When deciding whether to opt for this measure, the Court takes into consideration a series of circumstances, including: juvenile's previous life, the level of deviation in juvenile's behaviour, the gravity and nature of criminal offence, and whether the juvenile has previously been subject to a criminal or administrative sanction (Article 21, Paragraph 2 LJCOCPJ). A juvenile can stay in a correctional institution for a minimum of six months and a maximum of four years. Every six months, the Court reconsiders whether there are grounds to suspend the enforcement of this measure or to replace it with another educational measure (Article 21, Paragraph 3 LJCOCPJ).

This measure is executed in a juvenile correctional institution, where male and female juveniles are accommodated separately (Article 124 Paragraphs 1 and 2 LJCOCPJ). An adult subject to this educational measure as well as the juvenile who becomes an adult during the enforcement of this measure is placed in a separated block of the correctional institution (Article 124 Paragraph 3 LJCOCPJ). A person subject to custodial educational measure of remand to correctional institution can stay in this institution until he or she is 23 years old (Article 124 Paragraph 4 LJCOCPJ).

Educational measure of remand to special institution for treatment and acquiring of social skills is imposed on juveniles with difficulties in psycho-physical development or with psychological disorders instead of remand to educational or correctional institution (Article 23 Paragraph 1 LJCOCPJ). It is imposed instead of security measure of mandatory psychiatric treatment and staying in a medical institution (Article 81.CCRS), if this type of institution can provide juvenile's treatment and care and facilitate achieving the purpose of this security measure (Article 23, Paragraph 2 LJCOCPJ). A juvenile can stay in a special institution for treatment and acquiring of social skills for a maximum of three years. Every six months, the Court reconsiders whether there are grounds to suspend the enforcement of this measure or to replace it with another one (Article 23, Paragraph 3 LJCOCPJ). If this measure is imposed instead of a security measure, the juvenile can stay in the special institution for treatment and acquiring of social skills as long as it is necessary. But, when the juvenile is more than 21 years old, the enforcement of the measure shall be continued in the institution for the enforcement of security measure of mandatory psychiatric treatment and staying in a medical institution (Article 23, Paragraph 4 LJCOCPJ).

2.3. Juvenile prison sentence

Juvenile prison sentence can be imposed on an elder juvenile who has committed a criminal offence for which imprisonment of more than five years is prescribed if it would not be appropriate to impose an educational measure due to a high degree of juvenile's guilt, the nature and the gravity of criminal offence (Article 28 LJCOCPJ).

The application of juvenile prison sentence is facultative and it represents an *ultima ratio*, i.e. the last means in the reaction to criminality of juveniles (Ćopić, 2014: 223).

Juvenile prison sentence cannot last less than six months or more than five years. Juvenile prison lasting for a maximum of 10 years can be imposed for a criminal offence for which imprisonment of 20 years or a more severe punishment is prescribed, or in the case of joinder of at least two criminal offences for which imprisonment of more than 10 years is prescribed (Article 29 LJCOCPJ). This sanction is executed in a juvenile penal-correctional institution (Article 137 Paragraph 1 LJCOCPJ), whereas juvenile prison sentence imposed on female juveniles is executed in a separated block of penal facility for women (Article 137 Paragraph 3 LJCOCPJ). Adults subject to juvenile prison sentence and juveniles who become adults during the enforcement of the punishment are accommodated within a special block of the penal-correctional institution. (Article 137, Paragraph 5 LJCOCPJ).

Persons subject to juvenile prison sentence can stay in the penal-correctional institution for juveniles until they are 23. If they have not served their sentence until that moment, they are transferred to penal institutions for adults (Article 139 Paragraph 1 LJCOCPJ). By the way of exception, a person subject to juvenile prison sentence can stay in the penal-correctional institution when he or she is older than 23 if this is necessary for the accomplishment of his or her schooling or professional education or if the remaining punishment does not exceed 6 months, but in no case after attaining twenty five years of age (Article 139 Paragraph 2 LJCOCPJ).

3. ASSISTANCE AFTER THE ENFORCEMENT OF CUSTODIAL EDUCATIONAL MEASURES AND JUVENILE PRISON SENTENCE IN SERBIAN LEGISLATION

Juveniles in correctional institutions represent a specific category of users within the system of social protection. They are in need of support while being in the correctional institution as well as after leaving it. However, the return to the community represents an important period when a young person has to receive support within the community in order to keep the positive changes of his or her behaviour made as the result of treatment in the correctional institution. Unfortunately, the support system for this category of juveniles is not yet fully developed in Serbia. As a result, after leaving the correctional institution these juveniles are often left to themselves or to the family that is not capable of providing them with adequate support.

Social welfare centre plays an important role in social reaction to all forms of juvenile delinquency. Apart from participating in criminal procedure and giving expert opinion to regarding the choice of appropriate sanction, applying educational orders and non-custodial educational measures it is also in charge of post-institutional care of juveniles (Jugović, Žunić-Pavlović, Brkić, 2009: 649). According to LJCOCPJ, the social welfare centre is obliged to maintain a permanent relationship with the juvenile, his or her family and the institution the juvenile is accommodated in throughout the execution of custodial educational measure and juvenile prison sentence in order to facilitate the preparation of the juvenile and his or her family for his or her return to former social environment and reintegration into social life (Article 147 Paragraph 1 LJCOCPJ). The institution where custodial educational measures or juvenile prison sentence are executed is obliged to inform juvenile's parents, adoptive parents, guardians or close relatives that juvenile used

to live with and relevant social welfare centre about juvenile's return to his or her family at least three months before juvenile's release (Article 147 Paragraph 2 LJCOCPJ). Juvenile's parent, adoptive parent, guardian or close relative that juvenile used to live with prior to the beginning of the execution of custodial measure or juvenile prison sentence is obliged to inform the relevant social welfare centre abut juvenile's return (Article 148 Paragraph 1 LJCOCPJ). Social welfare centre is obliged to provide the juvenile with necessary assistance after the execution of custodial educational measure or juvenile prison sentence (Article 148 Paragraph 2 LJCOCPJ). LJCOCPJ obliges the social welfare centre to take special care after the release of juveniles without parents as well as of juveniles whose family and financial circumstances are in disorder from serving custodial educational measure or juvenile prison sentence (Article 149 Paragraph 1 LJCOCPJ). Such care particularly refers to: accommodation, nutrition, providing clothes, medical treatment, helping with resolving family issues, finishing professional education and employment of juvenile (Article 149 Paragraph 2).

Current Law on Social Protection[5] (hereinafter: LSP) does not explicitly mention post-institutional care. But, its provisions and the provisions of LJCOCPJ clearly indicate that social welfare centres play the key role in that process. LSP defines social protection as an organised social activity of public interest the purpose of which is to provide help and empowerment of individuals and families for an independent and productive life within the society as well as the prevention of social exclusion and the elimination of its consequences (Article 2 LSP). The right to social protection is provided through the services of social protection as well as through financial support in order to provide existential minimum and support to social inclusion (Article 5 LSP). This right belongs to every individual and family in need of social help and support in order to overcome social and life difficulties and create conditions to fulfil their basic needs (Article 4 LSP).

The user of rights or services of social protection can be an individual or a family facing obstacles when trying to fulfil their needs, which is preventing them from achieving or maintaining the quality of life. The users can also be individuals or families that do not have sufficient resources to fulfil their basic needs and cannot obtain them through employment, incomes from property or other resources (Article 41 Paragraph 1).

In the context of post-institutional care of persons who have entered the institution for the enforcement of custodial sanctions as juveniles but left it as adults, it is important to mention that LSP prescribes that juveniles and adults who have not yet attained 26 years of age can be the users of social protection if their health, safety and development are endangered due to family or other life circumstances, i.e. if it is obvious that they cannot reach an optimal level of development without the support of social protection system (Article 41 Paragraph 2). In that sense, it should be noted that LSP treats juveniles and adults under 26 who are in conflict with their parents, guardians or community, whose behaviour is dangerous for themselves and their environment or who are facing difficulties due to alcohol or drug abuse as particularly suitable to be the users of social protection (Article 41 Paragraph 2, Subparagraphs 4 and 5). However, it should be noted that LSP does not explicitly single out the persons who entered the correctional institution as juveniles and left it as adults as particularly vulnerable and does not provide them with any particular kind of support. This problem is caused by terminological irregularities in the text of the law. Namely, the law defines juveniles as persons under the age of 18, whereas young persons who leave the correctional institution are usually more than 18 year old.

[5] Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011.

That is the reason why social welfare centres treat them as adults and commonly provide them with a minimal amount of assistance such as a one-shot financial help.

Regardless of their obligation to provide adequate, prompt and comprehensive post-institutional care of the aforementioned persons, social welfare centres are often not capable to fully meet their needs. So, the provision of LSP that introduces the possibility of cooperation between the state and the civil sector when it comes to delivering the services of social protection in general, including not only the post-institutional care of juveniles but of adults as well (Batrićević, Srnić, 2013: 137), has particular importance for successful application of post-institutional care. Namely, LSP allows institutions and other organisations the law is familiar with that are delivering the services of social protection to cooperate with educational institutions, health institutions, police, judicial and other state bodies, associations and other legal entities and individuals. The frames and actual ways of cooperation in the area of delivering social welfare services are defined by the memorandum of cooperation between these entities (Article 7).

4. PRACTICAL EXPERIENCES IN THE FIELD OF POST-INSTITUTIONAL CARE OF JUVENILE PERPETRATORS OF CRIMINAL OFFENCES IN SERBIA

4.1. Current situation in the practice of post-institutional care of juvenile offenders in Serbia

LSP allows different forms of cooperation between social welfare centres and civil sector, embodied in non-governmental organisations who deliver the services of post-institutional care. At this moment, two non-governmental organisations in Serbia, both of which are located in Belgrade, actively participate in providing various programmes of post-institutional assistance for persons who committed criminal offences as juveniles: 1) Centre for Crime Prevention and Post-penal Assistance NEOSTART and 2) International Aid Network (IAN). Their practical experiences are briefly presented in this paper with the purpose to: 1) depict current needs in the area of post-institutional care of juveniles, 2) highlight key issues emerging in both-legislative as well as practical aspects of post-institutional care of juveniles and 3) present some positive examples from individual cases, confirming that active, comprehensive and dedicated post-institutional care can contribute to the reduction of recidivism.

4.2. Centre for Crime Prevention and Post-penal Assistance NEOSTART

Centre for Crime Prevention and Post-penal Assistance NEOSTART represents is the only non-governmental organisation in Serbia that is fully dedicated to providing the services post-institutional assistance. These services are delivered within the Programme of support for youth, which is designed for juveniles (this also refers to juveniles who became adults throughout the process of the execution of their sanction) who have left correctional institution in Kruševac or penal-correctional institution in Valjevo. This Programme represents a "bridge" between the isolated environment in these institutions and the life after release, during which juveniles are facing a series of problems and obstacles. The Programme is applied in the premises of NEOSTART in

Belgrade, where juveniles can watch TV programme, use computers, receive professional psychological support or participate in educational workshops to obtain skills necessary for successful social reintegration.[6]

In 2017, NEOSTART collected detailed statistics about its users. This sample includes 10 juveniles who left juvenile prison in Valjevo in 2017. All juveniles within the sample had dysfunctional family relations, four of them had been living in the street. Five juveniles did not have personal documents and had to wait three months to obtain them and only two juveniles managed to find a job. It is also important to mention that almost 20% of juveniles with residence in Belgrade who were sent to correctional institution did not live with their parents at the moment when they were sent to correctional institution because their parents had been deprived of parental right[7]. Since statistics show that juveniles predominantly tend to commit criminal offences against property, it is of particular importance to provide them with appropriate and legal source of income, i.e. regular employment as soon as they come out of the institution and prevent them from losing working habits they developed throughout their staying in the institution. These information clearly indicates that providing accommodation and employment for these juveniles represents a priority, which is exactly what the work of NEOSTART is focused on.

Although juveniles attend various professional trainings and courses in the correctional institution, they cannot find their place on the labour market. Thanks to citizens' donations, NEOSTART managed to provide essential tools and equipment for one of the juveniles who completed professional education for an electrician and enabled him to start his own business. This kind of support should be provided to all juveniles who leave correctional or educational institution or juvenile prison and who have completed professional trainings and courses for plumbers, house painters, central heating installers, upholsterers, hygienists, hairdressers etc. Youth Council of Kruševac conducted a research which included individual profiles for 57 juveniles from correctional institution in order to help them to become more active on the labour market after leaving the institution. This research has shown that the juveniles from Belgrade completed professional training and courses to become milling machine operators, horticulturists, bricklayers, house painters, grinder operators, metal-founders, electro-technicians, hairdressers, car mechanics, and machinist-locksmiths.

4.3. International Aid Network (IAN)

International Aid Network (IAN) is a local nongovernmental organization established in 1997 to support marginalised and vulnerable groups in development of their own potential for decent and peaceful life[8]. IAN's activities include, among other things, providing social welfare services within day-care centre for children and youth with behavioural problems.

J.I. came to IAN for the first time in 2012, upon the recommendation of social work case manager who took care of him after leaving correctional institution. At first, J.I. was willing to cooperate with IAN and was included in the programme activities. Unfortunately, his

[6] Centre for the Prevention of Crime and Post-penal Assistance – NEOSTART, http://neostart.org/maloletnici/, 13.03.2018.
[7] The data was collected within the research conducted for the purpose of Master Thesis "Characteristics of juvenile perpetrators of criminal offences with imposed custodial educational measures", Jelena Srnić, Faculty of special education and rehabilitation, Belgrade, 2015.
[8] IAN (International Aid Network), http://www.ian.org.rs/arhiva/vision/, 12.04.2018.

involvement lasted only two weeks. After that, IAN lost the contact with J.I. One year later, J.I. came to IAN's day-care centre again explaining that he had spent the past year in prison in Sremska Mitrovica, where he was serving sentence for theft.

J.I. has been in the social welfare protection system since the age of 12. His parents are not married and have different nationalities and religious beliefs. Since his mother was not able to take care of him and his father was not involved in his upbringing, he was placed into an institution for children without parental care. He has been showing the signs of problematic behaviour since the age of 14, when he started socialising with problematic peers and abandoned school. At that period, he also started committing criminal offences, for which an educational measure remand to correctional institution was imposed on him. While he was in the correctional institution, his mother passed away. He managed to complete professional training for a hairdresser and obtain practical experience for this profession in the correctional institution. But, as soon as he left the correctional institution in 2012, he was faced with several problems. Due to his mixed national and religious identity, neither mother's nor father's family was willing to accept him after he left the institution. Not only was he deprived of decent accommodation and food, but he also could not find a job. Namely, in spite of having a certificate for a job that is popular on the labour market, he could not start working legally due to the fact that he did not have an ID card because he was not signed in the register of the citizens of the Republic of Serbia and did not have an ID number. Due to the lack of personal documents, J.I. could not become the beneficiary of social welfare centre's financial help and was left without any kind of assistance, support or shelter.

Under the influence of all these circumstances, he returned to criminal behaviour and was sent to prison soon after leaving correctional institution. After leaving prison, he came to IAN's day-care again. He was included in different programme activities, but counselling was the one he needed the most. Namely, after leaving the prison, J.I. thought he did not have the professional skills necessary for finding a job and was convinced that nobody would employ him because of his origins. He suffered from low self-esteem and the lack of self-confidence. The lack of personal documents, which prevented him from finding a job and receiving financial help, made his mental condition even worse. He slept in an abandoned railway wagon and struggled to stay away from problematic peers. Once again, he was under serious risk of reoffending and being returned to prison.

During several months, J.I. was receiving various types of support at IAN's day-care centre: counselling and rebuilding self-esteem through the validation of all the tasks he fulfilled within IAN's programme. He also completed training for using computer hardware and software. At the same time, IAN worked with his social welfare case manager in order to speed up the procedure for the obtaining of J.I.'s personal documents, which was actually initiated several years before.

While working with J.I., IAN's team noticed his skills and capabilities and tried to encourage him to look for a job. When after several months J.I. had to leave the abandoned train wagon he had been sleeping in, IAN's team decided to pay him a room where could stay for the next six months, hoping that in that he would obtain his ID card and get a job in the meantime.

Shortly after that, J.I. started working as a hairdresser. The support he received in the following period referred to making relationships at work, taking the responsibility for the part of the job that he was doing and respecting the rules of the employer. Meanwhile, J.I.

managed to adapt successfully and made progress in his job. The employer was satisfied with his results, which he often verbally expressed in order to give J.I. support. After several months of working at the hairdresser's studio, J.I. regained his self-confidence and became convinced that he could do his job regardless of his origins and past thanks to his professional skills, responsibility and commitment. J.I. Obtained personal documents at the age of 21. The support he received significantly minimised the risk of reoffending and J.I. has not committed a single criminal offence since he started participating in IAN's treatment.

CONCLUSION

Statistics show that custodial sanctions for juveniles are not imposed too often in Serbia (Stevanović, Batrićević, Milojević, 2016: 308). Moreover, the frequency of their application had constantly been decreasing in the previous decade (Ilić, Maljković, 2015: 114). In spite of that, custodial sanctions for juveniles have maintained their place in the system of criminal sanctions as well as in general reaction to juvenile delinquency (Ilić, Maljković, 2015: 115). In many situations, their application appears to be reasonable and necessary. However, the practice indicates that there is a lack of adequate, prompt and comprehensive post-institutional care of juveniles following the execution of custodial sanctions in Serbia, primarily due to insufficient financial resources of social welfare centres (Jugović, Žunić-Pavlović, Brkić, 2009: 650).

The lack of adequate post-institutional measures aimed at their re-socialisation and reintegration into the community might contribute to the increase of recidivism among juvenile perpetrators of criminal offences. Namely, various studies suggest that social bonds inhibit delinquent an analogous behaviours, which makes insisting on re-building social bonds throughout this process of essential importance (Intravia *et al.*, 2017: 244). On the other hand, disadvantaged environments, due to inadequate and insufficient resources are less likely to introduce pro-social bonds to youth, which ultimately increases their likelihood of reoffending (Intravia *et al.*, 2017: 248). Having in mind the impacts of the environment and social bonds on the risk of reoffending among juveniles, it is necessary to strengthen the system of their post-institutional care. This can be achieved through insisting on a more active role of all entities involved in the planning and development of programs for reintegration of juveniles who have been subject to educational measure of remand to correctional institution (Stevanović, Batrićević, Milojević, 2016: 316), as well as of those who have served juvenile prison sentence. Since numerous juveniles become adults by the moment when they are supposed to leave the correctional institution or juvenile prison, it is extremely important that in the future the connection is made between the juvenile justice system and the system in charge of adult perpetrators of criminal offences (Stevanović, Batrićević, Milojević, 2016: 316-317).

The development of post-institutional care programmes should start as soon as the juvenile enters the institution for the enforcement of custodial sanctions. The precondition for this is to establish the cooperation between the social welfare system and staff of these institutions who are in charge of preparing these programmes. Moreover, it is important to keep working continuously with juvenile's family as well as with the community that he will be returned to after the enforcement of custodial sanction (Stevanović, Batrićević, Milojević, 2016: 316-317). Cooperation with juvenile's broader community is of particular importance since, in addition to the individual risk factors associated with juvenile

reoffending, communities are considered fundamental in understanding and explaining recidivism among both - adults and juveniles as well (Intravia *et al.*, 2017: 241).

Another reason why juveniles are not given adequate support after leaving correctional institution includes the legal imperfections of current Serbian legislative framework regulating this issue. LJCOCPJ does not dedicate too many provisions to the issue of post-penal care. LSP does not single out persons who entered the correctional institution or juvenile prison as juveniles and left it as adults as particularly vulnerable category. LECS and CCRS, as well as the Law on the Execution of Extrajudicial Sanctions and Measures prescribe that adults who are serving prison sentence have to be given adequate support while preparing for release and during the post-penal period. However, these laws do not mention juveniles in the similar context. Although the correctional institution and the supervising officers service both fall within the jurisdiction of the Administration for the enforcement of criminal sanctions, relevant legislative provisions fail to regulate the post-penal treatment of juveniles in a comprehensive manner. The need to change the described imperfections of the laws has been highlighted as one of the priorities in the Strategy for the Development of the System of Execution of Criminal Sanctions in the Republic of Serbia until 2020. The Strategy recognises juveniles placed in the correctional institution as a particularly vulnerable group within the system for the execution of criminal sanctions and emphasises that specialised programmes should be designed in order to facilitate their reintegration in the society after the execution of this custodial educational measure. For that reason, LJCOCPJ should be amended in order to facilitate a more effective and comprehensive approach to post-institutional care of juveniles. It should provide a more active role for the representatives of the social welfare centres, judiciary, education system, police and local community. In addition, more space should be made for the creation of new post-penal support programmes.

Draft version of Strategy for Social Reintegration and Aftercare of Convicted Persons for the Period between 2015 and 2020 was presented at the end of 2015. The Draft Strategy underlines that post-institutional care represents the weakest spot when it comes to juveniles placed in correctional institution. It also highlights the fact that these persons do not receive adequate support from social welfare centres because they usually leave the correctional institution as adults. Therefore, when it comes to juveniles placed in the correctional institution, the Draft Strategy gives high priority to the following activities: designing a programme of psycho-social support in order to facilitate their active participation in social life after leaving the institution, analysing their needs in the period after leaving the institution and improving the cooperation between social welfare centres and the representatives of local self-government. The adoption of this Draft Strategy would enhance the progress in the area of post-institutional care and support and allow a more comprehensive approach to this issue (Srnić, Vulević, 2016: 17).

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POSTINSTITUCIONALNI PRIHVAT MALOLETNIH UČINILACA KRIVIČNIH DELA U SRBIJI - KLJUČNI PROBLEMI U ZAKONODAVSTVU I PRAKSI

Nedostatak adekvatnog, blagovremenog i sveobuhvatnog postinstitucionalnog prihvata maloletnih učinilaca krivičnih dela nakon izvršenja zavodskih vaspitnih mera ili kazne maloletničkog zatvora je ozbiljna prepreka za realizaciju njihovog osnovnog cilja - prevaspitanja maloletnika i sprečavanja njihovog recidivizma. Zato autori u ovom radu analiziraju zakonske odredbe kojima je regulisano izricanje i izvršenje zavodskih vaspitnih mera i kazne maloletničkog zatvora, kao i one koje su relevantne za sprovođenje postinstitucionalnog prihvata u Republici Srbiji. Zatim je iz ugla stručnjaka koji rade sa maloletnicima koji su napustili ustanove za izvršenje zavodskih sankcija predstavljeno aktuelno stanje u našoj zemlji u toj oblasti. Navedeni su primeri uspešne socijalne reintegracije maloletnika koji su bili uključeni u postinstitucionalni prihvat, ali i brojni praktični problemi u vezi sa postinstitucionalnim prihvatom maloletnika.. Konačno, ukazano je na korake koje je neophondno napraviti na normativnom i praktičnom planu kako bi se omogućila primena ustanove postinstitucionalnog prihvata maloletnika.

KLJUČNE REČI: postinstitucionalni prihvat / maloletnici / recidivizam / reintegracija / maloletnički zatvor / vaspitno-popravni dom

APPLICATION OF DIVERSIONS IN THE CONTEXT OF JUSTICE FOR CHILDREN SYSTEM REFORM IN THE REPUBLIC OF SERBIA

Ines CEROVIĆ*

The juvenile justice system based on the rights of the child is critical to safeguard an effective justice for children system. The promotion of innovative and effective community-based measures, such as diversions, should be at the heart of juvenile justice policy. The Republic of Serbia has invested significant efforts to develop its legislation, policy and practice in line with relevant international child rights standards but the greatest challenge that remains in this area is proper application of progressive legislative solutions by relevant bodies that deal with children in conflict with the law in practice, in particular when implementing diversions. Having in mind these challenges, in 2010 the Ministry of Justice of the Republic of Serbia initiated efforts to reform the juvenile justice system through two related projects. This paper aims to explore to what extent have implemented project initiatives contributed to improvement of the justice for children system to be more appropriate and in line with relevant international standards, focusing particularly on implementation of diversions, and to offer recommendations for future reforms in this area.

KEY WORDS: diversions / reintegration / intervention / treatment / children in conflict with the law

INTRODUCTION

Functioning of the juvenile justice system is an important indicator of how children are perceived and protected by society. It is an essential area where states' commitment to the rights of the child can be best measured and evaluated. A juvenile justice system based on the rights of the child is critical to safeguard an effective justice for children system, a system that children understand, trust and feel empowered to use, in particular when they are alleged offenders of criminal offences.[1]

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[1] Santos Pais, M., 'Children's Rights, Freedom from Violence and Juvenile Justice' in: Zermatten, J., Riva Ganapy, P., D. Jaffe, P. and Winter, R., *The Essentials in Juvenile Justice* (The International Institute for the Rights of the Child) (2017) at 330.

A child rights approach to juvenile justice demands that formal or informal means other than the criminal justice system are used to deal with children in conflict with the law, taking into account children's development and evolving capacities.[2] This does not mean an abdication of responsibility. All people should be responsible for crimes they commit. Instead, promotion of reintegration and innovative and effective community-based sanctions, rather than retribution, should be at the heart of juvenile justice policy.

Many States parties to the Convention on the Rights of the Child ("CRC") have integrated relevant international principles in their national legislations and have invested significant efforts to develop policy and practice in line with these standards. Since 2006, the Republic of Serbia has a special law that deals with children in conflict with the law – the Law on Juvenile Offenders and Criminal Justice Protection of Minors[3] ("Juvenile Justice Law") which has, to a huge extent, incorporated relevant international standards in this field. The greatest challenge that remains is proper application of these standards by relevant bodies that deal with children in conflict with the law in practice.

This paper will focus on one, but very important element of the juvenile justice system that is based on international standards – diversions as a mechanism of reaction to juvenile offending. Diversions will be presented from an international human rights law perspective that is outlined in the first part of this paper, but also from the perspective of application of these standards in domestic legislation and in practice of relevant bodies that deal with children in conflict with the law in the Republic of Serbia, which will be outlined in the second part of the paper. The third part of this paper will be dedicated to an overview of the juvenile justice reform process in this area that has been carried out for the last seven years in the Republic of Serbia whereas the fourth part will offer recommendations for future end eavours in this area through further strengthening of justice and social protection systems.

1. INTERNATIONAL HUMAN RIGHTS LAW STANDARDS

There is now a wide range of international instruments offering special protection to children in juvenile justice system. Conversely, international child rights standards related to juvenile justice have been further shaped and refined based on developments on national juvenile justice systems.[4]

Specific rights of children in the system of juvenile justice were for the first time incorporated in an international human rights treaty with the International Covenant on Civil and Political Rights ("ICCPR"), adopted in 1966. It provides rules related to fair trial, including the exception to the rule of a public trial and judgment in a criminal case where the interests of juvenile require so and that the procedure shall take into account their age and desirability to promote their rehabilitation,[5] punishment[6] and

[2]Van Bueren, G., *Child rights in Europe, Convergence and divergence in judicial protection* (Council of Europe Publishing) (2007) at 113.
[3] The Law on Juvenile Offenders and Criminal Justice Protection of Minors (Official Gazette of the Republic of Serbia, No. 85/2005).
[4]Liefaard, T., 'Juvenile justice from an international children's rights perspective' in: Vandenhole, W., Desmet, E., Reynaert, D. and Lembrechts, S., (Eds.), *Routledge international handbook of children's rights studies* (Routledge) (2015) at 236.
[5]International Covenant on Civil and Political Rights, art. 14 and 15.
[6] Ibid, art. 6 and 7.

deprivation of liberty.[7] The main aim of the penitentiary system shall be social rehabilitation and reformation of children.[8]Although providing broad guidelines, the provisions of the ICCPR are obliging States parties to implement procedures that include rehabilitation of juvenile offenders and the treatment different from those relating to adults.[9]

The principal internationally binding treaty that addresses administration of juvenile justice more in detail is the 1989 CRC. The CRC encompasses the whole spectrum of civil, political, economic, social and cultural rights of the child, emphasizing the holistic approach of interdependence, indivisibility and interrelation of all human rights.[10] The leitmotif of the CRC is the principle of the best interests of the child, and the novelties in the area of juvenile justice are related to promotion of child's sense of dignity and worth and the application of alternatives to formal judicial proceedings, such as use of diversions when that is in accordance with the child's best interests.[11]

The CRC's Articles 37 and 40, in particular, deal with involvement with the criminal justice system of every child alleged as, accused of, or recognized as having infringed the penal law. It requires States parties to promote a distinctive system of juvenile justice for children which is of positive, rather than punitive nature. The CRC's Articles 1 and 39 require that children have the right to be treated in a manner consistent with the child's age and with desirability to promote the child's reintegration into society, while respecting for their human rights and fundamental freedoms of others.

In four paragraphs, Article 40 of the CRC provides an integrated framework regulating the treatment of children in the criminal justice system. Article 40(1) of the CRC provides a set of fundamental principles for the treatment of children in conflict with the law that are interrelated and interact with principles expressed in other articles of the CRC. The final two provisions of article 40 CRC are respectively concerned with the promotion of the use of diversion as a way of channeling children away from the formal criminal justice system through alternative procedures to institutionalization, whenever appropriate and desirable. Article 40(3)(b) provides the legal basis for rights-based formal or informal means to deal with children in conflict with the law, providing that human rights and legal safeguards are fully respected. Article 40(4) gives guidance on types of programms for alternatives to detention through a variety of dispositions which ensure the well-being of children (i.e. care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programmes etc.) and are proportionate to the circumstances and the offence i.e. the principle of proportionality. Diversions also provide a channel through which arrest, detention and imprisonment can be avoided, which is in accordance with Article 37(b) of the CRC.

The institute of diversions provided by the CRC has been further interpreted and explained by the adoption by the Committee on the Rights of the Child ("CRC

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[7]Ibid, art. 9 and 10.
[8]Ibid, art 10 (3).
[9] Levesque, R., 'Future Visions of Juvenile Justice: Lessons from International and Comparative Law', 29 *Creighton L. Rev*. 1563, 1996, at 3.
[10]United Nations Office at Vienna, International Review of Criminal Policy, Nos. 49 and 50, 1998-1990, *The United Nations and Juvenile Justice: A Guide to International Standards and Best Practice,* IIpara. 21.
[11]Van Bueren, G., 'Article 40: Child Criminal Justice' in: Alen, A., Vande Lanotte, J., Verhellen, E., Ang, F., Berghmans, E. and Verheyde, M. (Eds.), *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, Boston)(2006) at 7.

Committee") of its General Comments[12] that provide States parties with interpretation and analysis of specific articles of the CRC or deal with thematic issues related to the rights of the child. They thus constitute an authoritative interpretation as to what is expected of States parties as they implement the obligations contained in the CRC and shall be read together with the CRC.

The CRC Committee General Comment No. 10 Children's rights in Juvenile Justice is of particular importance since it highlights that diversion and restorative justice are an integral part of effective, child rights-based justice system. It elaborates on Article 40(3)(b) on the need to promote the use of diversion in as many cases as possible. Therefore, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases. In addition to avoiding stigmatization, this approach has positive outcomes for both children and the interests of public safety, and has proven to be more cost-effective. Diversions may be used at any stage of the proceedings and are not necessarily limited to minor offences.[13]

Also, in its Concluding Observations, the CRC Committee has repeatedly recommended to States parties to establish holistic juvenile justice systems, including the use of diversions. Apart from its Concluding Observations that present a growing source of interpretation of different CRC's provisions and their translation into national laws, policies and practices, the CRC Committee now, with entry into force of the Optional Protocol to the CRC on a Communication Procedure ("OPIC")has the possibility of examination of individual complaints on child's rights violations which can potentially be a very powerful enforcement tool for full implementation of this important treaty.

In addition to the CRC, as specifically focused binding document containing elaborated provisions regarding juvenile justice, there are also non-binding, international standard setting instruments that together represent a detailed framework concerning the child's involvement in the criminal justice process.

First, the Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules'), adopted by the United Nations ("UN") General Assembly in 1985, provide guidance for the development of a separate and specific juvenile justice system and promote diversion through establishment of community based programmes.

Second, the Guidelines for the Prevention of Juvenile Delinquency ('Riyadh Guidelines'), adopted by the UN General Assembly in 1990, emphasize diversionary and non-punitive approach when addressing the early protection and prevention of antisocial behavior of children and consider particularly children in situation of social risk.

Third, the Rules for the Protection of Juveniles Deprived of their Liberty ('JDLs' or 'Havana Rules'), adopted by the UN General Assembly in 1990, apply to all children deprived of their liberty in any institution. Even though the 'Havana Rules' are primarily concerned with the treatment of children in conflict with the law for whom diversion and

[12] CRC Committee, General Comment No. 10 on Children's Rights in Juvenile Justice, CRC/C/GC/10 (2007), CRC Committee, General Comment No. 12 on the Right to the Child to be Heard, CRC/C/GC/12 (2009), CRC Committee, General Comment No. 9 on the rights of children with disabilities, CRC/C/GC/9 (2007), and CRC Committee General Comment No. 11 on indigenous children and their rights under the Convention, CRC/C/GC/11 (2009).

[13] CRC Committee, General Comment No. 10 on Children's Rights in Juvenile Justice CRC/C/GC/10, 25 April 2007, para. 12.

alternatives have not been possible, they strongly reinforce the principle of non-detention as set out in Article 37(b) of the CRC.

Diversions have also been dealt with by the Guidelines for Action on Children in the Criminal Justice System (Annex to UN Resolution 1997/30 – Administration of Juvenile Justice ('Vienna Guidelines')), adopted in 1997. These guidelines provide that, where possible, diversion or other alternative initiatives to the classical criminal justice systems should be developed with the aim to prevent recidivism and promote the social rehabilitation of child offenders.

In addition, the Guidance Note of the Secretary-General: UN Approach to Justice for Children, adopted in 2008, highlights the importance of engaging the social sector in diversion and alternatives.

The Standard Minimum Rules for Non-custodial Measures ('Tokyo Rules'), adopted by the UN General Assembly in 1990, apply to all human beings, both adults and children. They provide useful, detailed guidelines which can be referred to, alongside the child-specific instruments, in the promotion and implementation of diversion and alternatives.

The issue of child criminal justice has been also dealt with at the regional level. The European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR"), adopted by the Council of Europe ("CoE") in 1950, provides for a set of fair trial rights that are equally applicable to adults and children. Even though the ECHR has only two direct references to children in conflict with the law, it should be immediately noted that this little reference does not automatically reduce the relevance of this important document to protection of the child's rights in the juvenile justice system since the European Court of Human Rights ("ECtHR") has constantly been referring to child-specific instruments, in particular the CRC and the 'Beijing Rules', using them for the interpretation of the ECHR when deciding on violation of child's rights issues in its jurisprudence.[14]

In addition, the CoE adopted a number of recommendations relevant for children in juvenile justice system, such as the Recommendation on social reaction to juvenile delinquency, adopted in 1987,[15] which encourages the development of diversion and mediation procedures at both public prosecutor level by the discontinuation of proceedings or at the police level, in order to prevent juveniles from entering into the criminal justice system. The Recommendation concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted in 2003,[16]calls for education instead of punishment, minimum intervention, use of diversions and giving priority to alternatives to youth imprisonment. Another very important document specifically dealing with children in justice system are the Guidelines on Child Friendly Justice, adopted in 2010, which were prepared based on the ECHR and the rich case law developed by the ECtHR as well as relevant decisions, reports and other documents of the CoE institutions and bodies. These Guidelines provide a detailed set of recommendations to the member states on rights and needs of children in the justice system, stating that member states should be encouraged to

[14]Kilkelly, U., 'The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on Human Rights in the Light of the UN Convention on the Rights of the Child', 2 *Human Rights Quarterly* 23, 2001, at 311.

[15] Recommendation No. R(87) 20 of the Committee of Ministers to member states on social reactions to juvenile delinquency, adopted on 17 September 1987.

[16] Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted on 24 September 2003.

use alternatives to judicial proceedings such as mediation, diversion and alternative dispute resolution, whenever these may best serve the child's best interests and providing that they are not used as an obstacle to the child's access to justice.[17]

All these standards refer to each other and provide for their mutual reinforcement. The CRC does not regulate juvenile justice system in detail, but rather, some of its key provisions are wide in scope. This is in contrast to the soft law standards, that provide detailed guidelines and rules, but they do not have the strength of a binding instrument. However, some of the rules have become binding by being directly included into the CRC, whereas others can be treated as elaborating rights contained in other instruments more in detail.[18]Despite the almost universal acceptance of the CRC and greater interest of expert, but also general public, for the area of the rights of the child in conflict with the law, rights and freedoms of these children are still being violated and there is a huge gap between international human rights standards relevant to children in conflict with the law and their appropriate application in the States parties to the CRC.

2. LEGISLATION AND PRACTICE IN THE REPUBLIC OF SERBIA

In the Republic of Serbia the juvenile justice system is regulated by the above mentioned Juvenile Justice Law which has been a milestone in the reform of Serbian justice for children system and its harmonization with relevant international standards. Even though the need for amendments and adoption of missing by-laws was recognized soon after its adoption, the law represented the first concrete step towards incorporating restorative and reintegration aspects in dealing with juvenile offenders. It introduced the mechanism of diversions with the aim to avoid instituting criminal proceedings, reduce recidivism and provide support to child offenders in process of reintegration in the society.

Diversions can be ordered by juvenile justice public prosecutor or judge – if the proceedings has already been initiated, and selection and application of the most suitable diversion is done in cooperation with child offender's parents/guardians and guardianship authority within the centre for social work ("CSW").This enables non-initiation of the proceedings, or its suspension, in case that the proceedings have already been initiated. Application of diversions has impact on reduction of stigmatization of child offenders, increase of efficiency of judicial bodies and shortening of the length of judicial procedure, reduction of procedural costs through at the same time taking into account interests and needs of victims. The Juvenile Justice Law also brought new duties to the social welfare system, as besides the expanded obligations of judges, prosecutors and police officers, new roles were given to the CSWs and community service providers.

Article 7 of the Juvenile Justice Law currently recognizes five specific diversions which are different in substance so it is possible to achieve positive results by combining one or more of these measures. The diversions are as follows: settlement with the injured party so that by compensating the damages, apology, work or otherwise, the detrimental consequences would be alleviated either in full or partly; regular attendance of classes or work; engagement, without remuneration, in the work of humanitarian organizations or community work (welfare, local or environmental); undergoing relevant check-ups and

[17] Guidelines of the Committee of Ministers of the CoE on child-friendly justice, 2010,guidelines 24 and 26.
[18]Van Bueren, G., *The International Law on the Rights of the Child* (The Hague, Martinus Nijhoff Publishers) (1998) at 170.

drug and alcohol treatment programmes, and participation in individual or group therapy at suitable health institution or counseling centre.

Despite of progressive legislative solutions introducing diversions as one aspect of promoting child's well-being and avoiding the negative consequences of criminal justice proceedings, including the stigma of conviction and sentence,[19]soon after the adoption of the Juvenile Justice Law, it was observed that the law was facing serious implementation deficits or was not being implemented at all in certain aspects. This was due to the lack of relevant secondary legislation and guidelines for implementation of the newly introduced institutes, funds for capacity building of the key stakeholders, unclear responsibilities and thus non-cooperation among judicial and social sectors.

Certain limitations were observed in terms of application of diversions. They were mainly applied for property-related criminal offences of small value. In terms of the type of ordered measures, the most commonly ordered diversions were those related to settlement with the injured party and engagement in the work of humanitarian organizations or community work, whereas other measures such as those related to drug and alcohol treatment programmes and participation in individual or group therapy at suitable health institution or counseling centre were applied sporadically or not at all.

Another limitation to more effective application of diversions was related to the current legislative solution that provides that diversions are always initiated by the public prosecutor who may file a motion to discontinue proceedings against a juvenile subject to the juvenile's acceptance of one or more diversions, which is a basis for judge's decision to sustain the prosecutor's motion and order the juvenile to comply with one or more diversions. This solution does not allow police officers to initiate diversions in the earliest phase of the proceedings even though the relevant international standards recommend a wide range of authorities for ordering diversions.[20]

Another obstacle was related to vaguely regulated financial responsibility for application of diversions. There is no determination of primary financial responsibility in the law, and this omission itself is a fundamental flaw. The question of financing thus remains almost entirely unresolved even 12 years after the adoption of the law. Further important elements are not defined by the law either, for example who determines or approves the allowable range of costs for different types of measures, who approves specific costs for individual children's measures and who disburses payments for services provided in accordance with ordered measures.

These deficits in implementation of the law urged UNICEF Country Office in Serbia to commission an independent study on implementation of the Juvenile Justice Law in Serbia("the independent study") in 2010 with the aim to develop a shared understanding of the barriers and challenges to juvenile justice reform and to provide high level technical input and guidance on further reforms. The independent study confirmed that there were serious shortcomings in successful implementation of the Juvenile Justice Law, ranging

[19]Van Bueren, G., *loc.cit, supra,* n. 1.

[20]CRC Committee General Comment No. 10, para. 13: "The law has to contain specific provisions indicating in which cases diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed, in particular to protect the child from discrimination";Beijing Rules, rule 11.2: "The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules."

from normative ambiguity, lack of implementing regulations, unclear authority and funding, non-cooperation among judicial and social welfare sectors, lack of capacity building based on practical skills, as well as inadequate data collection. The independent study pointed out that key roles and responsibilities in implementation of diversions were not addressed at all such as: who creates basic procedures for implementation of measures, who sets service standards and licenses providers to implement diversions with children, who bears responsibility for overall monitoring of the system of diversions.[21]All the above systematically prevent that diversions are the simplest option and "a well-established practice that can and should be used in most cases".[22]

3. REFORM INITIATIVES

In order to tackle the above mentioned challenges, the Ministry of Justice ("MoJ") of the Republic of Serbia initiated reform of the juvenile justice system in 2010, with donor support from the Norwegian Ministry of Foreign Affairs, through the project "Improving the Delivery of Justice in Serbia" ("IMG project") that was implemented by International Management Group from 2010 to 2014.

The IMG project was widely grounded in a comprehensive problem analysis given in the independent study commissioned by UNICEF. It was primarily designed to fill in the gaps left after the adoption of the Juvenile Justice Law and the fact that it was not followed by any procedural and practical instructions on how to implement the newly established diversions. The IMG project initiated drafting of the Bylaw on implementation of diversions and Guidelines on standards and procedures for implementing diversions. The drafting of both documents was result of a broad participatory process through working groups and focus groups consisted of a whole range of different professionals from judiciary, social protection, education, health, academia and non-governmental sectors. Hence, even though neither of these documents have been formally enacted to date, they did have value in itself, as they provided a basis for juvenile justice judges and prosecutors and CSW professionals to apply diversions in practice.

The IMG project established a specific model of cooperation – the so-called 'juvenile justice teams' that were formed in four cities in Serbia in which the courts of appeal are seated (Belgrade, Kragujevac, Niš and Novi Sad). These teams consisted of juvenile justice judges, prosecutors and CSW representatives, coordinated and monitored by the Republic Institute for Social Protection ("RISP"). The project further issued an opened call for organizations to implement diversions in their local communities. This call was opened to entities that have already been recognized as service providers for children in social protection system, which turned out to be certified non-governmental organizations ("NGOs") and special organizational units of CSWs. The juvenile justice teams additionally coordinated with other NGOs, companies and public institutions, forming a network of entities where diversions could be actually implemented in local communities.

In its inception phase, the IMG project commissioned a baseline (and later also end-line) study on implementing diversions in juvenile justice system in Serbia.[23] The baseline

[21] Cipriani, D., "Implementation of the 2005 Juvenile Justice Law in Serbia - Assessment of Diversion, Alternative Sentences, and Child Victim Protections", UNICEF Serbia, 2010.
[22]CRC General Comment No. 10, para. 11.
[23]Sataric, N. and Obradovic, D., "Analysis of Diversion Orders and Alternative Sanctions Application Practices in Serbia – Mapping Resources of Local Communities for Implementation of Diversion Orders and Alternative

study was grounded in extensive qualitative data collected from 10 cities, including in total 90 respondents across all types of involved stakeholders. The study showed that percentage of implemented diversions in relation to criminal charges was 1.69% in 2010, whereas this increased to 5.33% in 2013, suggesting an increase, although data was not desegregated between pilot and non-pilot towns. The end-line study reinforced the initially observed discrepancy in the type of diversions being applied. This is due to a legislative solution that the diversions of drug and alcohol treatment programmes and participation in individual or group therapy/counselling can only be ordered by juvenile justice judges, and not by prosecutors, making them significantly underrepresented in the structure of ordered diversions. Finally, the study found that non-piloted cities still faced challenges regarding coordination and clarity of procedures between sectors, while some of them did not even start to apply diversions.[24]

In addition, in order to address lack of training of professionals for application of diversions, the IMG project initiated capacity building activities which included an accredited, two-module training organised in partnership with the RISP for CSW professionals,[25]a multisectoral training for judges, prosecutors and CSW professionals organised in partnership with Judicial Academy,[26] and trainings and later consultations for established juvenile justice teams.

A very important aspect of the IMG project was that it supported the work of the Juvenile Justice Council that was formed based on the provisions of the Juvenile Justice Law in 2009, as an advisory body with potential to initiate reforms of the juvenile justice system.[27] The IMG project supported the Council's various activities, including its annual events initiated with a goal to facilitate cross-sectoral dialogue and critical assessment of progress made in reforming the juvenile justice system and to provide decision-makers with recommendations for future system reforms.

In terms of promotion and information sharing among wider public, the IMG project prepared a documentary entitled 'Diversions – a step towards accepting responsibility', presenting the process of implementation of diversions, including interviews with all key representatives of the target groups in the pilot towns that is still available today on YouTube.[28]

As it was found in the Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017) performed by the independent evaluation team of MAP Consulting Ltd. from Croatia in 2017 and commissioned by UNICEF, it can be assessed that the IMG project reached its goal to improve the juvenile justice system in implementing diversions, resulting in an increase of applied diversions. Long-term usability of produced draft Bylaw on implementing diversions and Guidelines on standards and procedures for implementing diversions was strongly confirmed even more than five years after these draft documents were finalized, since they successfully bridged the observed lack of a formal bylaw and enabled application of diversions in practice. Capacity building activities and strengthening the overall qualitative of work with

Sanctions", International Management Group, 2011.

[24]Sataric, N. and Obradovic, D., "Analysis of Improvement of Application of Diversionary Measures and Alternative Sanctions in the Juvenile Justice System in Serbia", International Management Group, 2014.

[25] Training was delivered to 118 participants.

[26] Training was delivered to around 100 participants.

[27]The Council was comprised of judges, prosecutors, representatives of ministries of justice, interior and social welfare and law attorneys.

[28]Available at: https://www.youtube.com/watch?v=6b_uZYBLOoE.

child offenders when applying diversions found its place in accredited training organized by the RISP. Also, the IMG project significantly strengthened the work of the Juvenile Justice Council even though its members' mandates had expired in 2014.

In order to continue the reform process, the project 'Strengthening the justice and social welfare systems to advance the protection of children in Serbia' ("IPA project"), was implemented by UNICEF, in partnership with the ministries in charge of justice and social welfare, from 2014 to 2017, and was financed through the Instrument for Pre-Accession ("IPA"). The IPA projectwas designed around building a more comprehensive justice for children system.[29]

With regard to diversions, the main project priority was on modelling of these measures to allow prioritizing an approach focused on increase of the enforcement rate and improved quality of diversions through direct work with children and their families in local communities. Since the piloting of diversions carried out under the IMG project lasted for only around a year, at the time when this project ended it was not seen as sufficient to fully routinize the diversions related procedures. This was the reason to continue with piloting of diversions under the IPA project in the same four cities with previously established juvenile justice teams.[30]The teams have additionally coordinated with a range of different entities in local communities which amounted to signing a total of 47 local memoranda of understanding that were initiated by the teams.

Although significant discrepancies exist between the data collected by RISP and Statistical Office of the Republic of Serbia ("SORS"), both datasets suggest an increase in application of diversions. According to RISP official data for 2016, the total number of court referrals to diversionary schemes has increased to 28.3 per cent of the total number of reported cases of juvenile offending, with 1032 diversions ordered in 2016.On the other side, according to SORS data, the total number of applied diversions in 2016 was 304, indicating that diversions were applied in only 8.3% of the reported cases. This data discrepancy calls for improvement of data collection in prosecution offices and courts and their analysis in comparison with the data in social protection sector.

As to the piloting towns, according to RISP data, the number of measures ordered from March 2015 until December 2017 amounted to the total number of 584 diversionary measures in piloting towns. By type, certain diversionary measures are still significantly under-applied (counseling and drug/alcohol addiction treatment), and although the latter is only intended for some cases, counseling could be combined with any other diversion and thus has significant space for increased application. In some cases, cooperation with the health sector is underdeveloped, requiring clearer involvement of health institutions in local communities, but also health system in general – perhaps through a Memorandum at the national level with the Ministry of Health so the health institutions in the local communities have a clear mandate to deal with juvenile offenders.

[29] The IPA project was consisted of two components – apart from juvenile offenders, its justice component focused on children victims and witnesses, children in civil proceedings and free legal aid providers, whereas its other component was focused on various aspects of the social welfare sector reform.

[30]In order to implement diversions in local communities, strategic partnerships were made with the same NGOs from Belgrade that were involved in the IMG project, the Centre for Social Protection Service Development "KneginjaLjubica" in Kragujevac and special organisational units of the CSWs in Nis and Novi Sad. In addition, partnership agreements were made with Counseling centres for marriage and family in all four towns with the aim to increase the number and improve quality of enforcement of diversionary measure involving settlement with the injured party.

Apart from the quantitative increase in number of ordered measures, the IPA project invested special efforts in improvement of their quality aspect through designing tailored interventions with child offenders and their families, taking into consideration different factors, such as child's individual characteristics, his/her family and social background, age and developmental needs and type of criminal offence committed. The IPA project relied on the existing services in local communities through combining them with ordered diversions with the aim to reach optimal effects in the process of reintegration of juveniles. Those are primarily services in social protection system belonging to a group of socio-educative, counseling and therapeutically services. This allows for an individualized approach to each child based on principles of positive juvenile justice, relying on child's strengths and potentials instead of his/her weaknesses. This has meant that the child could use both services in the local community intended for general population in his/her natural environment, but also some specialized services that address his/her current specific needs.

Specific objectives of these interventions were to more efficiently prevent future delinquent behavior through improving the child's personal capacities and social competences for a productive life in local community and his/her interpersonal relationships in family, school and peer group. The adopted approach was holistic and systemic, meaning that the child is seen as part of the system in which he/she belongs. The focus was on inciting a positive change in each particular child.

Special focus of the interventions was put on education aspect through improvement of regular school attendance, prevention of early drop out and provision of assistance in learning. This also required cooperation with teaching staff and school psychologists. Children were also motivated to develop working habits and skills which required parallel work with humanitarian organizations and companies to accept children and thus participate in their resocialisation. As the family is a key factor in successful overcoming of behavioral problems, special focus of interventions was put on motivating the child's parents/guardians to participate in the process, improvement of their parental skills and helping them to recognize early signs of antisocial behavior of their children.

The study done under the IPA project has confirmed that the majority of the interviewed juveniles (90.08%) and their parents (95.83%) consider that diversions had positive outcomes and that the mere fact that diversions represented a new chance for the juvenile offenders had huge positive effect.

In partnership with the RISP, the IPA project developed Guidelines for guardianship authority report and opinion on profile of juvenile offender and proposed diversion in order to address the absence of productive cooperation between professionals from judicial and social welfare sectors that were identified as one of the biggest impediment to effectively implement diversions and to strengthen the CSW ability to better meet the needs of judiciary in juvenile justice decision making process.

The capacity building for the main target groups (judges, prosecutors, CSWs and service providers) was organized by offering a set of trainings in and outside the piloted cities, in partnership with RISP and Judicial Academy. There were 21 trainings on the role of CSW and other service providers in the implementation of diversionary measures organized during the IPA project implementation, with 512 participants, out of which 198 were from the four piloted cities and 314 from non-pilot localities. Juvenile justice teams and service providers were offered additional capacity building activities on systemic approach in working with families of children with behavioral issues. Capacity building activities were

also carried out for the judicial sector (prosecutors and judges). With the assistance of the Judicial Academy, the trainings were held for 83 judges and prosecutors, out of which 26 participants were from the piloted cities and 59 non-pilot localities. Evaluation of these trainings indicated very high levels of participants' satisfaction with the three assessed aspects of the training – content, mode of realization and quality of trainers.

The good practices of providing support to juvenile offenders have been captured in the Handbook for working with juvenile offenders that was developed jointly with service providers and experts from RISP in the final year of the IPA project implementation. This has ensured that modeling intervention was widely defined and well documented throughout the country.

In order to solve the issue of financing of diversions, the IPA project commissioned an analysis of the financial implications of implementing diversions which has shown some possible options to secure continuous financing of diversions. Firstly, financing can be achieved through special-purpose transfers provided by the Law on Social Protection and Law on Financing of Local Self-Government, which provide support to local self-governments in securing social welfare services in local community. Second option for financing implies establishing a special budgetary fund by the Government with the aim to improve application of diversions.[31] This would allow development and unification of practice, development of various services and evaluation and improvement of competencies of all involved professionals.

In order to communicate all activities undertaken during the IPA project, poster and leaflets, planner and calendar with key messages promoting diversions were developed and distributed during the project implementation. In addition, one short video and human interest story were made about a child from Kragujevac who was ordered diversionary measure by deputy juvenile justice public prosecutor. The video is available online.[32]

According to the above mentioned evaluation performed by the MAP Consulting Ltd., all these efforts have largely contributed to the positive trends that are evident from the national data on juvenile offending showing the increase of cases in which diversions were applied. The system of ordering and implementing diversions is, for the most part, now functional and has reached the level of routine. The intervention also resulted in a whole set of guidelines for practitioners and thus provides an extensive intellectual base and recommends, at different levels, the most effective implementation tools and needed follow-up activities.

4. RECOMMENDATIONS FOR FURTHER SYSTEM IMPROVEMENTS

The next step in the reform process is to further extend the network of service providers to diversify the offer in non-piloting towns, but also to maintain and further expand the existing network in piloting towns, especially because some service providers did not manage to secure funding for their work on implementing diversions, upon the end of the IPA project. This would allowavailability ofmore service providers which would enhance frequency of ordering diversions, but also raise their overall quality. It would be also useful

[31]The fund could be financed through institute of opportunity which grants prosecutors discretion not to prosecute non-opportune cases and/or asset seizing/confiscating and managing the proceeds from crime.
[32]Available at: https://www.youtube.com/watch?v=BFO7foK9IpQ and https://www.unicef.org/serbia/media_28811.html.

to establish a formal database of all service providers and their external collaborators across the country, which would be a basis for monitoring and quality control, as well as targeted capacity building. In relation to this, there is a need for continuation of trainings for judges, prosecutors and CSW staff, and in case of non-piloted communities, the necessity to form teams comprised of the judges, prosecutors and CSW staff, if ordering diversions is to become a more widespread practice.

As the issue of further financing of diversions was not systematically resolved during the implementation of both projects, the current service providers from the civil sector could only rely on the funding from their local self-governments. Since issues concerning juvenile offenders, due to their multi-sectoral nature, are addressed by the ministries in charge of justice and social welfare, this demands an agreement between these two sectors, which should be framed as a national political decision to place financing of diversions under the budget of one or shared between both of these sectors. It should be emphasised that lack of agreement on a definite model of financing is seriously jeopardizing the sustainability of the initiated reforms.

There is a consensus among the key stakeholders that the Juvenile Justice Law should be amended, followed by enacting missing by-laws.[33]There is also a need to harmonize the Juvenile Justice Law with the 2013 Criminal Procedure Act, as it introduced prosecutorial investigation, substituting earlier judicial investigation. In light of the sustainability issues emerging around application of diversions, these legislative changes should be used to clarify future financing of these measures.

It would be important to re-invest in strengthening the Juvenile Justice Council, which can be a strong factor of sustainability and support to further reform.[34]Although financially supported by the IMG project while it still existed, based on the Article 6 of the Decision on its establishing, the Council should be financed by the national budget from the budget lines pertaining to the work of judicial bodies, implemented through the Judicial Academy.

In terms of the strategic framework, the only new strategic document that explicitly deals with children in contact with the law is the 2016 Action Plan for Chapter 23, which holds a formal capacity for further reforms. Other sectorial strategic documents dealing with children or judicial reform did not, so far, include this area as an explicit strategic priority, leaving space for further advocacy in the upcoming period. This is also a potential space for the Juvenile Justice Council which could develop an action plan in the area of justice for children.[35]

All future activities around improvement of implementation of diversions should be better communicated in public. More advocacy and promotional activities would be welcomed, such as organizing regular events, also perhaps under the leadership of the Juvenile Justice Council. In addition, an increased presence in the media of all kinds would be advised for general awareness raising and support of the themes connected to children in conflict with the law and addressing prejudices they are facing in society, and should be followed by a press-clipping analysis.

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[33]This activity is also indicated in the Action Plan for Chapter 23 adopted by the Government of Serbia, and although planned to take place by the end of 2016, it was postponed until the second quarter of 2018.

[34]Nonetheless, as its existence is also indicated in the Action Plan for Chapter 23, the Council has recently been re-established.

[35]This would also serve as an important input for the National Action Plan for Children that is currently been drafted, on the initiative of the Child Rights Council of the Government of Serbia.

Although both projects dealt with vulnerable groups, they have not been specifically designed to work with children belonging to certain vulnerable groups in contact with the judicial system - girls, boys, Roma, or children with disabilities and mental health issues, but rather to target all children in conflict with the law regardless of their ethnicity, nationality, gender or belonging to any other group. It is however recognized that a more specific approach when dealing with vulnerable groups should be the subject of further work in this area. This is particularly important due to the fact that children belonging to some of the vulnerable groups have very specific needs that should be recognized and addressed using a specific set of measures and adequate capacity building for the professionals working with them in the judicial, police, social welfare and other relevant systems.

CONCLUSION

Currently there is a rich body of international standards requesting States to use diversions at any stage of the proceedings which are not necessarily limited to minor offences and have great potential and practical scope. The Republic of Serbia has made substantial efforts to make these international standards reality. Nevertheless, even though in procedural sense diversions should be the simplest option for juvenile justice judge or prosecutor, these measures should not be seen as less serious solution or strict administrative instrument sending a psychological message to the child. On the contrary, diversions should be the most constructive response to delinquent behavior, through a holistic intervention and support based on intensive and continuous cooperation and communication with child offenders and their families, whereby they are empowered to recognize different options for their future development.

Local community needs to continue to develop different services in social protection system, in particular those that enable the least restrictive intervention for each child offender such as socio-educative and counseling services. This helps to create an individualized approach to each child offender, depending on his/her needs and level of expressed delinquent behavior, and through combining different service modalities.

Although at this point there is no conclusive decision in which form the juvenile justice system reform process will continue, the two major reform interventions outlined in this paper managed to secure very functional partnerships at the level of implementation and have resulted in a whole set of studies and guidelines which provide an extensive intellectual base and recommend the needed follow-up activities. All future reform endeavors should take into account lessons learnt from this process and be carefully designed so as to enable reintegration and resocialisation of child offenders through implementing diversions.

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PRIMENA VASPITNIH NALOGA U KONTEKSTU REFORME SISTEMA PRAVOSUĐA PO MERI DETETA U REPUBLICI SRBIJI

Sistem maloletničkog pravosuđa zasnovan na pravima deteta je od ključne važnosti za očuvanje delotvornog sistema pravosuđa po meri deteta. Primena inovativnih i efikasnih mera u lokalnoj zajednici, kao što su vaspitni nalozi, treba da bude u središtu politike maloletničkog pravosuđa. Republika Srbija je uložila značajne napore da razvije svoje zakonodavstvo, politiku i praksu u skladu sa relevantnim međunarodnim standardima o pravima deteta, ali najveći izazov koji ostaje u ovoj oblasti je pravilna primena progresivnih zakonodavnih rešenja od strane relevantnih tela koja se bave decom u sukobu sa zakonom u praksi, naročito kada je u pitanju primena vaspitnih naloga. Imajući u vidu ove izazove, Ministarstvo pravde Republike Srbije pokrenulo je 2010. godine reformu sistema maloletničkog pravosuđa kroz dva srodna projekta. Cilj ovog rada je da istraži u kojoj meri su implementirane projektne inicijative doprinele unapređenju sistema pravosuđa po meri deteta u skladu sa međunarodnim standardima, fokusirajući se posebno na primenu vaspitnih naloga, kao i da ponudi preporuke za buduće reforme u ovoj oblasti.

KLJUČNE REČI: vaspitni nalozi / reintegracija / intervencija / tretman / deca u sukobu sa zakonom

PROTECTING THE RIGHTS OF CHILDREN IN THE IMMIGRATION MOVEMENTS

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Children that are part of the immigration movements in the whole world fall in a very vulnerable category, because whether they are separated from their parents or are accompanied by an adult/parent they are still part of very difficult surroundings. They suffer and view all sorts of atrocities that influence their physical and psychological well-being. A lot of them end up in detention or worse situations or places because of immigration laws and policies and they are unable to plead for their rights. The governments should protect these children and introduce special legislation. They should be categorized as a vulnerable category and its precedence over their status of illegal immigrants should be changed. All Children should be part of the UN Convention on the Rights of the Child. These children seek and strive for survival, security, better life, education and basic needs. Therefore, for these children will be introduced different recommendations for developing and straightening new policies and legislation.

KEYWORDS: Children rights / immigration / human rights / UN Convention

INTRODUCTION

In the migration crisis that happened in the last couple of years the most affected were the children. They are the most vulnerable category and in times of war and atrocities they are the ones that suffer the most, because they either lose their parents, they're surrounded by atrocities that affects their physical and mental being, they can be very easily manipulated with and fall in the hands of smugglers or other criminals. They can be kidnapped, sold for human organs or prostitution, they can be brain washed and used by terrorist organization to fight for them and the number of such violations continues endlessly. But the problems don't stop here for these children they continue on when they arrive at the borders or they are caught on illegal roots then they are usually deported or placed in cruel detention centers, or worse. Therefore the struggles for migrant children don't stop.

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We have to understand that children in the immigration movements are just children and should be treated as one. They should enjoy rights as any other child, and this rights should be part of every government agenda, action and decision and policy making. They should be given support, help and respect and their human rights should be safeguarded. ("Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe 2017-2019" pg. 9)

Before continuing further on, a distinction should be made about few terms in order to have a clear picture what each child needs because all of them are different individuals and they have different needs.

- A "child" as defined in article 1 of the Convention", means "every human being below the age of 18 years unless under the law applicable to the child".
- "Unaccompanied children" (also called unaccompanied minors) are children, as defined in article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so."
- "Separated children" are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. ("General Comment No. 6 "2005 pg. 6)

These definitions should be respected by all the states that signed the Convention and should abide to the rights and regulations presented in it.

1. THE STATISTICS ARE DEVASTATING

More than 60 million people in the world are refugees and half of them are children. These children fall in a very vulnerable category and are at risk of violence, abuse, exploitation, trauma and death. These children need protection, and this was agreed by the countries that ratified the UN Convention on the Rights of the Child (UNCRC). During 2014 the number of children coming to Europe increased, 144,550 children applied for asylum in EU, and in 2015 at least 337,000 children were registered as asylum seekers. In June 2015, 16% of all migrants crossing the Mediterranean were children, and in December the number of children was 35%. ("Safety and fundamental rights at stake for children on the move" pg.1) In 2014, 26% of the asylum applications registered in the EU were children under 18 years of age. Among these, 14% were submitted by unaccompanied children. ("Guidelines. Protecting the Human Rights and the Best Interests of the Child in Transnational Child protection cases" pg. 12-13) And these number give only part of the picture since we don't know the numbers of migrat children who were never registered, who drowned or were kidnaped.

Furthermore, the world statistics are worse, children aged between 15 and 19 years old represent the largest group and make up for approximately 11 million or 31%. The 10-14 year olds are the second largest group with 9 million migrants or 26%. 8 million migrants (23%) are aged between 5 and 9 years old and 7 million or 20% are very young between 0 and 4 years old. Children migrate globally, the majority of child and adolescent migrants under 20 (60%) reside in developing countries. In 2014, the reasons for forced migrations

were persecutions, conflict, and violence's. 86% of the forcibly displaced persons were hosted in developing countries. Among the displaced persons worldwide, 19.5 million persons were refugees and 51% of them were children. ("Guidelines. Protecting the Human Rights and the Best Interests of the Child in Transnational Child protection cases" pg. 12-13)

2. VULNERABILITY AND POSITION OF UNACCOMPANIED MIGRANT CHILDREN

Unaccompanied children are vulnerable and at risk of becoming victims in any scenario. States cannot present a legal guardianship for unaccompanied children, leaving these children without protection. In other states it takes a long period to present a guardianship. Girl's refugees are also a vulnerable group. Children get lost or are missing from the reception centers, which increases the risk of being victims of trafficking or exploitation. Many states place children in detention centers which are not designed for children. Furthermore, emergency shelters are designed to accommodate refugee children for couple of days and they stay for weeks or even months, without receiving education, health, and proper sanitation conditions. Almost all states fulfil the basic needs but that is not enough and it violates all children human rights. To continue with, the right to information and the right to be heard are not protected nor presented to the children. Some children are invisible in EU policies, including children arriving with their family, children not applying for asylum and stateless children. To ensure children have their rights respected and to be protected the governments in the world and in the EU must develop an action plan for protection of all migrant children. ("Safety and fundamental rights at stake for children on the move" pg.2-3) Therefore it can be concluded that the vulnerability of the children presented through the states policy and decision making and regulations is on the same level with those who use these children for criminal activities.

3. THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Universal Declaration of Human Rights refers briefly to children. In 1959 the Declaration of the rights of the child was adopted, a document that finally recognizes children's rights. The Declaration contains principles that ensure to all children without exception and without distinction, the protection of their rights, a normal child development in freedom and dignity. Among the principles proclaimed in the Declaration, and part of the Convention on the Rights of the Child, are the following:

> "the child should receive special protection; the child must be given opportunities and facilities by law and by other means to be able to develop healthy and normal, physically and intellectually, morally, spiritually and socially; the interest of the child is decisive; the child from birth, has the right to a name and nationality; the physically, mentally or socially disadvantaged child should receive treatment, education and special care required by his or her situation; to develop a harmonious personality, the child needs love and understanding; if possible, the responsibility of parents should increase, in an atmosphere of affection, of moral and material security; the child has the right to free and compulsory education, at least at

elementary level; the child in any circumstance will be among the first to receive protection and assistance; the child must be protected from all forms of neglect, cruelty or exploitation; the child must be protected against practices that could lead to racial, religious or any other form of discrimination.". (Moroianu Zlatescu Irina, pg. 117-118)

There were three reasons that led to the elaboration of the Convention: to cover all areas where intervention was necessary; the need of a unitary document with all international regulations on children; and the requirement of revising the rules of the interests of the child's. (Moroianu Zlatescu Irina, pg. 117-118)

Furthermore, the United Nations Convention on the Rights of the Child combines social, economic and cultural rights with civil and political rights. It specifies the obligations of states, parents and caregivers, public authorities, private service providers and the private sector. It guides policy makers on how to safeguard children. The Convention applies to all children who are within the borders of a state and those who attempt to enter a state. The rights apply to children on the move, regardless of the purpose or conditions of their migration. It provides standards for care and protection. Children who have been exposed to violence, exploitation or abuse have a right to be recognized as victims, to have assistance for recovery and rehabilitation, and to access justice. ("Guidelines. Protecting the Human Rights and the Best Interests of the Child in Transnational Child protection cases" pg. 11-13)

Although the paper stresses the rights of the children who migrate due to atrocities and wars. It has to be specified that the motivations for children to migrate can be due to economic reasons, educational aspirations, gender-specific and cultural reasons, personal motivations as well as emergencies, natural disasters and climate change, persecution and humanitarian crises. Some leave in search of better opportunities whereas others leave from situations of violence, ("Guidelines. Protecting the Human Rights and the Best Interests of the Child in Transnational Child protection cases" pg. 11-13)

4. STATES SHOULD RESPECT THE MIGRANT CHILDREN RIGHTS

States should ensure that the rights in the Convention are guaranteed for all children despite their own or their parents' migration status and address all violations. Child care and protection agencies should take responsibility for all migrating children. States should adopt human rights laws and policies to ensure that all migrant children enjoy the protection of the Convention. The detention of a child due to the parent's migration is a child rights violation. States should adopt alternatives to detention, affirmative policies, programs and actions to ensure equal protection of children. The right of the child to family life and family reunification should be respected. States should refrain from detaining and/or deporting parents if their children are nationals of the destination country. Children should have right to health. States should establish monitoring and reporting systems for child rights' respect. In 2005, the Committee adopted General Comment No. 6 on the Treatment of Unaccompanied and Separated Children providing guidance on the protection, care and appropriate treatment. ("Migration, human rights and governance" pg. 116-118) Therefore States should finally realize that children should be protected no matter what the circumstances and they should adopt laws and regulations that abide and protect these children.

4.1. No specific legislation for migrant children

There is no single piece of legislation that addresses migrating children. As a result, the international, and domestic laws have an inconsistent impact on child migrants. The analysis of applicable legislation is divided to the three approaches: regulatory, criminalizing, and protective. The regulatory migration law criminalizes children's movement across borders, trafficking law serves to protect children, and refugee law can be both protective and punitive. In the regulatory approach the legislation assumes that children are dependents of the family, it does not deal with children who travel alone. Although the right to family life is recognized a child's legal right to migration for family reunification is inconsistently applied. For example, the European Union Council Directive on the Right to Family Reunification only requires states to admit children for family reunion without additional qualifications. To continue with, the protective legal approach includes the set of universally applicable human rights treaties, as well as protection of specific groups of children. Like the European Convention on Human Rights, the European Court of Human Rights. ("Children on the move. An urgent Human Rights and Child Protection Priority." Pg.5-11) Therefore, the legislation either does not imply to these children or if it does is insufficient and inconsistent.

5. THE EU NEW APPROACH TO MIGRANT CHILDREN

Responses to migration cannot be effective or protect children unless they take into account the children best interests and needs. Some of the rights violations that migrant children face include lack of safety, food and access to services; separation from their parents; extortion, violence and exploitation as well as injury and death. The risks of detention and forced removal and statelessness, are increasing. Children face more and such challenges when they are unaccompanied, separated or with parents. But we have to keep in mind that all these children one they will grow up and become EU citizens, citizens that will need to love their statehood. These children should be considered first as children than as migrants. The states should invest in them, and empower them as equal participants in their communities. The EU should work hard in the following areas: reform the Asylum legislation, prioritize children in all migration and asylum policies, create funds for strengthening child protection system, address the refugee and migrant children in all areas, protect children across borders and ensure and use quality data evidence. First an Action Plan is needed to ensure that children, both alone and with their families, are protected. The Action Plan on Unaccompanied Minors 2010-2014 is a good foundation but the new plan should expanded to all migrant children. Second, reforming the asylum legislation should refer to the Common European Asylum System and improve the situation of refugee and asylum-seeking children. Guardianship, family reunification, resettlement and relocation, identification and registration will be improved if children see their rights guaranteed within the system. Third, Prioritizing children in all migration and asylum policies means that any decision on return must be based on children's rights and best interests. Genuine, fair and effective procedures should be urgently developed and implemented by child protection actors, including legal professionals. Fourth, funds should be created for strengthening child protection systems. Funding need to be made available to support the migrant children like the Asylum Migration and Integration Fund (AMIF), European Structural Investment Funds (ESIF), the European Development Fund and so on. Fifth, refugee and migrant children should be addressed in all areas where the EU and

Member States work together. Integrated national child protection systems in the EU and in third countries should be established in line with the UN Convention on the Rights of the Child. Six, protecting children across borders means investing in transnational child protection in order to prevent children from going missing, and identify children at risk of exploitation and trafficking, and to support children to move safely and regularly. The EU can look at mechanisms to improve cross border cooperation, the Dublin Regulation is a key instrument to enable unaccompanied and separated children to reunite with their families within the EU. And seven, ensuring and using quality data and evidence. This only means that there is a lack of data on refugee and migrant children, due to gaps in data on migration and asylum, incomparability of data across Member States, and lack of disaggregation. For example, there is no accurate data on the numbers of children dying at Europe's borders. Cooperation among authorities is needed to increase reliability and comparability. ("Children cannot wait: 7 priority actions to protect all refugee and migrant children". Pg. 1-3) Also it should set minimum standards for reception and transit centers. They should be made winter-proof. Develop minimum standards for emergency reception and transit centers, and provide assistance to member states and non-EU countries to meet those standards. This includes provision of heating, warm water, warm clothing, food and practical and medical assistance. Child-friendly spaces should be guaranteed and child safeguarding protocols. The inclusion should be enhanced through education and training opportunities and integration of children who remain. They should grow up in a nurturing environment and provide them with support for their transition into adulthood, and through this combating radicalization and other movements. ("Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe 2017-2019" pg. 17)

CONCLUDING REMARKS

To conclude, migrant children fall in a very vulnerable category and they could very easily get hurt, taken advantage of, manipulate and they can fall into despair. Therefore, the states and institutions should finally realize that this vulnerable category that is growing fast with its movements in the world, is the future. The children should be accepted by the communities and grow up to be remarkable people. The legislations and policies should be revised and children should be part of all of them. The Convention on the Rights of the Child should be respect by all and be an instruction tool for new policies.

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ZAŠTITA PRAVA DECE U IMIGRACIONIM POKRETIMA

Deca koja su deo imigracionih pokreta, u čitavom svetu spadaju u veoma ranjivu kategoriju, jer bez obzira da li su oni odvojeni od svojih roditelja ili su i dalje sa njima, nalaze se u veoma teškim okolnostima. Ona vide i trpe sve vrste zverstava koja utiču na njihovo fizičko i psihičko blagostanje. Mnoga od njih završavaju u administrativnom pritvoru, odnosno nalaze se i na gorim mestima ili u lošijim situacijama, budući da zbog imigracionih propisa i politika ne mogu ostvariti svoja prava. Vlade bi trebalo da zaštite ovu decu, odnosno da u tom smislu donesu posebne propise. Njih bi trebalo kategorizovati kao ranjivu kategoriju, odnosno procedura u vezi sa njihovim statusom ilegalnih imigranata bi trebalo da bude promenjena. Sva deca bi trebalo da se podvedu pod Konvenciju UN o pravima deteta. Ova deca traže i bore se za preživljavanje, bezbednost, bolji život, edukaciju i osnovne potrebe. Zbog ove dece, biće predstavljene različite preporuke za razvoj i unapređenje novih politika i zakonodavstva.

KLJUČNE REČI: prava deteta / imigracija / ljudska prava / Konvencija UN

PARENTAL SUPERVISION AND CONTROL AS A FACTOR OF JUVENILE DELINQUENCY IN SERBIA: RESULTS OF THE INTERNATIONAL SELF-REPORT DELINQUENCY STUDY*

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During 2013 and 2014 Serbia took part in the International Self-Report Delinquency Study (ISRD3) for the first time. The research was conducted on a sample of 1344 primary (7th and 8th grade) and secondary (all grades) school students in two largest towns – Belgrade and Novi Sad. The data was collected by using a standardised questionnaire. The aim of this paper is to present a part of the research results of the ISRD3 in Serbia related to the scope, structure and correlations between examined forms of delinquent and risk behaviour, and the parental control and supervision as a factor of juvenile delinquency. The findings suggest high prevalence of juvenile delinquency, including substance use, in two towns in Serbia where the research was conducted. Juveniles commit less sever offences, while property offences dominate. Violent offences are less frequent, and they mainly refer to group fight and animal cruelty. Boys are more likely than girls to commit offences, while offences committed by boys are more sever and include violence. Additionally, the older respondets are the more they act deliquently. Most of juveniles from the sample consumed alcohol, while almost one forth abused drugs sometimes in their life. The findings show high correlation between all examined forms of delinquent behaviour, including substance use. Parental knowledge, parental supervision and child disclosure, as three dimensions of parental control and supervision, negatively correlate with delinquent and risk behaviour. Additionally, all three dimensions of parental

* The paper presents the findings of the research of juvenile delinquency in Serbia, which was implemented in the scope of the International Self-Report Delinquency Study 3 (ISRD3) and within the project *Development of the methodology of crime recording as the basis for creating effective measures for its suppression and prevention*, No. 179044, financed by the Ministry of Education, Science and Technological Development of the Republic of Serbia, and implemented by the Faculty of Special Education and Rehabilitation of the University of Belgrade under the supervision of prof. dr Vesna Nikolić-Ristanović. The data collection costs were financed by the Swiss Federal Office for Migration. The findings of this research are published in: Nikolić-Ristanović, 2016.

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control and supervision negatively predict delinquent and risk behaviour. In general, the lack of parental control and supervision is associated with perpetrating of delinquency and is a predictor of juvenile delinquency. Therefore, it is important to work on developing preventive programs, including programs aimed at strengthening parental competencies and skills and enhancing communication and relationship between parents and their children in order to prevent and suppress juvenile delinquency in Serbia.

KEYWORDS: juvenile delinquency / International Self-Report Delinquency Study / parental supervision and control / Serbia

INTRODUCTION

Regular collection of data on prevalence, structure and characteristics of juvenile delinquency is important for assessing trends and registering new forms of juvenile delinquency, which is of immense relevance for developing efficient and effective evidence-based legislation, criminal policy and practical programs of social response to this phenomenon. However, relying on the official statistical records is not enough for getting to know the real scope of juvenile delinquency, since many juveniles may remain out of the system of support and social reaction, such as juveniles who are not yet criminally responsible, whose behaviour has not been criminalized, and whose delinquent behaviour for some reasons has not been detected and recorded. Therefore, in many countries the data from official statistical records are complemented by the data from national and/or international self-report juvenile delinquency studies, which provide information on both registered and unregistered cases of delinquency of juveniles (Nikolić-Ristanović, Stevković, 2015: 260). The self-report study, as a technique for detecting the dark figure of crime, enables the survey of a representative sample of children (criminally irresponsible) and juveniles (criminally responsible), and obtaining information about their delinquent and risk behaviour. The three rounds of the International Self-Report Delinquency Study (ISRD) that have been conducted since the early 1990s speak in favour of the significance of using this particular technique in surveying juvenile delinquency (see more in: Junger-Tas et al., 2010; Nikolić-Ristanović, Stevković, 2015). The ISRD presents internationally comparative survey on offending of young people and their victimization. Serbia took part in the third round of the ISRD project for the first time.

The third round of the International Self-Reported Delinquency Study (ISRD3) started in 2012. It was conducted in 35 countries across the world and it was based on a standardised methodology. The aim of this study is two-folded: firstly, to collect internationally comparable data about juvenile delinquency and victimisation of juveniles, and the factors that contribute to both delinquency and victimisation of juveniles, and secondly, to explore and test theoretical concepts which explain juvenile delinquency and could be relevant for policy purposes, i.e. for designing measures for suppression and prevention of both delinquency and victimisation of juveniles. The research conducted within the ISRD3 in Serbia is a result of cooperation between the Faculty of Special Education and Rehabilitation, University of Belgrade, and the Victimology Society of Serbia.

The aim of this paper is to present a part of the research results of the ISRD3 in Serbia related to the scope, structure and correlations between examined delinquent and risk

behaviour, and the parental control and supervision as a factor of juvenile delinquency. The paper starts with a brief overview of the research methodology, which is followed with presenting key findings on the prevalence and structure of juvenile delinquency in Serbia, as well as on correlations between examined forms of delinquent and risk behaviour. In the second part we analyse and discuss the findings about parental supervision and control as a factor of juvenile delinquency in Serbia. In the final part we point to the main conclusions and give some recommendations relevant for the prevention of juvenile delinquency from the perspective of combating factors that are directly connected to the family and family relationships.

1. THE RESEARCH METHODOLOGY

The research of juvenile delinquency was conducted on a city-based sample, which consisted of 1344 primary (7th and 8th grade) and secondary (all grades) school students in two largest towns in Serbia – Belgrade and Novi Sad. The sample encompassed students from 12 to 19 years of age (M=15.46; Mdn=16.00; SD=1.760).[1] The sample was gender uniform, with slightly more boys (52.2%), than girls (47.8%). Therefore, this research enabled for the first time collecting the data on a representative sample on the prevalence, structure and characteristics of juvenile delinquency, factors influencing juvenile delinquency, victimization of juveniles and relationships between juvenile delinquency and victimisation.

The data was collected from April 2013 to February 2014 by using a standardised questionnaire. There were also three additional sets of questions, out of which two were national specific: questions about victimization of juveniles by domestic violence and questions about domestic violence committed by juveniles[2]. An online questionnaire was used, but in its offline version, with using special FluidSurveys software. The questionnaires were filled in on the school classes. As for the refusal rate, 25% for schools and 8% for students refused to take part in the survey. Additionally, only 6 students (0.4%) were excluded from the survey by parental decision (Stevković, Nikolić-Ristanović, 2016).

For the purpose of the paper the data was processed by using several methods. For determining prevalence and structure of delinquent behaviour of juveniles a descriptive statistics was used. Additionally, we used the analysis of the reliability of the Parental control and supervision scale (Cronbach's Alfa), analysis of correlation of different forms of delinquent behaviour (Pearson's correlation), analysis of correlation between variables parental supervision and control, on the one hand, and delinquent behaviour, on the other hand (Chi Square test) and analysis of possible predictions of delinquent behaviour based on the absence of parental supervision and control (Logistic Regression).

[1] For the purpose of the research under the term juvenile we meant minor person, i.e. a person below 18 years of age, as it is also defined in the Criminal Code of the Republic of Serbia. Therefore it included both criminally responsible and criminally irresponsible juveniles.

[2] Data regarding domestic violence committed by juveniles are 'locked' for the purposes of PhD dissertation of Ljiljana Stevković, and only she has access to this data.

2. PREVALENCE AND STRUCTURE OF JUVENILE DELINQUENCY IN SERBIA[3]

In order to obtain data on the prevalence of delinquent behaviour of juveniles, the respondents were asked to report if they had ever perpetrated one or more forms of delinquent and/or risk behaviours[4] mentioned in the questionnaire during their lifetime (Table 1). Out of a total of 1344 respondents, 1229 (91.4%) reported that they had perpetrated some form of delinquent behaviour or use alcohol or drugs in their life. When we exclude substance use, the obtained data show that almost two thirds of juveniles in the survey sample (857 or 63.7%) expressed some form of delinquent behaviour understand in its strict sense during their lifetime.

As the data in Table 1 suggests, the most frequent form of delinquent behaviour of juveniles, including substance use, in the given sample, is alcohol abuse (79.5%). However, is we only look into delinquency in its strict sense, we may argue that most frequent forms of juvenile delinquency are: graffiti and shoplifting, followed by group fight and vandalism. On the other hand, juveniles perpetrate delinquent behaviours that present serious crimes, which also include the use of weapons, force or threat, such as robbery and burglary, the least.

Table 1: Lifetime prevalence of different forms of delinquent behaviour

Delinquent behaviour	**N**	**%**
Graffiti	475	35.3
Vandalism	165	12.3
Shoplifting	335	24.9
Burglary	16	1.2
Bicycle theft	91	6.8
Car/motor theft	43	3.2
Car break	90	6.7
Robbery	20	1.5
Personal theft	137	10.2
Carrying weapon	152	11.3
Group fight	179	13.3
Assault	62	4.6
Drug trafficking	61	4.5
Animal cruelty	140	10.4
Alcohol abuse	1067	79.5
Drug abuse	297	22.1

In the structure of the lifetime delinquent behaviour of the respondents risk behaviours, such as alcohol abuse, and less severe forms of delinquent behaviour, particularly graffiti and shoplifting prevail (Table 2).

[3] This part of the paper is based on the analysis presented in Ćopić, 2016, where more details on the prevalence and structure of juvenile delinquency can be found. Additionally, more information about characteristics of juvenile delinquency can be found in Kovačević, 2016.

[4] In this paper risk behaviour includes alcohol and drug abuse, i.e. substance use, while other forms of delinquent behaviour are considered as delinquency in its strict sense.

Table 2: Structure of the lifetime delinquent behaviour

Delinquent behaviour	N	%
Graffiti	475	38.6
Vandalism	165	13.4
Shoplifting	335	27.3
Burglary	16	1.3
Bicycle theft	91	7.4
Car/motor theft	43	3.5
Car break	90	7.3
Robbery	20	1.6
Personal theft	137	11.1
Carrying weapon	152	12.4
Group fight	179	14.6
Assault	62	5.0
Drug trafficking	61	5.0
Animal cruelty	140	11.4
Alcohol abuse	1067	86.8
Drug abuse	297	24.2

The survey data show that the percentage of boys (92.6%) and girls (90.2%) who have expressed some form of delinquent behaviour in their life is similar. However, when the substance use is excluded from the analysis, it can be noticed that significantly more boys (71.9%) than girls (55.1%) reported that they had perpetrated one of more forms of delinquency ($\chi^2(1)=40.55$, $p=\leq.001$).

Table 3: Lifetime delinquent behaviour and gender

Delinquent behaviour	Boys	Girls	
	%	%	Significance
Graffiti	42.8	27.5	0.000
Vandalism	18.5	5.6	0.000
Shoplifting	28	21.7	0.008
Burglary	1.9	0.5	0.019
Bicycle theft	8.2	5.3	0.038
Car/motor theft	4.9	1.4	0.000
Car break	8.9	4.4	0.001
Robbery	2.3	0.6	0.012
Personal theft	10.3	10.2	0.931
Carrying weapon	18.5	3.6	0.000
Group fight	22	3.9	0.000
Assault	7.7	1.3	0.000
Drug trafficking	6.2	2.8	0.003
Animal cruelty	10.7	10.2	0.732

Nevertheless, it is important to bear in mind that for some forms of delinquent behaviour, although significant gender differences were established, due to a small number of respondents who answered that they had expressed such behaviour, we should be careful in giving some general conclusions. This particularly refers to: assault, car/motor theft and car break. On the other hand, if we look into the most frequent forms of juvenile delinquency, it can be noticed that these forms of delinquency are more often expressed by boys than by girls. This is particularly visible in cases of vandalism and group fight. As for vandalism, the data show that three times more boys (18.5%) than girls (5.6%) reported that they had had such an experience in the lifetime course. When it comes to group fight, five times more boys (22.0%) than girls (3.9%) answered that they had expressed this form of delinquent behaviour. Although statistically significant, this difference is, when looking into percentages, somewhat less in case of graffiti: 42.8% of boys versus 27.5% of girls.

The survey findings also suggest that the older respondents are the more they express delinquent behaviour ($\chi^2(7)=68.13$, $p\leq.001$). Age differences could be also noticed when we exclude the data on risk behaviour from the analysis ($\chi^2(2)=8.93$, $p<.05$).

Table 4: Lifetime delinquent behaviour and age

Delinquent behaviour	12-13 %	14-16 %	17-19 %	Significance
Graffiti	26.9	35.1	40.8	0.001
Vandalism	9.9	9.2	18.1	0.000
Shoplifting	24.5	22.1	29.4	0.024
Burglary	0.8	0.2	2.9	0.000
Bicycle theft	9.1	5.8	6.9	0.222
Car/motor theft	1.6	2.7	4.9	0.036
Car break	8.3	4.7	8.6	0.023
Robbery	1.2	0.6	2.9	0.010
Personal theft	9.9	11.4	8.9	0.398
Carrying weapon	5.2	11.4	14.8	0.001
Group fight	9.9	13.1	15.7	0.092
Assault	2.8	3.6	7.1	0.009
Drug trafficking	1.6	3.3	7.9	0.000
Animal cruelty	9.9	9.8	11.7	0.567

As the data in Table 4 suggests, respondents younger than 14 and those between 14 and 16 commit less delinquent behaviour than older ones, and they mostly commit less severe property crimes. Significant correlation between the age and delinquent behaviour was found for the lifetime delinquency for the following forms of delinquent behaviour: vandalism, burglary, drug trafficking, graffiti and carrying weapon.

When it comes to substance use, the data suggests that alcohol abuse is present in almost the same percentage with boys (78.9%) and girls (80.2%), so there are no significant gender differences. As for the age differences in alcohol consuming, the research revealed that the older respondents are, the more they consume alcohol ($\chi^2(1)=117.20$, $p\leq.001$): this was stated by 59.3% of respondents between 12 and 13 years, 77.7% of those between 14 and 16 and 93.2% of those between 17 and 19. Finally, almost one forth of respondents (22.1%) reported that they had abused drugs in some moment in their lifetime. Although the survey findings suggest that there are statistically significant gender differences in abusing drugs ($\chi^2(1)=4.53$, $p<.05$), this difference, in percentages, is only five percentage points in favour of boys (24.3% of boys versus 19.5% of girls). As for the age, the data show that the old respondents are the more they express this form of risk behaviour ($\chi^2(2)=125.71$, $p\leq.001$).

Table 5: Correlations of different forms of delinquent behaviour

Delinquent behaviour	Graffiti	vandalism	Shoplifting	Burglary	Bicycle theft	Car/motor theft	Car break	Robbery	Personal theft	Weapon	Group fight	Assault	Drug trafficking	Animal cruelty	Lifetime alcohol abuse	Lifetime hashish abuse	Lifetime synthetic drugs abuse	Lifetime cocaine, heroin abuse
Graffiti		.920	.862	.821	.798	.794	.801	.791	.760	.769	.764	.763	.748	.734	.655	.662	.643	.647
Vandalism	.920		.868	.826	.806	.801	.807	.796	.766	.775	.769	.771	.754	.740	.651	.660	.643	.647
Shoplifting	.862	.868		.864	.845	.839	.845	.831	.808	.808	.801	.803	.772	.764	.667	.668	.647	.651
Burglary	.821	.826	.864		.925	.925	.930	.908	.868	.871	.864	.874	.836	.810	.707	.706	.692	.698
Bic. theft	.798	.806	.845	.925		.903	.917	.884	.851	.851	.848	.851	.814	.791	.689	.688	.672	.677
Car/motor theft	.794	.801	.839	.925	.903		.909	.832	.848	.853	.845	.855	.815	.795	.689	.688	.674	.680
Car break	.801	.807	.845	.930	.917	.909		.897	.868	.863	.860	.862	.823	.810	.698	.694	.681	.688
Robbery	.791	.796	.831	.908	.884	.892	.897		.901	.911	.900	.893	.852	.830	.717	.714	.702	.708
Pers. theft	.760	.766	.808	.868	.851	.848	.868	.901		.880	.874	.859	.817	.802	.695	.686	.672	.675
Weapon	.769	.775	.808	.871	.851	.853	.863	.911	.880		.886	.872	.832	.806	.775	.697	.683	.687
Group fight	.764	.769	.801	.864	.848	.845	.860	.900	.874	.886		.876	.834	.812	.708	.700	.686	.688
Assault	.763	.771	.803	.874	.851	.855	.862	.893	.859	.872	.876		.886	.865	.730	.727	.715	.719
Drug trafficking	.748	.754	.772	.836	.814	.815	.823	.852	.817	.832	.834	.886		.891	.724	.728	.717	.716
Animal cruel.	.734	.740	.764	.810	.791	.795	.810	.830	.802	.806	.812	.865	.891		.705	.705	.692	.965
LT alcohol ab.	.655	.651	.667	.707	.689	.689	.698	.717	.695	.705	.708	.730	.724	.705		.788	.758	.761
LT hash. ab.	.662	.660	.668	.706	.688	.688	.694	.747	.686	.697	.700	.727	.728	.705	.788		.866	.862
LT synt. dr. ab.	.643	.643	.647	.692	.672	.674	.681	.702	.672	.683	.686	.715	.717	.692	.758	.866		.926
LT coc., her. ab.	.647	.647	.651	.698	.677	.670	.688	.708	.675	.687	.688	.719	.716	.695	.761	.862	.926	

* Significance for all correlations: p≤.001

All examined forms of delinquent behaviour, including substance use, highly correlate with each other at the level of significance p≤.001, which indicates possibility that in some juveniles one delinquent behaviour leads to another (non-violent or violent) delinquent behaviour (Table 5). Extremely high correlation (r>.900) is present among various property crimes, primarily with violent or non-violent criminal behaviour. For example, the highest correlation is present between burglary and the car break (r=.930), which can contain the element of violence in its modus operandi in situations when the car had been broken before the object was stolen from it. This suggests the high level of likelihood that the juvenile who had at some moment committed burglary, also committed a car break and theft. High correlation is also present between abuse of synthetic and the so-called heavy drugs, such as cocaine, heroin and crack (r=.926), as well as between abusing hashish and synthetic drugs (r=.866) and heavy drugs (r=.862). High correlation was also established between carrying of weapons in a public place (including school) and robbery (r=.911). This indicates the risk that while committing a robbery, a juvenile may use a weapon and possibly inflict injury to another person. Accordingly, the high correlations between carrying weapons and other property and violent crimes, such as theft (r=.880) and participation in a group fight (r=.886) should not be neglected.

3. PARENTAL SUPERVISION AND CONTROL AS A FACTOR OF JUVENILE DELINQUENCY

The Parental control and supervision scale consisted from 12 items (variables) that examined three dimensions of this factor of juvenile delinquency: *parental knowledge* (Parents know where I am; Parents know which friends I am with, and Parents know what am I doing in free time), *parental supervision* (Parents ask where, with whom, what I did in my leisure time; Parents tell when to come after going out; I must call parents when I'm late; Parents check homework, and Parents check what I watch), and *child disclosure* (I tell parents who I spend time with; I tell parents how I spend money; I tell parents where I am after school, and I tell parents what I do in leisure time). Coefficients of the Cronbach's Alpha for the Parental control and supervision scale (α=.87), as well as for each of the three sub-scales (Parental knowledge: α=.83; Parental supervision: α=.85; Child disclosure: α=.88) reflect good internal consistency of the scale as a whole, and of each of the three sub-scales separately. The Parental control and supervision scale is a five-level Likert scale, with answers from 'almost always' to 'almost never'. When analyzing data for each item, a new variable with three answers was created: never (rarely), sometimes, often (always).

The obtained data suggests that all three variables of the *parental knowledge* sub-scale negatively correlate with most of the examined forms of delinquent behaviour (Table 6). Namely, the lack of parental knowledge on where the child is, i.e. where a child spends his/her time when he/she is not at home correlates with all forms of delinquent behaviour, as well as with substance use, except with the car break and animal cruelty. Additionally, the lack of parental knowledge on which friends the child spends time with when he/she is not at home is associated with all forms of delinquent behaviour, except bicycle and personal theft. Finally, the third variable that refers to parental knowledge on how a child spends leisure time when he/she is not at home is associated with all forms of delinquency, except personal theft.

Table 6: Parental knowledge and delinquent behaviour (results of χ^2 test)

Delinquent behaviour	**Parental knowledge**		
	Parents know where I am	Parents know which friends I am with	Parents know what am I doing
	p (φ)	p (φ)	p (φ)
Graffiti	.000 (-.22)	.000 (-.29)	.000 (-.21)
Vandalism	.000 (-.37)	.000 (-.39)	.000 (-.33)
Shoplifting	.000 (-.15)	.002 (-.14)	.002 (-.12)
Burglary	.000 (-.39)	.000 (-.32)	.000 (-.31)
Bicycle theft	.026 (-.11)	>.05 (-.05)	.000 (-.19)
Car/motor theft	.005 (-.17)	.009 (-.19)	.001 (-.18)
Car break	>.05(-.04)	.005 (-.20)	.001 (-.15)
Robbery	.000 (-.28)	.003 (-.11)	.001 (-.13)
Personal theft	.007 (-.19)	>.05 (-.05)	>.05 (-.05)
Weapon	.000 (-.39)	.000 (-.35)	.001 (-.13)
Group fight	.000 (-.37)	.000 (-.39)	.000 (-.19)
Assault	.000 (-.29)	.000 (-.19)	.002 (-.12)
Drug trafficking	.000 (-.35)	.000 (-.34)	.000 (-.17)
Animal cruelty	>.05 (-.05)	.010 (-.19)	.000 (-.15)
LT alcohol abuse	.000 (-.17)	.000 (-.28)	.001 (-.13)
LT hash. abuse	.000 (-.35)	.000 (-.34)	.000 (-.32)
LT synt. dr. abuse	.000 (-.39)	.000 (-.44)	.000 (-.34)
LT coc., her. abuse	.001 (-.14)	.000 (-.27)	.000 (-.26)

The level of correlation: φ<.29 - weak; .30≤φ<.49 - moderate; φ>.50 – strong

The less parents are informed about how, where and with whom a child spends leisure time, the more delinquency is present, and vice versa, as the level of parents' information on these issues is increasing the level of perpetrating of delinquency, as well as substance use, is decreasing. The strongest relationship of all three variables of parental knowledge, on the level of modest strength, is present with committing property crimes (vandalism and robbery), violent crimes (carrying weapon and group fight), drug trafficking, as well as with drug abuse (hashish and synthetic drug abuse, e.g. ecstasy, amphetamine, LSD).

Table 7: Parental supervision and delinquent behaviour (results of χ^2 test)

Delinquent behaviour	**Parental supervision**				
	Parents ask where, with whom, what I did	Parents tell when to come after going out	I must call parents when I'm late	Parents check homework	Parents check what I watch
	p (φ)	p (φ)	p (φ)	p (φ)	p (φ)
Graffiti	.009 (-.19)	.000 (-.25)	.000 (-.28)	.026 (-.17)	.000 (-.18)
Vandalism	>.05 (-.05)	.000 (-.19)	.000 (-.19)	>.05 (-.05)	>.05 (-.06)
Shoplifting	>.05 (-.09)	>.05 (-.06)	>.05 (-.07)	>.05 (-.06)	>.05 (-.04)
Burglary	.000 (-.19)	>.05 (-.09)	.010 (-.21)	>.05 (-.06)	>.05 (-.07)
Bicycle theft	>.05 (-.09)	>.05 (-.08)	>.05 (-.08)	>.05 (-.10)	>.05 (-.06)
Car/motor theft	>.05 (-.08)	>.05 (-.07)	>.05 (-.04)	>.05 (-.03)	>.05 (-.03)
Car break	>.05(-.08)	.013 (-.20)	>.05 (-.06)	>.05 (-.09)	>.05 (-.06)
Robbery	>.05 (-.04)	.004 (-.23)	.002 (-.19)	>.05 (-.11)	>.05 (-.05)
Personal theft	>.05 (-.10)	>.05 (-.07)	>.05 (-.07)	>.05 (-.06)	>.05 (-.06)
Weapon	.017 (-.18)	.000 (-.30)	.001 (-.29)	>.05 (-.10)	.000 (-.23)
Group fight	>.05 (-.04)	.000 (-.28)	.000 (-.28)	>.05 (-.08)	.001 (-.16)
Assault	.000 (-.21)	.000 (-.19)	.001 (-.26)	>.05 (-.08)	>.05 (-.07)
Drug trafficking	>.05 (-.03)	.001 (-.20)	.009 (-.19)	>.05 (-.07)	>.05 (-.08)
Animal cruelty	>.05 (-.05)	>.05 (-.04)	>.05 (-.09)	>.05 (-.57)	>.05 (-.08)
LT alcohol abuse	>.05 (-.06)	.000 (-.27)	.001 (-.18)	.000 (-.38)	.000 (-.48)
LT hashish abuse	.004 (-.17)	.000 (-.36)	.005 (-.16)	.000 (-.32)	.000 (-.26)
LT synt. drugs abuse	.001 (-.21)	.000 (-.20)	.000 (-.22)	.036 (-.17)	>.05 (-.08)
LT coc., heroin abuse	>.05 (-.06)	>.05 (-.07)	>.05 (-.05)	>.05 (-.04)	>.05 (-.03)

The sub-scale *parental supervision* examined the level of parents' interest in where, how and with whom a child spends his/her leisure time, setting of boundaries (when to come back home after going out, obligations to call parents when he/she is late) and supervision (check of certain issues, such as checking homework and if videos a child watches are allowed and appropriate for its age) (Table 7). Unlike parental knowledge, parental supervision as an aspect of parental control has proved less significant for delinquent behaviour. Namely, most of the examined delinquent behaviours, including alcohol and drug abuse, are not associated at all to the variables of parental supervision or the association is rather weak. A somewhat stronger relationship, but still on a moderate level, was established between the reduced involvement of parents in setting of boundaries (determining the time when a child needs to return home in the evening), on the one hand, and carrying weapons ($p \leq .001$; $\varphi = -.30$) and the light drugs abuse ($p \leq .001$; $\varphi = -.36$), on the other hand. In addition, the variables that point to parental supervision, in terms of the reduced control of whether a child has completed homework and whether video content is allowed and appropriate for his/her age, contribute to alcohol and light drugs abuse.

Table 8: Child disclosure and delinquent behaviour

Delinquent behaviour	Child disclosure			
	I tell parents who I spend time with	I tell parents how I spent money	I tell parents where I am after school	I tell parents what I do in leisure time
	p (φ)	p (φ)	p (φ)	p (φ)
Graffiti	.000 (-.20)	.000 (-.24)	.000 (-.25)	.000 (-.17)
Vandalism	.000 (-.26)	.000 (-.29)	.000 (-.31)	.000 (-.20)
Shoplifting	.041 (-.12)	.001 (-.22)	.018 (-.12)	>.05 (-.08)
Burglary	.000 (-.29)	.000 (-.19)	.000 (-.26)	.003 (-.17)
Bicycle theft	.005 (-.15)	.014 (-.18)	>.05 (-.06)	>.05 (-.03)
Car/motor theft	.003 (-.14)	.003 (-.13)	.037 (-.06)	>.05 (-.08)
Car break	.013 (-.17)	.013 (-.08)	>.05 (-.09)	>.05 (-.06)
Robbery	.005 (-.12)	.004 (-.16)	.001 (-.14)	>.05 (-.05)
Personal theft	.008 (-.11)	.002 (-.19)	>.05 (-.09)	.021 (-.17)
Weapon	.000 (-.36)	.000 (-.34)	.000 (-.37)	.000 (-.19)
Group fight	.000 (-.37)	.000 (-.32)	.000 (-.25)	.000 (-.17)
Assault	.000 (-.26)	.000 (-.27)	.000 (-.26)	.000 (-.23)
Drug trafficking	.001 (-.13)	.001 (-.18)	.001 (-.22)	.001 (-.18)
Animal cruelty	>.05 (-.02)	>.05 (-.10)	>.05 (-.07)	>.05 (-.07)
LT alcohol abuse	.001 (-.14)	.000 (-.36)	.002 (-.13)	.001 (-.18)
LT hashish abuse	.000 (-.18)	.000 (-.36)	.000 (-.31)	.000 (-.29)
LT synt. drugs abuse	.000 (-.33)	.000 (-.39)	.000 (-.38)	.001 (-.29)
LT coc., heroin abuse	.000 (-.26)	.000 (-.27)	.000 (-.20)	.001 (-.244)

Finally, when it comes to the third dimension of parental control and supervision – *child disclosure*, the data suggests that reduced children self-reporting (child disclosure) contributes to somewhat higher level to perpetrating of delinquent behaviour, including alcohol and drug abuse (Table 8). Children who rarely or never tell their parents where, how and whom with they spend their leisure time and how they spend money express most forms of delinquent behaviour, including substance use, more often than children who share these information with their parents. Reduced children self-reporting on spending leisure time and spending money is associated with almost all forms of delinquent behaviour, except with animal cruelty. A somewhat stronger relationship, on the level of moderate relationship, is present between reduced self-reporting and carrying weapons, group fight and abuse of alcohol, hashish and synthetic drugs ($p \leq .001$; $.30 < \varphi < .49$).

Having in mind these results, we wanted to see what the possibility of predicting delinquent and risk behaviour based on the absence of parental control and supervision is. We used Logistic Regression to analyse possible predictions of delinquent behaviour based on the absence of parental supervision and control. Based on this analysis, statistically significant regression models for all three dimensions of parental control and supervision were established. Results of logistic regression are presented in Table 9.

Table 9: Parental knowledge, supervision and child disclosure as predictors of delinquent and risk behaviour

Parental control and supervision	B	SE	Wald	df	Exp. (B)	p
Parental knowledge						
Delinquent behaviour	-.572	.057	101.115	1	1.772	.000
Alcohol abuse	-1.358	.068	401.665	1	3.887	.000
Drug abuse	-.1.273	.066	370.657	1	.280	.000
Parental supervision						
Delinquent behaviour	-.571	.057	99.863	1	1.770	.000
Alcohol abuse	-1.365	.068	400.577	1	3.915	.000
Drug abuse	-.1270	.066	366.313	1	.281	.000
Child disclosure						
Delinquent behaviour	-.569	.057	99.752	1	1.766	.000
Alcohol abuse	-1.355	.068	399.787	1	3.876	.000
Drug abuse	-1.274	.066	370.388	1	.280	.000

When it comes to *parental knowledge*, logistic regressive model is significant for prediction of delinquent behaviour ($\chi^2(3)=37.34$; $p\leq.001$; successfully classifies 63.9% of cases), alcohol abuse ($\chi^2(3)=82.56$; $p\leq.001$; successfully classifies 79.5% of cases) and drug abuse ($\chi^2(3)=74.52$; $p\leq.001$; successfully classifies 78.5% of cases).

Logistic regression model for *parental supervision* as predictor is significant for delinquent behaviour ($\chi^2(5)=38.18$; $p\leq.001$; successfully classifies 64.3% of cases), alcohol abuse ($\chi^2(5)=114.770$; $p\leq.001$; successfully classifies 79.6% of cases) and drug abuse ($\chi^2(5)=73.769$; $p\leq.001$; successfully classifies 64.3% of cases).

Finally, logistic regression model for *child disclosure* as predictor is also significant for delinquent behaviour ($\chi^2(4)=50.89$; $p\leq.001$; successfully classifies 63.8% of cases), alcohol abuse ($\chi^2(4)=41.72$; $p\leq.001$; successfully classifies 79.5% of cases) and drug abuse ($\chi^2(4)=52.55$; $p\leq.001$; successfully classifies 78.1% of cases).

All three aspects of parental control and supervision are the most predictable for alcohol abuse. Juveniles whose parents are less informed how, with whom and where they spend leisure time are at 3.89 higher risk of alcohol abuse than juveniles whose parents are more informed. Similarly, juveniles who are less supervised by parents are at 3.91 higher risk, and those who rarely inform or do not inform their parent at all about how, with whom and where they spend their leisure time are at 3.88 higher risk of alcohol abuse than juvenile who are more supervised by parents and more often inform their parents about these aspects of leisure time (Table 9).

More precisely, parental knowledge on *how* (B=-.485; Exp(B)=.62; $p\leq.001$) and *with whom* (B=-.469; Exp(B)=.63; $p\leq.001$) a child spends leisure time significantly contribute to the regression model for delinquent behaviour. Parental knowledge on *how* a child spends leisure time also significantly contributes to the regression model for alcohol abuse (B=-.403; Exp(B)=.67; $p<.01$). Finally, parental knowledge on *how* (B=-.361; Exp(B)=.70; $p<.01$) and *where* (B=-.472; Exp(B)=.62; $p\leq.001$) a child spends leisure time significantly contribute to the regression model for drug abuse.

For prediction of delinquent behaviour by parental supervision the most significant is absence of boundaries or less frequent setting of boundaries for a child: 'when to come home after going out' (B=-.175; Exp(B)=.84; $p<.05$), obligation to 'call parents when he/she is late' (B=-.202; Exp(B)=.82; $p<.05$), and 'parents check what he/she watches' (B=-.235; Exp(B)=.79; $p<.05$). Setting of boundaries – 'when to come home after going out' (B=-.299; Exp(B)=.74; $p<.01$), checking homework (B=-.427; Exp(B)=.65; $p\leq.001$) and what kind of video a child watches (B=-.558; Exp(B)=.57; $p\leq.001$) negatively predict alcohol abuse. These three indicators of parental supervision significantly contribute to the regression model of drug abuse, as well.

When it comes to child disclosure, (not) telling parents how he/she spends money significantly negatively predicts delinquent behaviour (B=-.462; Exp(B)=.63; $p\leq.001$). This aspect of child disclosure also significantly negatively predicts alcohol abuse (B=-.569; Exp(B)=.57; $p\leq.001$) and drug abuse (B=-.433; Exp(B)=.65; $p\leq.001$). Not telling parents where he/she is after school, negatively predicts drug abuse (B=-.238; Exp(B)=.79; $p<.05$), as well.

CONCLUSION

The findings of the ISRD3 in Serbia suggest high prevalence of examined forms of delinquent behaviour, including risk behaviour (alcohol and drug abuse) in two towns in Serbia where the research was conducted. If substance use is excluded, the data suggests that almost two thirds of juveniles in the given sample expressed some form of delinquency in their life. The structure of juvenile delinquency in Serbia confirms the results of some previous research and is in line with the official statistics in both Serbia and abroad: juveniles commit less sever offences, while property offences dominate. Violent offences are less frequent, and they mainly refer to group fight and animal cruelty. Nevertheless, carrying weapons should not be ignored as it appears to be a high risk behaviour that may result in violence. The research confirmed significant gender differences in self-reported juvenile delinquency: boys are more likely than girls to commit offences, while offences committed by boys are more sever and include violence. Children (below 14) and younger juveniles (14-16) commit less offence, while offences they commit are less serious and usually relate to property offences. Most of juveniles from the sample consumed alcohol (79.5%), while almost one forth abused drugs sometimes in their life (22.1%). Boys abuse drugs more often than girls, while alcohol use is present in both boys and girls in similar percentage.

The findings also show high correlation between all examined forms of delinquent behaviour, including substance use, which suggests possibility that, in some juveniles one delinquent behaviour leads to another one. Not surprisingly, the highest correlation is present among various property crimes, primarily with violent or non-violent offences. High correlation is also present between abuse of synthetic and the so-called heavy drugs, such as cocaine, heroin and crack, as well as between abusing hashish and synthetic drugs and heavy drugs. This suggests the possibility that some juveniles try out all the available types of drugs, i.e. that they start with light drugs and gradually switch to synthetic and heavy drugs, thus, develop dependence on psychoactive substances. The findings also show high correlation between carrying of weapons in a public place (including school) and robbery, theft and participation in a group fight, which indicates the risk that juveniles may use the weapons and possibly inflict injury to another person.

This data suggests the need for developing different programs for prevention of juvenile delinquency, which would encompass different activities directed towards early detection and reaction, assistance and support, constructive spending of leisure time, as well as informing and raising awareness of juveniles about the risks of delinquent behaviour.[5]

The obtained data suggests that parental knowledge, parental supervision and child disclosure negatively correlate with delinquent and risk behaviour. This confirms the findings of similar studies in which it has been established that lack of parental knowledge of ways to which adolescents spent leisure time, lack of boundaries and supervision, as well as the lack of child disclosure contribute to adolescents' delinquent and risk behaviour (Padilla-Walker et al., 2008; Kiesner, Poulin, Dishion, 2010; Kerr, Sattin, Burke, 2010; Branstetter, Furman, 2013). Similar to previous studies (Kejisers et al., 2009; Tilton-

[5] More information on the recommendations developed on the basis of the research results could be found in: Nikolić-Ristanović, 2017

Wiewer et al., 2013) the association between disclosure and delinquency was significantly stronger than the association between parental knowledge or control and delinquency.

Parental knowledge and supervision, as well as child disclosure negatively predict delinquent and risk behaviour. The less parents' know and supervise child's activities during leisure time and the less child tells parents what, how and with whom he/she spends leisure time, the greater is the possibility for him/her to express delinquent behaviour and to use alcohol or drug, and vice versa. In general, out of the three explored dimensions of parental control and supervision, child disclosure has proved to be the most important predictor of delinquent behaviour, while parental knowledge and parental supervision are more significant predictors of substance use than the child disclosure. According to Branstetter and Furman (2013), child's will to share information with parents depends on child's relationship with them. Delinquent behaviour disturbs relationship between the child and the parent, and therefore it can lead to a reduced child's willingness to tell the parents how, where and with whom he/she spends free time. The less child tells to parents, the less they will have control over him/her and the more will be the risk for him/her to behave delinquently.

Parental knowledge and supervision, as well as child disclosure have the strongest predictive effect on alcohol abuse, which suggests that the lack of parental control and supervision (its passive and negative element) increase the risk for alcohol abuse more than three times. These findings confirm results of other studies on parental control and supervision (Keijsers et al., 2009; Kiesner, Poulin, Dishion, 2010; Kerr, Stattin, 2000; Kerr, Stattin, Burk, 2010; Stattin, Kerr, 2000; Branstetter, Furman, 2013).

The research findings about the relationship between the lack of parental control, on the one hand, and juvenile delinquency, including substance use, on the other hand, point to relevance parental control in general has for the prevention of delinquency. Therefore, it seems important to work on developing (counselling) programmes, which would aim at empowering families and strengthening parental competencies, building parental skills, restoring family relationships and enhancing communication between parents and children, which is important for preventing juvenile delinquency, including substance use. It is also relevant to work on establishing and strengthening cooperation between family, children and schools, as well as their cooperation with the local community, since only synergetic efforts could lead to prevention of juvenile delinquency.

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RODITELJSKI NADZOR I KONTROLA KAO FAKTOR MALOLETNIČKE DELINKVENCIJE: REZULTATI MEĐUNARODNE ANKETE SAMOPRIJAVLJIVANJEM DELINKVENCIJE

Tokom 2013. i 2014. godine Srbija je po prvi put uzela učešće u Međunarodnoj anketi samoprijavljivanjem delinkvencije (ISRD3). Istraživanje je sprovedeno na uzorku of 1344 učenika osnovnih (VII i VIII razreda) i srednjih škola (I do IV razreda) u dva najveća grada - Beogradu i Novom Sadu. Podaci su prikupljani pomoću standardizovanog upitnika. Ovaj rad ima za cilj da prikaže deo nalaza istraživanja koji se odnose na obim, strukturu i korelacije različitih oblika delinkventnog i rizičnog ponašanja koji su ispitivani, kao i na roditeljski nadzor i kontrolu kao faktor maloletničke delinkvencije. Podaci do kojih se došlo pokazuju visok stepen rasprostranjenosti ispitivanih delinkventnih ponašanja, uključujući rizična ponašanja, posebno konzumiranje alkohola, u populaciji maloletnih lica u gradovima u kojima je istraživanje sprovedeno. Maloletna lica češće ispoljavaju delinkventna ponašanja manje društvene opasnosti, a među njima preovlađuju dela imovinske prirode. Nasilna dela su manje zastupljena i najčešće se ispoljavaju u učestvovanju u grupnoj tuči na javnom mestu i u zlostavljanju životinja. Dečaci vrše više delinkventnih ponašanja od devojčica, pri čemu su ponašanja dečaka teža i češće uključuju nasilje. Takođe, što su ispitanici stariji to više vrše delinkventna ponašanja. Većina maloletnih lica iz uzorka je konzumirala alkohol, a oko četvrtine njih je konzumiralo drogu u nekom momentu tokom života. Nalazi istraživanja pokazuju visoku korelaciju između svih ispitivanih oblika delinkventnog ponašanja, uključujući konzumiranje alkohola i droge. Sve tri ispitivane dimenzije roditeljskog nadzora i kontrole (roditelji znaju gde, kako i sa kim dete provodi slobodno vreme, roditeljski nadzor i informisanje roditelja od strane deteta o tome kako, gde i sa kim provodi slobodno vreme van kuće) negativno koreliraju sa delinkventim i rizičnim ponašanjem. Takođe, sve tri dimenzije roditeljkog nadzora i kontrole predstavljaju prediktore delinkventnog i rizičnog ponašanja maloletnih lica. Ukupno gledano, odsustvo roditeljskog nadzora i kontrole povezano je sa ispoljavanjem delinkventnog ponašanja i predstavlja prediktor maloletničke delinkvencije. Polazeći od toga, važnim se čini rad na razvijanju različitih preventivnih programa, uključujući programe usmerene na razvijanje i jačanje roditeljskih kompetencija i veština, kao i unapređenje komunikacije i odnosa na relaciji roditelji-dete kako bi se delovalo u pravcu prevencije i suzbijanja maloletničke delinkvencije u Srbiji.

KLJUČNE REČI: maloletnička delinkvencija / Međunarodna anketa samoprijavljivanjem delinkvencije / roditeljski nadzor i kontrola / Srbija

WELL-BEING OF CHILDREN AND VARIOUS FORMS OF CAPITAL: SOCIAL, HUMAN AND CULTURAL CAPITAL[*]

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New criminological theory, as well as research, shows increased interest in the contribution of human, cultural and social capital for juveniles to abandon crime. Their relation is viewed in the context of stimulation of social cohesion and social justice, and elimination of negative effects of absent social and cultural capital. Indirect relation of human, social and cultural capital contributes to the process of juveniles returning to crime. Cultural capital is linked with social exclusion at various levels, and research of these links aims to promote an approach, which views culture as the means for curbing or compensating of effects of social exclusion of children and young people. This paper makes a connection between various formations of human and social capital, for the purpose of designing of public policies based on the strategy, which calls for interaction between the state, and the society in realization of social justice at all levels, especially with regard to children and young people.

KEY WORDS: social capital / human capital / social justice / children / young people

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INTRODUCTION

Sustainable human development[1] as well as well-being of social communities are based on production of various forms of capital. The concept of sustainable human development views society as a whole, whose path of development is based on broadening of the scope, selection, and participation in social life which exists outside of individual domains, but includes all individuals, forming social capital.

Within the framework of the concept of well-being, quality of life of an individual or a society is considered, i.e., individual well-being is differentiated from social well-being. Although they cannot be reduced to each other, there is a direct link between these two levels of well-being. They intertwine in a dynamic process of individual self-realization within the framework of the potential for social progress, therefore conceptualization of the term points to a direct link between social and individual well-being (Bulatovic, 2015).

The subject of this paper is analysis of interaction among human, social and cultural capital and indirect influence of these relations on children and young people. The focus on individual, but also interactive effect of various scopes and qualities of these types of capital, aims to emphasize the importance of social integration, realization of social justice and respect for the need for various social actors to participate in social life. This is about promoting of strategies for realization of voluntary forms of social regulation, based on cultivation of social relations which stimulate individuals to strive from the earliest age toward full realization of personal capabilities, through social activation, motivated by achieving of joint interests. In this sense, interaction is promoted between the state and the society, where increasing of the level of social, cultural and human capital is understood as a way for realization and maintaining of well-being for present and future generations. Neglect of indicators which indicate low levels of all forms of capital, not only economic one, leads to neglect of critical components of well-being of a community.

In the existing literature and research practice operationalization of the concept of social capital in a much larger degree relates to everyday life of grownups and their communities, than to everyday life of children and young people (Leonard, 2005). Relations which young people develop and mobilize, creating social capital, are neglected. The assumption that measures and indicators of social capital, which is generated among grownups, may be applied to young people (Leonard, 2008; Baier & Nauck, 2006, according to Boeck, 2011: 33) is also questionable. Social capital of young people is generally considered a product of relations of their parents, while social networks, which social capital of young people is made of, remain invisible (Leonard, 2005).

It should be said that the concept of social capital has been the subject of numerous sociological and political reviews which, in essence, are based on emphasizing of its factical emptiness and its usefulness for abstaining politicians from responsibility for issues of

[1] The sustainable human development concept puts the emphasis on enabling society as a whole in charge of its destiny and able to choose the development path suitable to its own circumstances; it also puts emphasis on broadening the scope of choice and participation beyond individuals, to encompass society as a whole. It has become common for countries to create a framework of sustainable development indicators (SDI) to measure progress in raising social, economic and environmental well-being of their regional and national communities. Standard practice is to place the focus on changes in stock measures of physical capital, financial capital, human capital, natural capital and social capital. It pays explicit attention to cultural well-being, alongside social, economic and environmental well-being (Dalziel et al., 2009).

social justice and inequality in the economic sphere. Complexity and unpredictability of social life and distribution of power it is permeated with, impugns the idea of a tendency to achieve transcedent unity offered by the term "social" in social capital. This is about the strive to remove historic and current reality from deep gaps in liberal democratic society along the line of race, class, gender, ethnicity and disability (Arneil, 2006). Dichotomy relating to two prevailing theoretical models of social capital is based on two completely different approaches. The first views social capital as a concept of social integration, while the second sees it as the concept of social injustice and differentiation (for more on this see: Holland, 2008).

Taking into consideration the contexts of privileges, as well as class, gender and ethnic membership, which have a large influence on the approach to social and cultural capital, the paper starts from the assumption that young people are capable of generating their own social capital, which should be institutionally supported. Also, maintaining and promoting of social capital of young people is a process which includes critical creativity, positive approach to life and trust, which help them live through various situations in life and take risks necessary for their own dynamic development. In this sense, social capital of children and young people has an important role in lives of young people, both for their well-being and creation of new opportunities, and for development of solidarity, trust, creativity and resilience. The paper also discusses negative sides of social capital, which appear as direct and indirect effects of various levels of human and cultural capital an individual disposes of, and his/her immediate and broad social environment.

1. SOCIAL, HUMAN AND CULTURAL CAPITAL

Social capital is a theoretical concept based on the idea that trust, solidarity and reciprocity in social relations, as well as their predictability, bring about well-being and prosperity, both for individuals and for the social community. Social capital is generated from social networks established in voluntary associations, encouraging and developing individual and general reciprocity of trust (Putnam, 1993). Social trust and civic engagement appear as two principal indicators of social capital, defined as increasing function of participation in civic life. A series of useful properties and effects of social capital derive from these assumptions, in various fields of social life (increase of economic efficiency, decrease of transaction costs, reliability during conclusion of contracts, civic participation in political life, development of democracy, sharing of joint norms and values, social control and cohesion). Social capital may be understood as almost every form of human interaction and every level of social management. Plentitude of literature on social capital, and multitude of empirical and disciplinary instances which observe it, point to its flexibility and multiple meanings.

Formal and institutional foundation of social capital in its productive form imply a high degree of predictability and reciprocal well-being among variously positioned social actors. The property, which separates social capital from other types of capital (economic, human, and cultural), is that it is made of social relations in which an individual is sunk, as an individual, as a group member, and as a citizen. The degree of emotional inclusion, rational and instrumental motivation, or situational solidarity, changes in connection with the type of social capital which is analyzed, but available resources of social capital always present to an individual a smaller or larger possibility for exploitation of social networks, regardless of their properties (formal-informal, communitarian-non communitarian, family-

institutional, intragroup-outgroup). High level of social capital implies a high level of sociability. In fact, zero point in individual disposal of social capital implies full social isolation of an individual. However, many economic, social and developmental capacities of a society shall depend on the type of sociability.

Human capital is defined as an individual good made of knowledge, skills, intellectual and physical capabilities of an individual, primarily viewed through the degree of education and health status. It includes actions, skills, physical and mental health of people in a certain region. In theories on human capital, the repertoire of knowledge and the capability to implement it adequately are believed critical for professional development of individuals and operation of businesses they are employed in. High and sustainable level of human capital implies continual learning, being well-informed, cultivation and creative implementation of knowledge (Rastogi, 2002). Higher level of human capital ensures higher cognitive capabiltiies, makes individuals more productive and increases their potential and efficiency in performing of activities (Becker, 1964; Mincer, 1974).

Human and social capital are closely linked, and may be mutually supported, realizing positive effects on economic growth, social control and support, and better governing policy. It is assumed that the degree of social inclusion rises with better education, broadening networks of participation in various associations, as well as sharing the same system of values. Higher degree of human capital makes individuals more confident, which gives them greater motivation in various spheres of economic and social activities. Social capital appears as the point of gathering of actors who use external links to benefit and promote relations of trust in organization of social and business activities (Adler & Kwon, 2002). Social capital increases capabilities of actors to better place human capital they dispose of, using the potential of social networks.

However, high individual competence and achievements may be disturbed in realization of social success by the very limits of social capital which derive from its intragroup or minority nature. Individual human capital includes social capabilities of individuals, which are developed, distributed, and awarded in a specific social context (Schuller, 2000).

The exclusive focus on education as a private positioning good, which increases competitiveness at the labor market, neglects the importance of education for a broader social community, as well as the importance of total knowledge and education for the individual. Human capital, as private good of an individual, may present a part of social capital, of which Coleman speaks when he identifies social capital as important for educational outcomes (Coleman, 1988). And if human capital presents a property of an individual (individual achievement, competence and competitiveness), making his/her non-material asset, productive link with social capital implies trust and sharing of joint norms among people and requires various forms of cooperation among them (Coleman, 1990).

The fact that social capital appears as a resource, which actors meet in a specific social structure and use it for their personal interests, reduces the importance of the density of social networks and contacts. Individual mobility is more efficiently realized in less dense networks, while social capital only provides a chance to make use of financial and human capital (Burt, 1992: 9). Individual performances of an individual, which make his/her intellectual, human and cultural capital, become more significant in circumstances created by new markets. However, easier and more intense access to significant social contacts

helps individual careers "which implies the strength of close powerful contacts" in contrast to "the strength of weak contacts" of which speaks Granovetter (1974, 1985). Good education becomes a guarantor for professional success if an individual has contacts with people at high social positions. Although traditional models of human capital (Becker, 1962; Mincer, 1974) focus on the close link between education and income, new studies have shown that social networks can ensure access to useful information on the labor market and thus be of help in finding better and better paid jobs (e.g. Loury, 1977; Bourdieu, 1980; Coleman, 1988; Burt, 1992).

The need for research on young people and social capital derives from various manifestations of inequality, discrimination and being deprivileged (Williamson, 2007). Polarized distribution of life opportunities in various sub-populations of young people becomes an ever more frequent topic in public and youth policies through which lack of social justice for young people is observed.

Dahrendorf`s differentiation of entitlement and provision, which is based on seeing the distinction between "material economy" and "material goods" from "positioning economy" and "positioning goods", points to the specific type of classification where the importance of human capital for successful economic and social positioning of an individual is emphasized. The former are the subject of economic growth in a traditional sense, while absence of the latter makes essential deprivation (Dahrendorf, 1990: 13). Social provisions include terms such as innovation, incentive, competition, selection and opportunities for education, health care - all that we could call life opportunities. Social progress appears as the struggle of social groups for opportunities in participation and access to active public and social life. The essence of new social conflicts consists of unequal distribution of "life chances" which are the result of power structure (Dahrendorf, 1990: 27). In this sense, the relation of human and social capital ceases to be complementary, because their mutual effect becomes the result of individual advantages or frustrations mediated by lack of cultural capital. The elite and non-elite separate during educational process by confirmation of belonging to a social class through acquiring of academic qualifications. Those with greater cultural capital achieve success and thus reproductive process is renewed of a hierarchical society (Bourdieu & Boltanski, 1981). Education plays a central role in reproduction of social hierarchy, while cultural and human capital gain real economic value.

Social capital, on one hand, is defined by norms and values (cognitive component), and on the other hand, by "the aspect of informal (or formal) social organization which presents a productive resource for one or more actors" (Coleman, 1994: 170).

Cultural capital, which was introduced in theory by Pierre Bourdieu (Bourdieu, 1986), presents a concept which in later theoretical and research elaboration obtained various dimensions. Accordingly, three main tendencies in defining of cultural capital are: first, that cultural capital derives from the strength and quality of networks through which members of ethnic, religious and minority groups connect (e.g. in larger family structures); second, that cultural capital is a collection of values, norms, traditions and behavior, which a certain group and members of a group develop as means and resources for stimulating of economic, political and social well-being. For instance, through conversion into other forms of capital, or creating infrastructure which promotes social cohesion through the culture of production and consumption, like festivals, ethnic markets, etc.; the third is that cultural capital is made of cultural norms and values which present permanent and stable forms of cultural capital (Dalziel et al., 2009). Cultural capital is an important aspect of social capital

and vice versa. Social capital is based and developed on norms, values, networks and way of activity which make the core of cultural capital.

Confidence in expression of own cultural identity is a part of well-being of a community and is defined as cultural confidence which does not differentiate age, generation, gender, sexual, professional, socio-economic, ethnic, religious, physical and spiritual limitations. Insecure cultural practice includes all actions which reduce, annul or limit cultural identity and well-being of individuals (Dalziel et al., 2009). This means that members of a community may participate in cultural life of their community and creatively self-express themselves in freely chosen cultural activities which require respect of basic human rights and cultural diversity at the level of the whole society.

Solidarity, trust and civic engagement cannot be achieved by politically inspired programs which praise romanticized past of an organic community in which social capital flourished. Principal qualities of social capital, which are generalized trust and pro-social values, may also be perceived as hindrance and weakness. Social distrust, moral cinism, as well as normative relativism of the new cultural ethos (neoliberal market order) are based on individual (frequently negative) experience of an individual. Individual predatory (criminal) capital may be linked with the presence/absence of various forms of capital (economic, social, human and cultural capital) and their mutual relations. Same mechanisms that are involved in creation and maintenance of positive human and social capital are involved in creation and maintenance of negative human and social capital. One accumulates negative human capital through education and training of criminal activity (Putnam, 1995; Lochner, 1999; Western et al., 2000; McCarthy & Hagan, 2001; Lochner, 2004, according to Swofford, 2011: 15). Illegal income is advanced by previous offending, prior arrests, conviction and probation (McCarthy & Hagan, 2001). Research effects of criminal human capital point to the need of specialization of criminal skill sets. Viewed at a broader social-cultural level, the ability of an individual to commit an offence, violate norms, and "swim well" presents individual advantage in the new "cognitive peisage" which is characterized by questionable relation between the legal and the legitimate (Pavicevic, 2014).

2. HUMAN, SOCIAL AND CULTURAL CAPITAL – INTERACTION IN THE CONTEXT OF DEPRIVILEGED CHILDREN AND YOUNG PEOPLE

Structural component of social capital, which defines it as a resource determined by class stratification and position of an individual in it, is consistently ignored in Putnam`s concept[2]. Bourdieu, who was among the first to introduce the concept of social capital into the theory, views the essence of this concept in relations of power which determine it and unequal access to benefits it brings. Bourdieu defines social capital as "the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintances and recognition - or in other words, to membership of a group - which provides each of its members with the backing of

[2] Still, soon after publishing of his pioneer paper, Putnam noticed the need for purification of the concept, because it was evident that not all associations demonstrate benign social effects. In the attempt to solve the problem arising from existence of social connections and sharing of norms which do not know general interest, Putnam introduced a distinction between the bonding and the bridging social capital. Putnam pointed to the distinction between the formal and informal, strong and weak, social capital oriented toward inside and outside (Putnam, 2000; Putnam & Goss, 2002: 10).

the collectively-owned capital"... The volume of social capital possessed by a given agent thus depends on the size of the network of connections he/she can effectively mobilize, and on the volume of the capital (economic, cultural or symbolic) possessed in his/her own right by each of those to whom he/she is connected (Bourdieu, 1986: 248–249). He stresses that the value of social capital is not the same for all actors, that it is not a public good equally accessible to the privileged ones and the deprived ones. There are tendencies of privileged individuals to maintain their privileged positions using their connections with other privileged people (Bourdieu, 1986). Discussing Bourdieu`s theory of human capital (Becker, 1964) with the emphasis on different capabilities and different investments in education, Bourdieu concluded that "From the very beginning, a definition of human capital, despite its humanistic connotations, does not move beyond economism and ignores, inter alia, the fact that the scholastic yield from education action depends on the cultural capital previously invested by the family" (Bourdieu, 1986: 17). Human and cultural capital are in essence reflected in individuals into whom time and effort must be invested in order for their accumulation to be realized. This process potentially begins in infancy, but depends critically on the cultural and economic capital already possessed by parents (Bourdieu, 1986: 25).

More precisely, it is because the cultural capital that is effectively transmitted within the family itself depends not only on the quantity of cultural capital, itself accumulated by spending time, that the domestic group possess, but also on the usable time (particularly in the form of the mother's free time) available to it (by virtue of its economic capital, which enables it to purchase the time of others) to ensure the transmission of this capital and to delay entry into the labor market through prolonged schooling, a credit which pays off, if at all, only in the very long term (Dalziel et al., 2009).

Membership of a social class and scope of cultural capital, which children and young people dispose of daily, give guidelines which shape attitudes and behavior relating to school, and thus life cycle of an individual. Children from poor communities are isolated from forming close relations with highly educated grownups (Wilson, 1987), are in a state of cultural deficit, reduced participation in cultural contents which are determined by status of parents` or school, have a low volume of cultural capital. They are not familiar with contents of middlebrow and highbrow culture - drawing, photography, needlework, theatre, museums, and art galleries. They are prone to divert to less respectable subcultural search, which is to compensate for the lack of social and cultural capital (Hagan, 1991). The difference in cultural activities has various implications in subsequent status trajectories of grownups. Parents and school, as well as different volumes of social and cultural capital (Coleman, 1961;1988; Bourdieu, 1977; DiMaggio, 1982) have an influence on educational and occupational achievements of adolescents, supporting or reducing efforts which adolescent invests, but their directions are often unpredictable and hard to understand.

Efforts in achieving social visibility, overcoming of circumstances of their parents` life and acquiring of confidence in circumstances of class background which disfavors them at many plans, bring adolescents from lower social layers closer to adolescent delinquent subculture, as the intervening variable between social origin and status and their striving for achieving success in school and life. At this point adolescent subculture appears as an inter-space which distances adolescents from the influence of the "family taste", attitudes and behavior established by family origin and presence or absence of various types of cultural capital as "acquired dispositions for differentiation and evaluation" (Bourdieu, 1984: 466).

Importance of human and social capital relates to the ability for acquiring skills and ability for binding, which enable individuals to enjoy higher levels of economic and social status and avoid stigmatization after unfavourable events such as after being incarcerated. It has been proved, through research of adolescent population, that the influence of class stratification should be viewed through a longer period of time, and that analysis of their link is a very important aspect of the life perspective of an individual. Later life preoccupations, which are crystalized in adult age, in a smaller or larger degree, may be determined by delinquent episodes in the adolescent age, and very often depend on class membership of an individual (Pavicevic, 2013). Adolescent subcultural preferencies reflect transitional cultural experiences, while link with the existing background and contingent of advantages may establish a longterm life course, both for those well oriented, and those drifting adolescents (Hagan, 1991). In this statement link is suggested which exists between the universal transitional property of adolescence as an age, and class membership made by social and cultural background, extremely important for life course of an individual. In other words, trajectories of members of different classes shall be more or less conditioned by delinquent episodes from the adolescent period.

Phenomenological interpretations of adolescent delinquency, which view it as playing with normative culture and its values in search for exceptionalism and excietement of the not-allowed, reduce the importance of the class and social context (Katz, 1988). Katz puts the greatest accent on the dynamics of individual motivation of actors, which cannot be ultimatively explained by structural-class, race or ethnic background of actors. Perpetrators of crimes share with other people a need to feel worthy of attention, as well as the tendency to base the feeling of their own worth on the concept of higher meaning. Because of this need, they abandon the real environment, creating a "magical environment" in which crime, even when it is the most brutal one, is not any more a banal act, but has a transecedental meaning for the perpetrator (Katz, 1988). According to Katz, phenomenological-logical purpose of crime primarily lies in this individual motivation, and only then variables of social context may be considered. In accordance with this, he believes that social distribution of "street elites" cannot be universally explained by the status of minorities, class tension or stresses of adolescence (ibid, 155). However, Katz also concludes that men - members of lower classes - are prone to violently (which is an irony) defend traditional values of middle class, while men from higher classes have several different options to avoid humiliation, regardless of there being no evidence which would be sufficient to explain this assumed relation (Katz, 1988: 45-47).

In his research of adolescent preferences, Hagan starts from several assumptions which relate to specific characteristics of delinquent behaviour in connection with social stratification and social status of adolescents. The search for excitement and entertainment, as the motive of adolescent cultural preferences characteristic for the transitional period within the life course, includes a set of subcultural preferences of which some are much more deviant than others. If there is a distinct remoteness from highbrow culture (including education), as well as absence of grownups (especially parents), adolescent is in a much greater danger from sliding into cultural ranges with reduced institutional control, characterized by delinquent and other forms of subcultural membership. It is recognized as a "symbolic membership in a new role in selection of clothes, speech, posture, and manirism which in certain cases stress social visibility (Lemert, 1951, according to Hagan, 1991). Subcultural preferences, according to Hagan, negatively relate to efforts directed toward acquiring of education and expected success in that plan, as well as to parental effort to control their children in the adolescent period. Subcultural preferences directly

weaken school and family connections and have relating consequences in establishing of trajectories of the life course, where cultural deficit of volatile adolescents may be critical for their further life preoccupations.

Class membership, on one hand determines cultural capital an adolescent disposes of, while cultural deficit which is in connection with subcultural preferencies affects members of lower classes in a larger degree (Pavicevic, 2013). On the other hand, adolescents from middle and higher classes, through parental status, various forms of status connecting of well-being, prestige and power, more rarely lose respect and respectability even when they slide into deviant subculure and crime. It may be concluded that the possibility for "getting another chance" and the "open structure of opportunities" is reserved for members of higher classes (Jessor, 1991). Benefits which, according to Matza`s suggestion, have less serious subcultural inclinations, in the sense of curbing larger deviant inclinations, simultaneously perform the function in adolescent sexual maturing and socialization (Matza, 1964). However, Hagan concludes that these subcultural elements (partying, drinking, search for contents which are separated from educational orientations), are exclusively useful and fruitful for members of middle and higher classes because they increase social cohesion for them, strengthen connections which will be important in future business environment, in a word, will be crystalized as a cultural resource for men which are not of workers` origin (Jessor, 1991).

Collective yield of a low level of human, cultural and social capital in direct social environment was researched within the project *Social and Human Capital: Contributing Effects of Incarceration on Neighborhoods* (Swofford, 2011). Certain effects of incarceration are arguably more damaging than others. Concerns for neighborhood effects, community and social cohesion, as well as the increase or decrease of human and social capital, tend to dominate the literature surrounding the economic impact of incarceration on communities (Swofford, 2011). Studies suggest that incarceration is more prevalent among under-skilled minority males. In addition, a large earnings deficit, or employment penalty incurred by incarceration, will deepen racial, educational and economic divides among men (Loury, 1989; Arrow, 1998; Western et al., 2001; Clear, 2001, according to Swofford, 2011).

The study hypothesizes the existence of a mediating relationship between human and social capital indicators (2000) and the rates of receiving formerly incarcerated persons (1997-2002) and juvenile arrest (2006-08) in 92 Portland, Oregon neighborhoods. Portland, Oregon receives more formerly incarcerated persons from Oregon's state correctional facilities than any other city or county in Oregon. Using neighborhood rates of residents with household income above 50K, high school graduation, and annual income type: retired or government assistance, as proxies for human capital measures and neighborhood rates of residents employed by non-profit organizations, number of churches, and self-employment as proxies for social capital measures, OLS regression and bivariate correlations tested for a mediating effect between human and social capital on rates of re-entry and juvenile arrest rates. Findings indicate neighborhoods with increased rates of returnees have higher rates of juvenile delinquency. In addition, mediating human and social capital indicators affect the direct relationship between re-entry and juvenile crime: neighborhoods with more residents receiving retirement income, higher percent of self-employed residents, non-profit employees, or higher rates of residents earning income above 50K had lower rates of returnees in their communities. Greater rates of Portland neighborhoods which house residents with high proportions of household incomes above

50K per year see increases in the rate of juvenile crime. Rates of neighborhood churches showed a positive correlation with both returnees and juvenile crime; obtaining a high school diploma was also associated with increased returnee rates and juvenile crime. Neighborhoods with more residents who are self-employed or employed by non-profit organizations had reduced rates of returnees and juvenile crime. Future research and recommendations are discussed to examine the impact of these findings on neighborhoods with formerly incarcerated persons, levels of human and social capital and juvenile crime in Portland, Oregon.

The research has shown that the importance of human, cultural and social capital is far-reaching. Acquiring of skills and capabilities for networking are critical in realization of young individuals to enjoy higher levels of economic and social status, and especially to avoid stigmatization after being incarcerated.

CONCLUSION - CONTRIBUTION TO STIMULATION OF SOCIAL CAPITAL OF YOUNG PEOPLE

The complexity of social, cultural and economic risks which characterize lives of young people bring them into situations which they cannot influence and cannot control. Fluidity and fragmentation of social structures stress continual sociological relevance of class, gender and position in understanding of experiences of young people (McDonald et al., 2005; Furlong & Cartmel, 2007). Reviewing of manners and rules according to which social neworks function is important for analysis of mutual influence of young people and social capital. Networks of families, cousins and piers are important aspects of analysis of transition of young people. Social capital is not the same as social networks, but insights obtained from analysis of social networks are important for understanding of social capital. Focus is especially important on reciprocities which derive from networks, as well as focus on their value in achieving of joint goals (Baron et al., 2001). The issue of promotion of social networks of young people, their life opportunities and participation in civic society, is linked with development of their social capital. Locating of social capital of young people within issues of social justice and inequality is accepted by the Bourdieu`s contestual approach which views social capital as deeply rooted in processes and practices of everyday life (Morrow, 1999; Ecclestone, 2004; Holland, 2007; Leonard, 2004; Koca et al., 2009, accoridng to Boeck, 2011: 36).

Wealth and complexity of social capital of young people make the process of negotiation be in a continuous interaction between self, situated activity, social settings and contexts (Boeck, 2011). Policy and practice oriented toward developing of available social and cultural capital which will play a part in strengthening of individual capital should be based on activities of young people. Promotion of social capital is achieved through strengthening of existing resources, support networks, and opening of access to new resources. Institutions should support taking of positive risk, cultivating of relations with significant others, and improving of the attitude of young people to life. Institutional support is especially important if levels of human and social capital are damaged by a lack of educational achievements and exclusion from the legal labor market because they were incarcerated.

The key topic of studies of young people and social capital is the degree in which young people approach social capital and generate it as the means for realization of the perspective of social justice and social inclusion. In the centre of this approach is

democratic strengthening and realization of rights of children and young people, as well as ensuring of their civic freedoms. Social capital is viewed both as a "hindrance" and as a means for overcoming of contextual and economic limitations. Promotion of human, social and cultural capital gives power to young people, and stimulates them to face challenges of everyday life, where they pass from subjective into critical and creative agency (Boeck, 2011). At the sample of young people who participated in the study *Young people and social capital* it was proved that young people see themselves as independent and not too prone to piers` pressure (Boeck, 2011). Respondents generally had a feeling that they knew what they wanted to achieve in life. In this sense, results could be interpreted as an expression of potential disharmony between a relatively optimistic life attitude and limitations young people shall face because of limitations of their social and economic background. However, the author of the research points out that these results indicate that not only structural factors, but also located activity, have a strong influence on the subjective sense of the agency (Boeck, 2011). Policy and practice interventions should build on young people's situated activity and turn the spotlight away from young people's networks as problems in themselves (ibid, 294). The process of strengthening should recognize the capacity of existent competencies of young people. This research has shown that helplessness is not a dominant feeling of young people, and perception of helplessness of grownups should not be transferred to young people. Essentially, the (re)integration of young people into normative social structures has been seen as a question of improving their social networking and life chances – the development of their social capital. However I would argue that this is not the arena where youth policy is best placed. Reflecting on young people's 'creative agency' policies should support rather than punish young people, and turn the spotlight around from young people networks as problems in themselves, to the problems young people encounter, enabling them to see opportunities to develop a much wider range of options for action and change (Boeck, 2011).

It is important to emphasize that strengthening implies inclusion, not exclusion, especially with regard to young people who had problems with incarceration. Their renewed inclusion into community is often characterized by inclusion into cohorts of criminal social capital and return to criminal activities (Swofford, 2011). Acquiring of human and social capital is in close connection with social reproduction, social disorganization and finally, increased crime rate. Limited level of human capital potentially produces low levels of cultural capital and generating of negative (criminal) social capital. Inclusion of young people into cohorts of criminal social capital leads to increase of violent crimes, spreading like an infection to increase of distrust among members of a community, eroding social organization and increasing the level of social disorganization (Swofford, 2011). The circle closes with the increase of violent crime, closing and new reducing of the level of human, cultural and pro-social social capital. Institutional support to promotion of the level of social capital included in strategies of public policies which relate to children and young people at various social positions should start from the idea that young people have the capability to produce their own social and cultural capital with the available support based on cooperation with governmental and social institutions. Increase of prosocial social capital of young people is based on recognition and respect of competencies, vitality, ability to recover and belief in new and equal life opportunities. Building of available prosocial social capital reduces the influence of criminal social capital which has significant correlations with reductions in thoughtful and reflective decision-making (TRDM) capacities or fatalistic beliefs (Kenneth Moule, 2016). Activation of prosocial social capital implies strengthening of young people to undertake responsibility,

reciprocal trust and support, through the feeling of connection and competence, annulling the effects of social reproduction of unfavorable individual, social and cultural positions.

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DOBROBIT DECE I RAZLIČITI OBLICI KAPITALA: SOCIJALNI, HUMANI I KULTURNI KAPITAL

U novijoj kriminološkoj teoriji, kao i u istraživačkoj praksi postoji pojačan interes za doprinos koji humani, kulturni i socijalni kapital imaju u odustajanju maloletnika od kriminala. Njihov odnos se posmatra u kontekstu podsticanja socijalne kohezije, socijalne pravde i eliminisanja negativnih efekata nedostajućeg društvenog i kulturnog kapitala. Posredni odnos između humanog, socijalnog i kulturnog kapitala utiče na proces povratka maloletnika u kriminal. Kulturni kapital ima različite nivoe povezanosti sa socijalnom isključenošću, a istraživanje ove relacije ima za cilj promociju pristupa koji kulturu vide kao sredstvo za suzbijanje ili nadoknadu efekata socijalne isključenosti dece i mladih. U radu se uspostavlja veza između različitih formacija ljudskog i društvenog kapitala u cilju osmišljavanja javnih politika zasnovanih na strategiji koja poziva na interakciju između države i društva u ostvarivanju socijalne pravde na svim nivoima, a posebno kada su u pitanju deca i mladi.

KLJUČNE REČI: društveni kapital / humani kapital / socijalna pravda / deca / mladi

JUVENILE CRIME AND ORGANIZED CRIME GROUPS — THE STRATEGIC PREVENTION PERSPECTIVE*

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Numerous studies have shown that criminal organizations in their mode of operation are mostly local. The local context directs the expansion and diversification of their criminal activities as well as their "entrepreneurial" risk management. Children are being targeted for criminal exploitation by organized crime groups as a mode of risk management given that they are perceived to be more likely to evade police detection or the sanctions. Continued increase of juvenile perpetrators of acts associated wtih organized crime activities points towards setting of a new trend. Children are being included into criminal entrepreneurship in a number of modalities ranging from distribution of narcotics and transformation of profits from illegal activities and corruption into *ostensibly "legitimate" assets.*

In general terms, criminal justice does not target the causality of crime. As criminal justice phenomena stem from social processes, the roots of crime prevention policy ought to be embedded in measures of social policy as much as to rely upon repressive and control measures of criminal law. In this article the authors discuss juvenile behavior in organized criminal activities from a number of perspectives in order to outline various facets of contemporary social prevention response to this type of crime.

KEY WORDS: juveniles / organized criminal groups / criminal act / perpetrator of crime / well-being

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1. INTRODUCTION: CRIME, ORGANIZED CRIME AND JUVENILES

Crime can be viewed at as a social process, a product of learning norms, values, and behaviors associated with criminal activity, and is, as such, a rational activity: A person becomes criminal when perceiving the consequences of violating the law as favorable. With a greater degree of structuring and interactions and a greater degree of criminal activities oversight and coordination, the criminal activities become more organized and the performance of criminal acts performance more complex.

The normative outline of crime is always influenced by the assumptions about the ways in which crime generates social threat. These assumptions differ in different countries and in different cultures, which is confirmed by numerous definitions of organized crime and its different standardization, or different incriminations in national legislations (Allum, Gilmour, 2012: 6; Allum, Kostakos, 2010: 4).

Organized crime is not directly related to deviation since it is by definition a rational set of criminal offenses, which includes the structure of relationships and interests that enables maintaining stable criminal activity with stable profit (Fatić, Korać, Bulatović, 2011: 58). It is operationally and structurally dependent on other types of crime, most of which are classified as 'classic' crime. While 'classic' or 'ordinary' crimes, as opposed to organized crime, are classified differently and are often considered to possess different structure and *modus operandi*, a closer look at how organized crime operates reveals considerable similarities between organized and 'classic' crime. Organized crime is increasingly simply a networked system of crimes perpetration which have traditionally been considered 'ordinary' crimes. Drug–related offences are probably the most prevalent and at the same time the most illustrative examples of this principle. In relation to classical crime, organized crime stands as a term related to escalated social concern over a criminal phenomenon given the level of threat to society it represents, in the sense of the long-term security issue (Paoli, L., Fijnaut, C., 2003: 1).

The specific focus of this paper is on the involvement of juveniles in organized criminal activities in a sense broader from being it *modus operandi* as well as the response of the criminal justice system to these offenders and to related crimes. The term "juvenile" is relating to a young person, the someone who is not yet old enough to be considered as an adult and also reflecting psychological or intellectual immaturity of that person. Given that juvenile is a person younger than the age of full criminal responsibility, contemporary dominant criminal law doctrine and practise stands by principle that such person either cannot be held criminally liable or is subject to less severe forms of punishment.

The changes related to active involvement in organized criminal activities as seen in juvenile delinquency, suggest an acceleration of the governance of young people through crime and disorder (Simon, 2007). Such developments, over the recent years, have been adding pressure on criminal justice calling for a more focused perspective on prevention and control of crime that involves juveniles in organized criminal activities. As the possibilities for communities to develop are also strongly associated with, and often dependent on, a process of ″vertical″ political manufacturing, with policies directed toward the creation of spaces for them to develop and flourish, constraints related to implementation of traditional criminal justice continually instigate search for more adequate legitimate response to criminal behavior (Hughes, 2004: 433).

2. RECRUITMENT OD JUVENILES INTO ORGANISED CRIMINAL NETWORKS AND THEIR PARTICIPATION IN ORGANIZED CRIMINAL ACTIVITIES

Megan Moore explains that the field of sociology has addressed crime and delinquency at the macro-level, primarily looking for societal and environmental influences that lead to criminal behavior, while psychological theories tend to address crime and delinquency at the individual level, primarily identifying individual differences that lead to criminal behavior (Moore, 2001). Legal practitioners as well as all other professionals that participate in crime prevention and control, in order to fulfill tasks, ought to understand the complexity of various crime related consequences. Understanding pathways of minors' recruitment into organized crime activities is essential for planning preventive programs targeting the related specific forms of juvenile crime.

Minors tends to "experiment with the law breaking", typically, in the middle adolescence.[1] The most of those prosecuted for juvenile offending, leave criminal pathways as young adults as they become better adapted to social functioning (Moffit, 1993; Rutter, 1989). However, some of delinquents continue to offend into adulthood and develope a "pathological personality" (Moffitt, 1993: 647). To comply with legal norms, or to brake it, stands as a choice generated by perception embedded in estimated opportune behavior and it is, arguably, the main factor to guide decision of a young adult who previously was juvenile offender. According to the differential association/social learning theoretical perspective, this is also pointing towards the risky behaviors to be a criminogenic risk factor to a life course persistent type of criminal behaviour in terms of definitions favorable to crime and, in the case of the social learning version, the differential reinforcement of crime and exposure to aggressive models (Akers, 1985, 1998). David Farrington offers an explanation of decision to commit crime by stressing that it is the result of social interaction and tendency to antisocial behavior based on individual perception of gains and losses attributed to criminal behavior (Farrington, 1996a, 1996b).

Recruitment into organized crime is a matter of highest relevance for social research because, as a phenomenon, it is intrinsically connected to the very sustainability of this form of crime. A key element of preventing and responding to organized criminal activity is to target how individuals become involved in illicit activities and to identify strategies that could be considered to intervene in such pathways by developing effective methods of preventing their recruitment, e.g. to make recruitment difficult and likely to lead to detection by law enforcement (Smith, 2014). Involvement in organized criminal activities provides opportunities for personal gain. However, relevant reliable data are difficult to access. Data are scarce and, by and large, represent anecdotal reports rather than result of evidence-based measuring that secured systematic evidence needed to transform how we think about it (Long, 2013). The criminal recruitment is twofold process, defined by the needs of criminal organization and the availability of adequate, motivated candidates. Children are targeted because organised criminal organizations perceive they are more likely to evade police detection and criminal justice due to their young age. Research that Edward Kleemans and Christianne de Poot conducted in Netherland during 2008 resulted with findings that 26% out of 979 research participants (suspects to be involved in organized crime) made their first criminal offence before reaching the age of 20 (Kleemans,

[1] Adolescence is a developmental stage, in between from childhood towards adulthood, with distinctive needs and interests.

de Poot, 2008: 78). Typically, participation in organized crime activities appears to be a career prospect that is appealing to a juvenile offender.

The pathways to recruitment vary according to the organisational structure of a particular organized criminal group (UNODC, 2002). The more centralized control in organization of activities, the recruitment activities are enforced in more targeted and efficient way, while unstructured groups, such as those that exist online, often recruit in an *ad hoc* manner (Smith, 2014). In Latin America, children are being kidnapped and if the family canot afford to pay out the ransom, kidnapped child become a recruit that is being used as per the age and sex. On the other hand, in Europe, organized crime organizations are using grooming tactics to coerce, manipulate and force young children into criminality to pay off unwanted debts by targeting the most vulnerable young people in society (typically, looked-after children or those already known to social services). Initially, young people are given some sort of incentives (cannabis, alcohol and cigarettes) as a reward for helping with organized groups' dirty work, to encourage addiction. Once addicted, organized crime groups' members tally up the cost of the drugs, allowing young people to quickly accumulate large debts. Vulnerable young people are becoming trapped in a situation where committing crime is one of very few ways that they can pay off their debt to the gang.

In the course of drafting the United Nations Convention on Transnational Organized Crime, a specialized agency of the United Nations, namely, United Nation Office for Drugs and Crime (UNODC) conducted a comprehensive research during 2002 with the aim to gain knowledge on typical organizational modalities of crime syndicates (UNODC, 2002). Organizational basis of a stable crime group can be ethnicity, family relationship, shared territorial origins (slams, highly disorganized neighborhoods, but also prison inmates) or motorcycle use (outlaw motorcycle gangs in Australia) (Smith, 2014).

Criminal organizations rely on rules and order in order to maintain discipline and control. Individuals do not act independently, and the activities they involve are not accidental. The violation of the rules results in verbal or physical punishment, as well as the deprivation of life. Strict rules of conduct generate enough certainty that a stable internal organization with a complex system of roles and a formal division of labor can be developed. When the structure and way of functioning of an organization are such as to generate sufficient organizational strength, it allows the continuation of the organization's work and when it looses one or more members, in accordance with the defined purpose of conducting criminal activities on a sustainable basis (Le, 2012: 121-131). In a hierarchical organization, the more centralized control – the more efficient and better targeted are recruitment activities. In mainstream discourse, the Mafia is the best known hierarchical organization. American authors describe Mafia as an organization of foreign criminals that import their values and family organization and structure into immigrant country (Vito, Maahs, Holmes, 2007: 404-405). Such an organization is based on strong hierarchy that is typicall of family featured by patriarchy, with clear and strickt roles devided between the family head ("*il capo*" in Mafia), his subordinates that control teams of "soldiers". In hierarchical type of organization, young members of the extended family (family that extends beyond the nuclear family and can include, in addition to blood kinship, also kinship relations constituted by marriage) have advantage in recruitment process and are offered positions of lesser relevance in the structure of the organization but if they perform well can climb up the ladder (Reuter, 1999).

Phil Williams suggests that criminal organizations are focused on producing and maximizing profits in line with their criminal business strategy (Williams, 2007: 195). Activities are being undertaken in secrecy, detailed mechanisms of avoiding of criminal prosecution and inconspicuous lifestyle are being created. Recruitment for the lowest executive level in hierarchical criminal organizations encompasses youth in neighborhoods who already got engaged in criminal activity at the local level. Such minors frequently begin as informers and advance their criminal career by performing minor tasks to prove their effectiveness and valor. For successful performance in these activities they get engaged in more demanding roles until they ultimately become full-fledged members of a criminal organization. The background and reasons for the growing use of children for participation in organized crime activities is lesser probability of detection and the liability of children as per criminal law resulting in underage children being trained to become professional hitmen ("baby–killers") that commit numerous murders while still underaged, (Ciappi, Bracalenti, 2005: 7).

Relationships between criminal organizations and juvenile gangs can have different forms. The very fact of membership in juvenile gangs contributes to involvement of minors in criminal activities such as burglary and theft. Establihsed practice in the underworld is that experienced adult criminals associated with organized crime monitor juvenile gang performance within turfs, respectively, and relations between organized criminal groups and juvenile gangs are being established in different forms. Inclusion is form of relationship formed in crisis situations for repressive institutions, when institutions are not performing properly, and organized crime is in the phase expansion of activities. For grown up criminals, inclusion in criminal enterpreunrship of juvenile gangs is a way to respond to increased workload. Concession as a mode of establishing relations between criminal organizations and juvenile gangs in cricumstances that are the opposite from previously elaborated in this article: when repressive institutions are performing well, hence, the risk for criminal endeavor is increased. Specific "risk management strategies" of organised crime groups next to the use of violence and corruption in order to neutralize risks include, as Phil Williams claims, the construction of flexible network structures that can be easily replaced or regenerated (Williams, 2007: 195). Therefore, criminal organizations delegate less significant criminal undertaking to juvenile gangs who, in return, pay the "tax", i. e. give away part of the profit gained. If demand for illicit goods and services is on decline, profit sharing between the criminal organization and the gang is imminent following integration of criminal wealth into legal flows (Ciappi, Bracalenti, 2005: 10-11).

Children are often targeted by organised criminal organizations because they are perceived to be more likely to evade police detection and criminal justice due to their young age. Specific recruitment pathways taking place where deviance is a part of the child' subculture are not reserved only for Mafia. In Italy and Germany, nomadic families, mostly ethnic Roma, have deviance as a life style; Roma children are prone to take part in the petty theft and pick-pocketing organized by members of their own family (Ciappi, Bracalenti, 2005:11; CJD, 2005:42). Selection of children and youth for recruitment by organized crime groups in Germany is also based on ethnic membership. The unequal power dynamic highlights minors whose ancestors migrated to Germany. Although they formaly have access to services and education system, vocational training and employment, reality on the ground points that it is not so. Juveniles from East Europian communities reflect specific subcultural patterns that are generated by cultural differences originated during period of socialism and previous ethnic conflicts what contributes to their tendency to be organized into crime groups

(CJD, 2005: 42, 46). In the Central America, adolescents and young people join gangs, known as *maras* for the same reasons mentioned earlier for ther parts of the globe, but they may also be joining them because of the threats and pressure suffered from *mara* members, as a way of protecting themselves in very violent contexts (IACHR, 2015: 35).

In network-based criminal organizations made of several gangs, coordination in commiting crime for financial gain is missing. Structure of such organizations is highly flexible, activities revolve around opportunities as they arise and they are heavily depend on hands-on tools needed to comit crime allowing for juveniles involvement in both transnational and organized crime activities such as trafficking of human beings and transport of narcotics.

Subjects of recruitment pooling are also immigrant children unaccompanied by adults. These children found themselves in a foreign country due to life-threatening situations in their homecountry that include forced territorial displacement, dangerously insecure economic/social conditions or exploitation, abuse in family, loss of caregivers, seek for adventures, being delegated by their families to perform the role of an "anchor" for the future immigration of other family memebers, and recruitment by criminal organizations (human trafficking) (Ciappi, Bracalenti, 2005: 11). Often with no adult support and without basic knowledge of the host country language, while striving to survive these immigrant children are approached by their fellow countryman to recruit them for ethnic based criminal organizations where they recieve protection and can have better life conditions and sense of belonging.

Child criminal exploitation usually involves some form of exchange (e.g. carrying drugs in return for something). The exchange can include both tangible (such as money, drugs or clothes) and intangible rewards (status, protection, perceived friendship or affection). Drug users, addicts and vulnerable youth living in underdeveloped areas are also exploited to assist with dealing and are also commonly forced to use their homes as a base for storing drugs and weapons. Forms of participation of juveniles in criminal activities under coercion are related to criminal acts of theft, begging, trafficking in persons, sexual exploitation, transport of cash and weapons (EUROPOL, 2011). Children who are criminally exploited are at a high risk of experiencing violence and intimidation and threats to family members.[2] Through the use of violence and intimidation, criminal groups exert control and a level of ownership over the young person from which it is difficult to escape**.**

Generally speaking, no specific level of expertise is a recrutment requirment apart from instrumental use of violence.[3] Violence is used for reducing disruption to operations, including procurement of protection racket, completing other agreed actions and trades, prevention of informing the police by members of the criminal croup, victims or turf residents (to ensure that the cost of informing the police is prohibitively high) and to ensure and to protect local monopolies from competitors (Long, 2013: 4).

[2] Violence is systematically used against those who try to challenge the monopoly over the illegal market, those who violate discipline in the organization, or those who cooperate with institutions by providing information or evidence that could be used against criminal organizations. Violence also allows the criminal organization to eliminate competitors and regulate illegal activity in a certain way.

[3] Use of violence or threat of violence is a feature closely associated with organized crime. Although it is general rule, there are some exceptions. The researches of 40 criminal organizations in 16 countries showed that violence was essential feature for 23 of them, while 10 of them used violence occasionally or moderately, and only 7 of them used little or no violence (UNODC, 2002:22).

Experience in using violence begins with desensitization to violence that occurs in environments where violence is frequent and effective communication tool. Instrumental use of violence earns social status and brings along goods. It could be implemented in the family (violence towards women, children and elderly, coercion in deviant/delinquent peer group, disintegrated neighborhood, prison and broader community) (Patterson, Reid, Dishion, 1992). Incarceration of youth with prisoners sentenced for violent crime could have effect of desensitization of youth to violence and involvement in gangs. Research conducted in Australia among 175 incarcerated gang members showed that 40% of them became first involved with a gang in between 12 and 17 years of age, and 6% of them when they were 11 years old or younger (Chalas, Grekul, 2017). Three fourth of them (42%) become involved in the gang in correctional center, the most frequent reasons were "to get respected", "for protection" and "a friend was in the gang". Among those who were recruited in the over half of recruited newcomers for the gang are selected due to being vulnerable, susceptive to being easily influenced, underachievers, lonely, or from dysfunctional homes, who are willing to excercise violence if needed, show loyalty and respect and follow orders (Chalas, Grekul, 2017: 374). Gang membership is frequently acquired in processes of initiation, and typically involves violent based rituals and committing a crime. Violence skills of the novice are advanced further under the supervision of criminal group, as it is in the case of baby-killers (Ciappi, Bracalenti, 2005:7).

For some criminal projects, specific skills and social positions are needed, like skills to produce illicit drugs, counterfeiting of payment cards, ability to use violence and intimidation, facilitation of the proceeds of crime laundering; willingness to engage in high-risk activities involving weapons or explosives, as well as governmental position that could provide influence and information relevant to criminal activities (Smith, 2014). Majority of such skills demand experience and training that is not available to youth, but on the other hand, they youth is prime incumbent for cybercrime (hacking, infiltrating viruses, identity teft, credit card fraud etc.). Organized cybercrime and online consumer scams could be coordinated entirely online while recruitment is frequently organized on *ad hoc* manner by new recruits online advertiseing (Smith, 2014: 5).

In countries labeled by prolonged armed conflict and active presence of paramilitary and terroristic organizations, the most destructive organized crime groups recruit child soldiers. The most vulnerable children in these circumstance are those that dropped out of school or have low school achievement, those that are poor and without protection, who live in highly insecure social surrounding, since they already are desensitizated to violence, use weapons and have witnessed death (Nett, Rüttinger, 2016). In Columbia, 14% of underaged minors from 7 to 17 (M=13.8 years) were forced to join the illegal army group. However, others who voluntarily joined, did it because being sought respect and recognition attracted to weapons, they can give (33%), poverty and payment (33%), the daily relationship with group members or because army groups had always been part of their environment (16%) and out of love or lost love (16%) (Rincon, Gomez, 2005: 82-83). Often reason of girls to become soldiers was also sexual abuse in the family.

CONCLUSION: STRATEGIC PERSPECTIVE IN PREVENTIVE SOCIAL RESPONSES TO JUVENILE CRIME AS A FORM OF ORGANIZED CRIMINAL ACTIVITIES

Control theory and differential association/social learning theories have shaped micro-level sociological thinking about crime in contemproary times. Social disorganization at the neighbourhood and community levels has been consistently linked to various forms of criminal activity. The patterns and qualities of relationships in a community operate from a variety of different sources, including social well–being, and all revolve around social capital. When there is more conformist behaviour, more respect for each other and when norms are institutionalized, the level of social capital is higher.

The potential for social capital, as a source of control and community organization, to contribute justice is among the priorities of social concern as it is related to capabilities of criminal justice to affect an infrastructure of security around human relationships that are guaranteed by institutions of justice (Bulatović, Pavićević, 2016: 321). Juvenile justice, until the 1970s, was dominated by debates circulating around the opposition of welfare and punishment. The social logics of the welfare state and public provision, particularly in Britain, USA, Canada and Australasia, in the neo-liberal spirit, have brought profound shifts in economic, social and political relations associated with the free market. Diverse trajectories in retribution, responsibility, restoration and rights have created a particularly complex contemporary landscape of youth governance (Muncie, 2005).

In order to increase efficiency and security, profit-motivated criminals use the environment as their primary interface. Pending on available resources, criminal organizations identify their niche of sustainability and accordingly define their activities structure. Ming Xia stresses that criminal organizations are essentially parasitic and opportunistic, so they avoid direct challenge of hegemonic organizations such as the state, and, instead, opt for "unconventional, flexible and unobtrusive organizational forms in order to minimize interference in their activities and distract attention of hegemonic institutions" (Xia, 2008: 1-23).

The relationship between children and organized criminal activities spans across multiple areas. Organized criminal activities have impact on youth that is both broad and direct. The landscape of children's involvement in organized crime is highly complex and inextricably linked to the context in which it occurs. Children and adolescents are systematically used and manipulated within the criminal structure. They are commissioned to participate in organized crime activities because they face more lenient sentences, get anonymity and a stronger focus on rehabilitation and no penalties for breaking bail conditions. As rewards for offending on their behalf, criminal groups offer to minors money, status and a sense of belonging. Children are deceived, coerced, abused and exploited by adults who have positions of greater leadership and dominance in the criminal organization. Efficient social control and crime prevention should be taking into account that group interaction is essential to promote conventional behavior and in relation to that is the achievement of proper socialization for marginalized youths. However, children who find themselves on the wrong side of the law must bear the legal consequences to ensure

that they obey societal norms but it should be done while avoiding the stigma of a criminal label is in the core of the restitution idea.[4]

Child criminal exploitation is a safeguarding concern, like other forms of abuse and exploitation. It constitutes abuse even if the young person appears to have readily become involved. When considering all aspects of children involvement into organized crime, it needs to be acknowledged that it can fit somewhere along a continuum from the extreme of instructing, to commission, to participation. Joint features of youth involved with criminal groups are, at one hand, a lack of legal means to acquire goods and obtain social status and/or belonging to deviant subculture where illegal activity is accepted and expected, and, on the other hand, access to use of illegal means to acquire goods and obtain social status. If the crime prevention is marginally effective and policy is focused on how to advance labor market, it stands as especially effective in preclusion of further involvement of juveniles in organized crime, i. g. undermines the recruitment process (Long, 2013).

Criminal justice response to organized crime increases the risks for criminal organisation in terms of increasing the likelihood of arrest and conviction as well as in terms of severity of the consequences of arrest and conviction. However, in the contemporary governance of crime, disorder and safety, factors that are important predictors of criminal involvement should be targeted for change. Given that criminal structures and criminal activities are socialy embedded, a broad range of socioeconomic policies could qualify as measures against organized crime such as programs to reduce poverty, unemployment, and discrimination as these measures would have an effect of reducing the appeal that joining a criminal organization has for young people.

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[4] Restitution is aiming at an offender to repay the victim rather than face the stigma of a formal trial and court-ordered sentence.

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STRATEŠKA PERSPEKTIVA U PREVENCIJI UČEŠĆA MALOLETNIKA U AKTIVNOSTIMA ORGANIZOVANIH KRIMINALNIH GRUPA

Brojne studije su pokazale da su kriminalne organizacije u modusu svog delovanja uglavnom lokalne što određuje kontekst ekspanzije i diversifikacije njihovih kriminalnih aktivnosti kao i menadžment rizika kriminalnog preduzetništva. Maloletnici postaju objekti kriminalne eksploatacije od strane organizovanih kriminalnih grupa zbog manje verovatnoće od otkrivanja i drukčijeg krivičnopravnog progona usled drugačijeg odmeravanja odgovornosti maloletnika u odnosu na odgovornost odraslih izvršilaca. Kontinuirani porast dece koja su izvršioci krivičnih dela koja se vrše na organizovan način ukazuju na pojavu novog trenda u delovanju organizovanih kriminalnih grupi. U tom smislu se uočava uključivanje maloletnika u kriminalno "preduzetništvo" u brojnim modalitetima — od distribucije narkotika, dela protiv imovine, pa do integrisanja profita u legalne tokove.
Kauzalitet kriminala, uopšteno uzev, sam po sebi nije proces na koji se odnosi krivičnopravno reagovanje — reč je uglavnom o socijalnim procesima koji dovode do krivičnopravnih fenomena i posledica. Ovo je osnov argumentacije da politika prevencije kriminala mora uključivati i mere socijalne politike, ravnopravno sa represivnim i kontrolnim merama krivičnopravnog karaktera. Razmatrajući aspekte delovanja dece u organizovanim kriminalnim aktivnostima autorke u tekstu polemišu o strateškim perspektivama savremenog društvenog odgovora na ovaj vid kriminaliteta.

KLJUČNE REČI: maloletnici / organizovane kriminalne grupe / krivično delo / izvršilac krivičnog dela / dobrobit

DARK TRAITS AND DARK FAMILIES: FAMILY DYSFUNCTIONS, PSYCHOPATHY AND SADISM AS FACILITATORS OF ADOLESCENT CRIMINAL BEHAVIOR[*]

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Psychopathy and dysfunctional family characteristics have been shown to facilitate criminal behavior and criminal recidivism. The role of trait sadism has not been explored in this context. We measured family dysfunctions (single or dual-parent families, quality of relations in families, presence of risk-factors), psychopathy (Interpersonal, Affective and Lifestyle traits) and sadism in a small sample of convicted adolescents (N=100). We collected measures of criminal behavior as well: the onset of criminal behavior, number of corrective measures, offences and convictions. The data showed that participants who grew up in dysfunctional families had more pronounced psychopathy and criminal behavior. Interpersonal and Lifestyle psychopathy traits positively correlated to criminal behavior as well. Sadism had a negative correlation with the onset of criminal behavior. In a regression model predicting general criminal recidivism (the first principal component extracted from the measures of criminal behavior), only low quality family relations and high Lifestyle traits had an independent contribution to the prediction. We did not find interactions between the dark traits and family dysfunctions in the prediction of criminal recidivism. The data extends on previous knowledge regarding the role of the dark traits and family characteristics in adolescent criminal behavior.

KEYWORDS: psychopathy / sadism / dysfunctional family / criminal behavior / adolescents

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INTRODUCTION

1. PSYCHOPATHY AND ITS DEVELOPMENTAL TRAJECTORIES

Psychopathy represents a syndrome of behavioral dispositions consisting of several traits. One of the prominent psychopathy models (Hare & Neumann, 2009) describes these traits as follows: Interpersonal (egocentric manipulation and superficial charm), Affective (diminished tendency to experience negative emotions, especially guilt, fear and emotional empathy), Lifestyle (impulsiveness, irresponsibility and a lack of long-term plans) and Antisocial characteristics (criminal behavior, developmental conduct problems). These four traits load on two super-ordinate factors: Interpersonal and Affective traits constitute Factor 1, while Lifestyle and Antisocial characteristics constitute Factor 2 (Hare, 2003). Psychopathy is associated with various forms of immoral and antisocial behavior like violence, exploitation of others, immoral decision-making, bullying, repeatable criminal behavior, etc. (Međedović, 2015). This is why the study of psychopathy is important both to behavioral science and to practitioners. Psychopathy is measured via rating protocols (Hare, 2003) and parallel self-report measures (Paulhus, Neumann, & Hare, 2015).

Psychopathy can be detected in early stages of ontogeny, with necessary limitations regarding the qualitative differences in behavioral traits between adults and children. However, rating protocols for assessing psychopathy in four-year olds revealed a similar factor structure to the one obtained in adults: Grandiose/Deceitful, Callous/Unemotional and Impulsive/Need for Stimulation traits (Colins, Andershed, Frogner, Lopez-Romero, Veen, & Andershed, 2014). It seems that psychopathy is relatively stable during childhood and adolescence, although there are data showing that individuals with higher scores on psychopathy show a decrease in these characteristics through adolescence (Frick, Kimonis, Dandreaux, & Farell, 2003). Psychopathy has been found to be associated with various forms of maladaptive behavior in childhood like attention deficiency, conduct problems, externalizing behaviors and ADHD symptoms in general (DeLisi, Vaughn, Beaver, Wexler, Barth, & Fletcher, 2011; Forsman, Larsson, Andershed, & Lichtenstein, 2007; Freidenfelt & af Klinteberg, 2007). Furthermore, psychopathy is related to aggressive and antisocial behavior in youth, including bullying and peer violence: a lack of empathy and emotional callousness, together with narcissistic and impulsive characteristics are important predictors of bullying in adolescence (Ciucci & Baroncelli, 2014; Fanti & Kimonis, 2013). All of this data show that the connections between psychopathy and maladaptive behavior are present in early stages of ontogeny as well.

2. PSYCHOPATHY AND CRIMINAL BEHAVIOR

Psychopathy is found to be reliably positively correlated with criminal and antisocial behavior. Some researchers even suggested that psychopathy represents a key behavioral disposition related to criminal activity (DeLisi, 2009). Indeed, psychopathy is positively associated with a criminal career index – a composite score composed of age at onset of offending, contacts with the police, substance use, court appearances etc. (Vaughn & DeLisi, 2008). Psychopathy can predict criminal recidivism as well, which is particularly important information since recidivists are especially harmful for society. Some studies

show that the predictive potential of psychopathy is very high since it can predict criminal recidivism even when several other related variables related to delinquency are controlled, like education, intelligence, previous offenses, delinquent peers and substance abuse (Salekin, 2008). Furthermore, psychopathy predicts recidivism above and beyond basic personality traits which means that it does represent some of the crucial personality characteristics related to criminal behavior (Međedović, Kujačić, & Knežević, 2012).

However, if we take a closer look at the particular psychopathy traits which predict recidivism, a problem emerges. It is based on a *tautological relation* between psychopathy and stable criminal behavior. The problem is reflected in the fact that only Factor 2 is related to criminal recidivism in most of the studies (Leistico, Salekin, DeCoster, & Rogers, 2008). In fact, some data suggest that only Antisocial psychopathy characteristics are related to recidivism (Walters, Knight, Grann, & Dahle, 2008). This association is tautological since the predictor and the criterion measure represent the same behavior. It is certainly useful for practitioners, but it does not explain the origins of criminal behavior. The question of Factor 1 traits relations to criminal behavior is still open. One of the crucial moderators in this relationship can be the type of criminal offense. For example, Affective characteristics are positively related to specific types of offenses like stalking (Storey, Hart, Meloy, & Reavis, 2009) or violent crimes in general (Roberts & Coid, 2007). On the other hand, if the type of offense is not controlled for, Affective traits can be negatively related to criminal recidivism (Burt, 2004; Međedović, 2015).

For the purpose of the present study it is important to mention that psychopathy predicts criminal recidivism in adolescents as well. Psychopathy is more pronounced in delinquents than the compared control group (Chabrol, Van Leeuwen, Rodgers, & Séjourné, 2009). Psychopathy positively associates with delinquent and aggressive behavior, externalizing problems, earlier onset of alcohol consumption academic behavior problems and expulsion from school (Campbell, Porter, & Santor, 2004). In the sample of adolescent delinquents in Serbia, psychopathy significantly predicted the number of criminal offenses as a measure of criminal recidivism, but interestingly, Factor 1 was the key predictor in this study (Međedović, Kujačić, & Knežević, 2012a).

3. SUBCLINICAL OR "EVERYDAY" SADISM

In recent years researchers have tried to provide a more precise topography of the space of immoral and antisocial personality traits (Međedović, 2012). This resulted in the so called Dark Tetrad concept where the immoral side of human personality is described via four traits: psychopathy, Machiavellianism, narcissism and sadism (Chabrol et al., 2009; Međedović & Petrović, 2015). It is worth pointing out that egocentrism and manipulative behavior (the key features of narcissism and Machiavellianism) are already present in the four-factor model of psychopathy as a part of Interpersonal characteristics. However, trait sadism probably represents an important addition to the description of dark personality traits (Bulut, 2017). Sadism and psychopathy have a common core - a lack of emotional empathy to the distress of others (O'Meara, Davies, & Hammond, 2011). On the other hand, sadism has some additional characteristics which are not present in psychopathy: pleasant emotions which emerge as a reaction to the pain of others (Međedović, 2017). The research showed that sadism is positively associated with various immoral and antisocial outcomes like hurting others without provocation and no discernible benefits (Buckels,

Jones, & Paulhus, 2013), vandalism (Pfattheicher, Keller, & Knezevic, 2018) or aggressive forms of humor and antagonism towards immigrants (Međedović & Bulut, 2017).

Research on the link between sadism and criminal behavior is still scarce. Until recently, the involvement of sadism in criminal behavior has been examined almost exclusively in the context of sexual sadism (Kingston, Seto, Firestone, & Bradford, 2010). However, recent findings have shown that sadism may be associated with various forms of criminal behavior, not only offenses marked by sexual violence (DeLisi, Drury, Elbert, Tahja, Caropreso, & Heinrichs, 2017). Finally, the data on adolescents showed that sadism can predict delinquency even when psychopathy is controlled in the analysis (Chabrol et al., 2009). These data suggest that sadism is not a redundant predictor of delinquency and that it can explain the variance of criminal behavior which is not accounted for by psychopathy.

4. DYSFUNCTIONAL FAMILY ENVIRONMENT IS RELATED BOTH TO DARK TRAITS AND CRIMINALITY

Of course, criminal behavior is not a consequence of personality characteristics alone. Various environmental characteristics are related to to the production of criminal behavior. Certainly, one of the most explored environmental factors that contribute to criminality, are various indicators of dysfunctional family relations. The existing data are congruent in finding links between the dysfunctions in interpersonal relations within the family and criminal behavior, both in adults (Jonson-Reid et al., 2010) and adolescents (Bender, Postlewait, Thompson, & Springer, 2011; Moffitt & Caspi, 2001). Furthermore, adverse family relations, especially childhood maltreatment has been found to associate with psychopathy traits as well (Borja & Ostrosky, 2013; Međedović, Petrović, Želeskov-Đorić, & Savić, 2017). The existing data shows that the presence of family maltreatment is positively related both to higher expressions of affective psychopathy traits (Kerig, Bennett, Thompson, & Becker, 2012) and to impulsive and reckless behavior (Poythress, Skeem, & Lilienfeld, 2006). So far, there is no data on the links between family dysfunctions and trait sadism. Finally, there is an interaction between the personal characteristics of individuals and family relations in the predictions of antisocial behavior. For example, negative parental practices are more related to problematic behavior in adolescents with low behavioral control (Van Leeuwen, Mervielde, Braet, & Bosmans, 2004).

5. GOALS OF THE PRESENT RESEARCH

The existing data and theory suggest that subclinical sadism could be one of the dark personality traits which are important for understanding criminal behavior. However, the data regarding this link is still scarce. Furthermore, the predictive role of sadism in explaining criminality should be tested together with psychopathy since these two traits have some common characteristics. Finally, the dark traits could interact with adverse family relations and multiplicatively contribute to the emergence of criminal behavior. This is why we tested the relations between psychopathy, sadism, dysfunctional family characteristics and criminal behavior in a sample of institutionalized adolescents. We assumed that: 1) criminal behavior would be more pronounced in dysfunctional families; 2) Factor 2 psychopathy traits would have a larger role in the prediction of criminal behavior than Factor 1 traits; 3) trait sadism would have an independent role in the prediction of criminal behavior; 4) dark traits and family characteristics would interact in the prediction

of criminal behavior: individuals with high psychopathy and sadism who lived in families with aberrant interpersonal relations would express the highest levels of antisocial behavior; conversely, individuals with low psychopathy and sadism and with a more beneficial family environment would show the lowest levels of criminal behavior.

6. METHOD

6.1. Sample

We sampled individuals serving their sentence in the Correctional Facility for juveniles in Kruševac. One hundreed participants volunteered to participate in the research (M_{age}=17.6 years; SD=1.49). All participants had elementary reading skills. The data was collected in small groups and the researcher was present at the time of data collection.

6.2. Measures

We measured psychopathy via SRP4 scale (Paulhus et al., 2016). It measures four psychopathy traits: Interpersonal, Affective, Lifestyle and Antisocial characteristics. Every trait is measured via 16 items. Please note that we dropped Antisocial characteristics from the analyses since the relation of this trait and criminal behavior is tautological in nature; furthermore, if kept in the multivariate analysis it could buffer non-trivial relations between psychopathy and delinquency, i.e. the link between Lifestyle traits and criminal behavior (Međedović, 2015).

We measured sadism via the Core sadism scale from the Variety of Sadistic Tendencies (Paulhus & Jones, 2015) inventory. It is a seven item scale which captures crucial features of sadistic personality (items example: "I enjoy making people suffer"; "I enjoy mocking losers to their face").

We measured three indicators of family environment. We asked the participants if they lived with both or only one parent: dual-parent families are coded by 1 while single parent families are coded with 0. Participants estimated the quality of relations with each parent, together with the quality of relations between the parents themselves on a five-point scale ranging from 1 - "very bad" to 5 - "very good". The average score on these three items was used in the analyses (if a participant lived with one parent, that single measure was used in the analyses). Finally, we measured several family risk-factors which are shown to correlate with psychopathy and criminal behavior - the presence of parental criminal behavior, psychological dysfunctions, alcoholism and substance abuse. All measures were binary coded - the presence of a risk-factor was coded by 1 while absence was coded by 0. The measure of family risk-factors was analyzed as a sum of these four scores.

We measured criminal behavior via four items: the onset of criminal behavior (the age when a participant committed their first offense), the number of offenses, legal convictions and previous corrective measures. We used these individual scores in the analyses but we calculated the total score of criminal recidivism by extracting the first principal component from these four indicators (all scores except the onset of criminal behavior had positive loadings; Eigenvalue=1.28; 31.89% of original indicators' variance explained).

7. RESULTS

7.1. The relations between the examined measures

First we showed descriptive statistics, the reliabilities of multi-item measures and the bivariate associations between the examined measures. Pearson's coefficient of linear correlation was used as the measure of association; point-biserial correlation coefficient was used in order to explore the associations between binary (dual vs. single-parent family) and continuous measures. Since the sample size is small, we showed and interpreted coefficients with marginal statistical significance as well. The results of these analyses are shown in Table 1.

Table 1: Descriptive statistics, reliabilities and correlations between the examined measures

	M	SD	α	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
1. Dual-parent family	/	/												
2. Family risk-factors	1.88	1.32		-.34**										
3. Relations in family	3.62	0.99		.55**	-.26*									
4. Interpersonal	2.83	0.89		-.13	.12	-.17†								
5. Affective	2.86	0.86		-.07	.14	-.12	.64**							
6. Lifestyle	3.32	0.86		-.21*	.16	-.18†	.65**	.59**						
7. Sadism	2.39	0.87		-.14	.05	-.08	.58**	.55**	.49**					
8. The onset of criminal behavior	12.52	2.45		.23*	-.15	.18†	-.18†	-.23*	-.21*	-.20*				
9. No. of corrective measures	0.60	0.49		-.13	.26**	-.21*	.02	.15	.13	-.02	-.11			
10. No. of offenses	14.2	7.30		-.17†	.08	-.23*	.16	.03	.07	.10	-.11	.09		
11. No. of convictions	10.49	6.52		.16	-.12	.02	-.08	-.18†	.14	-.12	.00	.06	.01	
12. Criminal recidivism	0.06	0.93		-.22*	.20	-.31**	.23*	.20	.32**	.15	-.64**	.53**	.51**	.34**

Notes: † - p<.1; * - p<.05; p<.01.

We can see from Table 1 that the relations between family characteristics generally depict a higher vs. lower presence of family dysfunctions: a higher frequency of family risk-factors is detected in single-parent families and in families with lower quality relationships. There are high positive correlations between the dark traits, as expected. The quality of relations in participants' families correlated negatively to psychopathy (Interpersonal and Lifestyle traits) and criminal behavior. Individuals who grew up in families with a higher number of risk-factors showed an elevated number of corrective measures. Participants who were raised by both parents had lower levels of psychopathic Lifestyle and criminal behavior as well. Interestingly, all dark traits are negatively related to the onset of criminal behavior. However, only psychopathy was positively associated to the general factor of criminal recidivism (Interpersonal and Lifestyle traits) and negatively to the number of convictions (Affective psychopathy characteristics).

7.2. Dark traits and family dysfunctions as predictors of criminal behavior

Since dark traits and family dysfunctions positively correlate between themselves, we wanted to test their power to predict criminal behavior in a context where these correlations are controlled. Furthermore, we controlled the variance of participants' age since it is a crucial covariate of the frequency of criminal behavior. We set age, family dysfunctions and dark traits as predictors while general factor of criminal recidivism was set as the criterion measure (four participants were removed from the analysis as multivariate outliers). We conducted the analysis only for this criterion measure in order to decrease the number of analyses and consequently, the type 1 error probability; at the same time, this variable is representative for the whole set of criminal behavior indicators. However, we wanted to evaluate the relative contribution of individual vs. family characteristics in the prediction. This is why we set two hierarchical models of multiple linear regression. In the first one, we set age on the first level, dark traits on the second and family dysfunctions on the third level. Age explained 5% of criterion's variance ($F_{(1,95)}$=5.38; p=0.02), the dark traits explained an additional 12% on the second level ($\Delta F_{(4,91)}$=3.11; p=0.02) while family dysfunctions explained an additional 6% to the variance on the third level ($\Delta F_{(3,88)}$=3.11; p=0.07). In the second regression model we switched the predictors on the second and third level: in this case family dysfunctions explained 10% of criterion's variance above the participants' age ($\Delta F_{(4,91)}$=3.49; p=0.02) while dark traits explained 8% of variance above and beyond the predictors on the previous levels of regression ($\Delta F_{(3,88)}$=2.29; p=0.07). We show only the contributions of individual predictors in the full model of the regression in Table 2. As we can see, only three predictors had independent contributions to the prediction of criminal recidivism: age and the quality of relations in the family were negatively associated, while psychopathic Lifestyle was positively related to the criterion measure. We also searched for interactions between the dark traits and family dysfunctions, but we did not detect statistically significant interactions.

Table 2: Dark traits and family dysfunctions as predictors of criminal recidivism

	B	se	β	t
age	-0.17	0.07	-0.27	-2.53*
Dual-parent family	0.10	0.22	0.05	0.45
Family risk-factors	0.02	0.07	0.03	0.30
Relations in family	-0.26	0.11	-0.28	-2.38*
Interpersonal	0.05	0.15	0.05	0.34
Affective	-0.15	0.16	-0.14	-0.96
Lifestyle	0.36	0.15	0.33	2.44*
Sadism	0.00	0.13	0.00	0.03

Notes: * - p<.05.

8. DISCUSSION

In the present study we tried to further contribute to the existing knowledge of the relations between dark personality traits, family environment and criminal behavior in adolescents. The first two hypotheses we set were supported by empirical data: family dysfunctions and psychopathy were significantly positively associated to criminal behavior. Lifestyle psychopathy traits and low quality of the relations in family were especially good predictors of stable criminal behavior. However, our latter predictions were not corroborated by the data: trait sadism showed relatively low associations both to detrimental family characteristics and delinquency; furthermore, there were no interactions between the individual and family characteristics in the prediction of criminal recidivism.

8.1. Dark traits are positively associated to dysfunctional family characteristics

Generally, the present data revealed positive correlations between psychopathy and dysfunctional characteristics in adolescents' families. This finding is in line with previous data showing an elevated expression of psychopathy traits in families where abuse, neglect or other dysfunctional behavior of the parents was present (Borja & Ostrosky, 2013; Međedović et al., 2017). Lifestyle characteristics were particularly affected by family conditions since they were less pronounced in participants who grew up with both parents and in families with a higher quality of interpersonal relations. This finding is congruent to previous data which shows elevated levels of impulsive and reckless behavior in individuals who experienced maltreatment in childhood (Poythress et al., 2006).

Interestingly, sadism was not related to adverse family conditions. This is not in line with previous data showing negative relations between sadism and attachment to parents in adolescents (Chabrol et al., 2009). There may be moderators that can account for the lack of associations between family characteristics and sadism. According to some authors, sadism represents a malicious, destructive and hypertrophied form of aggressiveness (Knežević, 2003). Therefore, it is possible that dysfunctional family characteristics facilitate the development of sadistic traits only in children who are particularly prone to aggression. There is also another possibility for the lack of these associations. Higher expression of psychopathy in adverse environmental conditions may be due to the potential adaptive role of psychopathy in a harsh environment – higher resilience to stress which may serve to buffer stress-related pathology (Glenn, Kurzban, & Raine, 2011; Međedović, 2015). However, there is no theoretical rationale for the assumption that trait sadism may have adaptive potentials as well.

8.2. Dark traits as predictors of criminal behavior

Psychopathy and sadism were generally related to a higher frequency of criminal behavior. The onset of criminal behavior was especially affected by the variance in dark traits: all four dark personality characteristics were negatively associated with this indicator of criminality. The result that Interpersonal psychopathy traits were related to delinquency

is especially interesting – this could corroborate the possibility that Factor 1 psychopathy traits are related to criminal behavior (Međedović, 2015). Furthermore, Affective traits were negatively related to the number of convictions which is in line with the notions that Affective traits may have a protective role in regard to criminal behavior (Burt, 2004; Međedović, 2015). However, the regression model showed that only Lifestyle psychopathy characteristics independently contribute to the prediction of criminal recidivism. These findings are in line with the data showing that only Factor 2 psychopathy traits are related to stable criminal behavior (Leistico et al., & Rogers, 2008). It seems that a lack of impulse control and long-term plans, followed by an irresponsible and parasitic lifestyle are key psychopathy predictors of delinquency in adolescents, similarly as in adults.

The lack of sadism's power to predict repeated offending is not in line with previous findings which demonstrated that sadism can predict criminal behavior in adolescents when other dark traits are controlled in the analysis (Chabrol et al., 2009). In fact, there are data showing that sadism is the best predictor of delinquency in youth (Chabrol, Bouvet, & Goutaudier, 2017). Again, there could be moderators which can be responsible for the absence of this link. Sadism, similarly to Affective psychopathy traits, should be especially related to specific forms of criminal offending – acts with violent characteristics. However, we did not control for the type of offense in the present study. Still, previous research showed that sadistic traits are related to repeated criminal offending in adults (Međedović, 2015; Međedović et al., 2012). Thus, it is possible that the role of sadism in criminal behavior is more prominent in adults than in adolescents.

8.3. Family, individual characteristics and criminal behavior

Individuals who lived with both parents and had better family relations had a lower frequency of offending and they started with criminal activity later in ontogeny. These results are in line with the large amount of data showing that troublesome relations in a family facilitate criminal behavior both in adults (Jonson-Reid et al., 2010) and adolescents (Bender et al., 2011; Moffitt & Caspi, 2001). Hence, the present findings further highlight the importance of family relations in facilitating or buffering criminal behavior. In the present research dysfunctional family characteristics had a similar power in recidivism prediction as the dark traits did (although, the latter predicted a little bit more variance of recidivism than family characteristics). The contributions of dysfunctional family characteristics and the dark traits in the prediction of criminal recidivism were additive in nature: detrimental family characteristics did not interact with the dark traits, as we assumed.

8.4. Limitations and future directions

The present study has several important limitations. The first and most obvious one is the small sample size. It reduced the power of the study and thus elevated the probability of type 2 error - failure to detect the effects which exist in a population. Thus, we should be cautious in interpreting the absence of expected effects: they may still be found in a study with a larger sample size. Another limitation of the present research is the fact that we obtained all the measures from the participants themselves, which makes the present study mono-methodic. It would be better if some information, especially regarding the criteria measures, would be collected from an independent source - penitentiary dossiers, for example. Finally, the design used in the present study is retrospective; consequently we

cannot make causal inferences regarding the relations between the variables. A design where recidivism would be operationalized as a follow-up relapse in committing criminal offence, after the information about personality and environment would be gathered, would provide causal evidence for the determinants of stable criminality.

CONCLUDING REMARKS

In the present study we tried to contribute to the existing knowledge of the predictors of adolescent criminal behavior. This topic is especially important since existing empirical studies show that the corrective and therapeutic programs aimed at changing psychopathy traits are effective in children and adolescents; furthermore, these programs are especially successful if they involve the parents of the children with behavioral problems as well (Kolko, Dorn, Bukstein, Pardini, Holden, & Hart, 2009). The present data clearly show why this is the case: family environment and adolescents' personality traits are independent predictors of criminal behavior. This is why empirical studies on this topic are so important: they can precisely point the practitioners to personality or family characteristics which should be targeted in the treatment. Such results could lead not only to more effective corrective programs, but to better prevention as well. In this way, we could divert at least some of the children who are at risk of delinquency and strengthen their potentials for different life choices.

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MRAČNE CRTE I MRAČNE PORODICE: PORODIČNE DISFUNKCIJE, PSIHOPATIJA I SADIZAM KAO FACILITATORI KRIMINALNOG PONAŠANJA KOD ADOLESCENATA

U ranijim istraživanjima je pokazano da psihopatija i disfunkcionalne porodične karakteristike facilitiraju kriminalno ponašanje i kriminalni povrat. Uloga crte sadizma u ovom kontekstu nije empirijski istraživana. U ovom istraživanju merili smo porodične disfunkcije (prisustvo jednog ili oba roditelja, kvalitet odnosa i prisustvo faktora rizika u porodici), psihopatiju (Interpersonalne, Afektivne i karakteristike Životnog stila) i sadizam u malom uzorku institucionalizovanih adolescenata (N=100). Takođe, prikupili smo i mere kriminalnog ponašanja: uzrast prvog počinjenog krivičnog dela, broj vaspitnih mera, krivičnih dela i pravnosnažnih osuda. Nalazi su pokazali da porodične disfunkcije, psihopatija i kriminalno ponašanje sistematski pozitivno asociraju između sebe. Sadizam je negativno korelirao sa uzrastom prvog počinjenog krivičnog dela. U regresionom modelu predikcije kriminalnog recidiva (ekstrahovanog kao prva glavna komponenta mera kriminalnog ponašanja) samo su nizak kvalitet porodičnih odnosa i visoko izražena karakteristika Životnog stila nezavisno predviđali kriterijumsku meru. Nisu pronađene interakcije između mračnih crta i disfunkcionalnih porodičnih karakteristika pri ovoj predikciji. Nalazi istraživanja proširuju postojeće znanje o ulozi mračnih crta i porodičnih karakteristika u kriminalnom ponašanju kod adolescenata.

KLJUČNE REČI: psihopatija / sadizam / disfunkcionalna porodica / kriminalno ponašanje / adolescenti

CHILD-FRIENDLY JUSTICE – EDUCATIONAL PERSPECTIVE[*]

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A problem of school failure has been observed for a long time, and the results of the empirical research indicate a significant correlation between school failure and juvenile delinquency. The research also confirmed that leaving school contributed to the intensification of delinquent activities of minors and that attending school could have a protective effect on minors. According to the obtained results, early school leaving represents a long-term major risk factor of delinquent behavior, as it has a cumulatively adverse effect on the minor's life (unemployment, use of social and justice services, poor health, etc.).

Reducing educational and school failure has a high priority in education strategies and policies in the world. Also in our conditions, by adopting and implementing various strategies and legal solutions, we seek to improve the educational status. It is worthwhile making efforts to prevent school failure what can have a significant contribution to overcoming and preventing juvenile delinquency.

KEYWORDS: juvenile delinquency / law / education / prevention

INTRODUCTION

In a complex and dynamic process of children`s education, up-bringing and socialization, the school occupied a very important place, i.e. formal education of children and youth within existing education system. The process of intellectual, emotional and social development which began in a family as a primary social group, continues with much greater intensity in school but in new conditions and with much more serious demands (Rot, 2010). It is considered that, after family, the school is the most important agent of child`s up-bringing and the process of socialization.

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However, besides exceptional positive effects, school as an organized social institution for education and up-bringing of young generation may also be a significant source of problems and frustrations that can lead to overall schooling failure. Among the first indicators of failure in school are: frequent bad marks, student`s need to attend remedial instructions, getting warnings and reprimands, and student`s absence from school classes (up to the point of an extreme form of leaving school). Failure is more expressed when a pupil has to attend a remedial and extended teaching, i.e. when he/she has to take a remedial and grade exams. Repetition of a grade and leaving further education are considered as extreme forms of school failure (Malinić, 2009). The pupils who leave school before the end of started education have limited possibilities of personal and professional development, they are exposed to a greater risk of poverty and social exclusion and get employed later, accepting less paid jobs or they lose a job what means that they may become potential users of social relief. In this way the state and society lose significant economic and human capital, the society becomes more distinctly divided, social inequalities increase and general economic and social welfare considerably decreases (Filipović, 2012; UNICEF, 2016).

A number of studies have proved the relationship between poor school performance and drop out of school on one hand and development of delinquent behavior in children and youth on the other. In this respect, school failure is regarded as a key correlate of delinquent behavior as a global, insufficiently precisely operationalised variable which includes also a poor school performance (educational deficit), and irregular attending of classes and drop out of school (up-bringing deficit) and social exclusion from the regular flows of peer socialisation, therefore, global social deficit (Janssen et al, 2016; Matejić Đuričić and Filipović, 2012; Thompson, & Bynum, 2016).

The ultimate consequences of school failure and particularly that of school drop out are numerous and very serious. Research conducted in America in 2004 shows that minors who give up secondary school have 72% greater chances to be unemployed compared to those who complete secondary school, their salaries are smaller and there is a greater possibility for them to become the users of social relief (Sweeten, at al, 2009: 49). In addition, in this category, a worse health status is reported and greater risk of early death due to inaccessible or inadequate health care insurance (Davidoff and Kenney, 2005).

Some authors highlight the fact that children and youth absent from school without excuse have a lot of extra free time at their disposal, without any kind of supervision and structure, what leads to spending their time in an inadequate way by consuming alcohol and psychoactive substances abuse. The addiction, on the other hand, requires financial means, so the unemployed juveniles decide to get the money in various forbidden ways (Burfeind, & Bartusch, 2015; Siegel, & Welsh, 2016). Therefore, irregular attendance at school and school dropping out increases the chances of getting involved in risk behaviors what opens the path to delinquency.

Previous conclusions about the relationship between school failure and getting into juvenile delinquency seem acceptable and logically founded, however, this relationship is considerably more complex and allows no application of causality linear models. Namely, the problem can be regarded in an opposite direction, meaning that the first manifestations of socially unacceptable, asocial and antisocial behavior certainly generate school failure. It is a matter of circular support and mutual causality of two processes: juvenile delinquency and the disturbed process of regular education.

1. JUVENILE DELINQUENCY AND CONSTRUCT OF SCHOOL FAILURE

Real proportions of criminality in any region, as well as in Serbia, are not entirely obtainable. Modern science has not yet discovered reliable methods and techniques to enlighten the so-called "dark numbers" – undiscovered and hidden criminality (Ignjatović, 2009). For the purpose of this paper, we shall deal with registered juvenile criminality using the source of data obtained by a judicial statistics whose results (once a year for previous year) are published by the Republic Bureau of Statistics of the Republic of Serbia.

Although data obtained by official statistics show certain weakness, nevertheless on their basis some evaluations and estimations of the state and characteristics of juvenile criminal in the area of Serbia can be derived. Based on data available and analyzed for the period from 2007 to 2016, it was determined that proportion of youth criminal offenders in the total mass of criminality oscillates and ranges between 3%–7% (ten-year period average being 5.6% and is slightly increasing). Structure of crimes performed by underage convicts indicates that juvenile criminal in Serbia is largely concerning property being 59.49% (almost two-thirds of the total number of criminal offenses committed). However, it is evident that proportion of property criminal over recent investigation period tended to decrease by significant 20%. On the other hand, a proportion of perpetrators of a criminal offense against life and body is constantly rising, in recent years is over 12%. The next are criminal offences against public law and order being 11.63%, then offences against people`s health (related to the abuse of narcotics) accounting for 5.96%, offences against public traffic safety accounting for 2.85%, offences against rights and freedoms of man and citizens accounting for 1.38%, offences against sexual freedom accounting for 1.36%, economic crimes accounting for 0.46% and other criminal offences being 4.77%. In the structure of criminal sanctions pronounced against minors, a prevalence of correctional measures is outstanding (99.44%) in relation to a prison sentence (0.56%). In the structure of correctional measures, the measures of intensified supervision (49.25%) and warning and guidance measures (45.59%) are predominant, while school correctional measures participate with over 4% (4.58%).

1.1. Construct of school failure

Reviewing the scientific literature dealing with school failure we noticed two approaches which define this concept. The first, individual approach points to the characteristics of students and incidence forms of school failure while the second, systemic approach, connects the school failure with school responsibility, school system, and organization. Thus, for example, Faubert (Faubert, 2012) and Psacharopoulos (Psacharopoulos, 2007) define school failure as a failure of school and teaching system to ensure an appropriate level and adequate conditions so that all pupils (students) should be successful. These definitions indicate the responsibility of school management policy and practices which differs significantly from conventional thinking that school failure is a result of a student`s qualities who failed to acquire envisaged skills, knowledge or to make an expected success. These definitions are significant because they assume the different view of causative connection, i.e. they assume that the failure of school leads to failure of a pupil.

One of more often cited reasons of school failure is giving too much importance to the function of education minimising the tasks concerning up-bringing (Ilić, 2000). Besides, neglecting real possibilities of a child, generated by personal, family or

environment characteristics, might greatly contribute to the incidence of problems which gradually become more complex and can result in the incidence of more serious forms of disturbance in behavior.

Social and economic expenditures of school failure are extremely high and occur in different forms: increased criminal rate (higher cost of police and judicial organs), a lower rate of economic rise, higher cost of health insurance, higher unemployment, poor social cohesion (Psacharopoulos, 2007). Research conducted by Levin shows that juveniles who leave school early have lower incomes than graduated secondary students, then, that only the half of them have regular (steady) jobs compared with 74% graduated secondary students and that they depend more on social relief system (health system, in case of unemployment and alike) (Levin, 2005).

According to the last 2011 Census of population, households, and apartments of the Republic of Serbia (Republic Bureau of Statistics), there are 2.68% people with no qualifications, 11% did not complete primary education, 20.76% completed primary education, 48.93% completed secondary education, 5,65% completed high education, 10.59% completed higher education while the status of 0.40% inhabitants of Serbia is unknown. When it comes to juvenile criminals the analysis for a period from 2012 to 2016 shows that 2.91% of convicted youth are unqualified, 15.82% did not complete primary school (1st to 7th grade), 65.16% completed primary education, 11.62% completed secondary education, while the status of 3.67% juveniles was unknown. When the educational status is in question 59.27% of convicted youth are regularly involved in the educational process, 6.37% are part-time students, 20.68% are out of the educational process and the status of 13.68% minors is unknown. Data analysis and comparison per categories were done bearing in mind the fact that juvenile offenders of criminal acts are 14 to 18-year-olds, i.e., in the age when they are expected to be included in the educational process. In the category with no school qualifications, the proportion of juveniles is slightly higher in relation to general population (2.91% vs 2.68%), while it is somewhat higher in an incomplete primary education category (15.82% vs 11%). As regards primary education almost two-thirds of minors have completed primary school which is expected taking into account their age (primary education encompasses 7 to 15-year-olds). The biggest difference is observed in secondary education completed by almost half of general population (48.93%) in relation to 11.62% juvenile delinquents. However, this is not at the same time the most significant difference taking into account that 65.64% convicted minors are involved in the educational process (59.27% regularly and 6.37% part-time), so they can be expected to complete their education. The most disturbing is the fact regarding minors who are out of the educational process (20.68%), but also those with unknown status (13.68%). This group includes those who interrupted education or left school permanently.

Education development strategy in Serbia by 2020 indicates that overall primary school drop out constitute children who do not enroll in primary school, children who do not pass into fifth grade and children who do not finish primary school what, according to existing analysis and estimations, accounts for between 10% and 15% of the generation taking into account that it is significantly higher in children from vulnerable groups (primarily Roma children and children in rural areas). To this the proportion of children who do not pass into secondary school, i.e. do not continue their education, should be added, what has recently accounted for about 2%. There are no precise data about early leaving of school in secondary and specialised schools. On the basis of data of the Study of measuring living standard and development of human resources in Serbia (2010), the drop out rate in

secondary education was 2.3% (2005). However, some other data show that this rate is considerably higher, even about 30% in secondary education compared with the official data which do not observe age groups of students. According to the data of the Ministry of Education the survey conducted in 2000-2008 generation, showed drop out of 7.3% while according to other measurings in the Republic of Serbia 10% of persons did not acquire an initial secondary specialised education (Eurostat, 2010). As opposed to these numbers the Study on living standard estimates that still, one-fifth of children in Serbia do not attend secondary schools, particularly boys and youth from socially endangered families (Strategy of development of education in Serbia by 2020). The goal of this strategy is that drop out rate should not exceed 5%.

In foreign literature, a problem of school failure/success has been studied for quite a while and the results of empirical investigations indicate a significant correlation of school failure and juvenile delinquency (Swetten, 2009; Gagne, 1977; Henry et al., 1999; Harlow, 2003: Elliott & Voss, 1974). The research also confirmed that leaving school contributes to intensifying juvenile delinquent activity and that attending school can have a protective effect on adolescents who in their childhood manifested disorders in behavior and who come from families with disturbed interpersonal relations (Bouillet and Uzelac, 2007, according to Gagne, 1977; Henry et al., 1999). According to results obtained, early school leaving represents the greatest risk factor for delinquent behavior in a long run because it has a cumulative unfavorable effect on the life of adolescents (unemployment, social relief beneficiaries, poor health, etc.).

Research conducted by Harlow shows that approximately 68% prisoners in America did not finish secondary school (Harlow, 2003). Other research in Philadephia shows that in almost 70% cleared up criminal offenses the offenders have the lowest-grade education (Wolfgang et al., 1977, according to: Swetten, 2009: 49). Fagan et al. established that school leavers were more involved in all kinds of delinquency, consumption and selling drugs and had more contacts with judicial organs for youth (Fagan et al, 1990). Farington also discovered that secondary school leavers have higher rates of self-reporting of violence criminality in the age of 16 to 32 and that they also have more criminal charges between ten and thirty-two years of age than those who finished school (Farington,1989). Poldrugac (1992) concludes that probability for delinquent behavior is ten times higher in the population of youth that left school than in the population of youth that regularly attends school.

The results of the research show that there are many common characteristics of the category of juveniles who leave school. Compared to their peers who remain at school and finish it on time, they more often come from poor families, have poorly educated parents, history of poor school performance, chronic absence from classes, lag behind their generation, associate with delinquent peers and the possibility that they have behavioral problems including the history of antisocial behavior is greater (Alexander et al, 1997; Alexander et al, 2001; Elliott & Voss, 1974; Fagan &Pabon, 1990; Fagan et al, 1986). The research about juveniles put in correctional institutions indicates their specific educational characteristics. Ilić (2000) points out that majority of the wards distinctly express lagging behind in the process of primary education, i.e. that school-age does not match (lags behind) calendar age. The aversion towards school and teaching stuff is also evident: relatively small number of the wards has a positive attitude towards school and teaching stuff, conflicts are frequent, together with incidences of school leaving and often complete breaking up with school; bad performance during previous education and big gaps in

knowledge fund: mostly generated as a consequence of bad success and frequent disruptions during previous education; undeveloped working habits and irresponsibility towards curriculum obligations: they are in the highest extent characterised by complete absence of working habits, clearly express dependence in studying what also entails irresponsibility regarding obligations.

The author further highlights the fact that some other educational characteristics of this population can be added to these already mentioned ones which can be applied to majority of juveniles in whom the problems during schooling are present among which are: difficulties to adopt curriculum and ignorance regarding learning techniques, concentration problems, great individual differences regarding personal potentials and knowledge fund, difficulties regarding adaptation to atmosphere and collective work at school as well as expressed inferiority and distrust in personal potentials (Ilić, 2000).

2. REDUCING EDUCATIONAL AND SCHOOL FAILURE

In the Strategy of Development of the European Union, Europe 2020 (EU2020), one of the goals is that 40% of the population aged from 30 to 34 should have higher education and that the rate of early school leaving should be under 10% (European Commission, 2010). World Education Forum implements inclusive education along with preventing drop out of school as one of 5 strategic priorities (UNESCO, 2015), while the Goals of Sustainable Development 2015–2030 of the United Nations mention providing inclusive and qualitative education and promotion of possibility of life long learning as one of its goals (UN, 2015). Prevention of drop out from education system is recognised as one of the priority fields of activities in ensuring quality education for all and also in the Strategy of Development of Education in Serbia by 2020 (Government of the Republic of Serbia, 2012), assuming the aim that early school leaving be under 5%, what means that at least 93% of one generation should complete primary school if we know that primary education accounts for under 100% in one generation.

Number of measures implemented through the 2009 Law on Fundamentals of Education System (Official Gazette of the Republic of Serbia, no. 72/2009), such as the change in enrolment policy, instituting the interresource commission, introducing pedagogue assistant and individual educational curriculums, extending mandatory preparation pre-school programme to nine months, etc., although they are not directly engaged in prevention of drop out they create a legal frame whose successful implementation should certainly significantly contribute to dropping out reduction and early school leaving (the way it is defined at the EU level) and belong to the measures that indirectly stimulate the prevention of dropping out. Successful implementation of these measures, through increasing the number of students and adapting the school to the needs of students at risk of dropping out, should significantly contribute to reducing the proportion of 18 to 24-year-old students who did not complete secondary education. The 2013 amendments to the Law on Fundamentals of Education System foresaw that in the realisation of general principles of education system a special attention is devoted to reducing the rate of dropping out of education system (art. 3, Official Gazette of the Republic of Serbia, no. 55/13). In addition, the obligations of the National Education Council and of the Council for Special Education and Education of Adults have been issued in order to monitor, analyse and give recommendations for reducing the dropping out of children and pupils from education system and to propose measures for continuation of the

education of persons that left the system (art. 14 and 16, Official Gazzettte of the Republic of Serbia, no. 55/13), and besides obligations of these bodies at national level, on the basis of the Law on Primary Education (art. 26, Official Gazzettte of the Republic of Serbia, no. 55/13) and the Law on Secondary Education (art. 9, Official Gazzettte of the Republic of Serbia, no. 55/13) the schools are also obliged to plan the measures for preventing dropping out, to realise and monitor measures within the School Development Plan.

At the same time, as frequent absence from school (absenteeism) is often an introduction to final school leaving, the Law on Primary Education (art. 58, Official Gazette of the Republic of Serbia, no 55/2013) assumes that primary school is obliged to inform the parent/trustee if his/her child does not attend the classes. If the pupil continues to be absent from school the school is obliged to immediately inform authorised body in the local community about it.

However, mentioned legal regulations and existing mechanisms do not determine what measures are those and that leaves the space for formulating the measures by authorised bodies and schools. It means that efficient measures of prevention and intervention to prevent dropping out of school and in the local community should still be developed and tested in practice although a legal frame for inclusive education exists. Measures of community support to children and youth at risk of leaving school are scarce (for example, programmes of scholarship, mentoring within schools, extra and adapted material support to child), and even if they exist preventing of dropping out is not their primary aim. At the same time, cooperation with different partners at a local level is often poor and insufficiently directed to preventing the drop out of pupils at risk.

In addition, the records about children who are not encompassed by the education system, as well as records about drop out alone, are not collected systematically what prevents maintaining of the efficient planning of preventing decreasing and creating an adequate system of monitoring and early recognition of pupils at risk of dropping out. In addition, the education system has not yet solved the issue of trying to get back into education systems the pupils who left school.

Thus, respecting described context, within the project Prevention of Drop-out from the Educational System of the Republic of Serbia, Dropout Prevention Model has been developed and tested in ten primary and secondary specialist schools in Serbia (Unicef, 2016). This model includes implementation of the system for early identification of pupils at risk of dropping out and reaction by means of suitable measures of intervention for each identified pupil, strengthening the capacity of school to independently create and conduct different measures and activities in this field and change the school culture aimed to check its effectiveness and possibility to come to the desired change at the level of educational system when preventing dropping out is in question.

CONCLUSION

Relatively contradictory interpretations of findings of different authors only confirm that relationship between the school failure and delinquent behavior should be studied in connection with other individual and social criminological factors. Therefore there is a need to continue the research in this field regardless of a great number of studies.

In our environment, school failure is a neglected topic in studying etiology of juvenile delinquency although it is quite a significant problem both from the aspect of obtaining

new knowledge about the nature of relationship between school failure and juvenile delinquency and from practical aspect in planning and programming education and teaching of juveniles who have already expressed some forms of risk or delinquent behavior.

Decreasing educational and school failure has a high priority in education strategies and policies throughout the world. In our conditions as well, by adopting and implementing different strategies and legal solutions we struggle to improve educational status. We think that efforts invested in prevention of school failure can have a significant contribution to overcoming and preventing juvenile delinquency.

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PRAVDA PO MERI DETETA – OBRAZOVNA PERSPEKTIVA

Problem školskog neuspeha istraživan je duže vreme, a rezultati empirijskih israživanja ukazuju na značajnu povezanost između školskog neuspeha i maloletničke delinkvencije. Istraživanjima je potvrđeno da napuštanje školovanja doprinosi intenziviranju delinkventne aktivnosti maloletnika i da pohađanje škole može imati zaštitnički učinak na maloletnike. Utvrđeno je da rano napuštanje školovanja predstavlja dugoročno najveći rizični faktor za delinkventno ponašanje jer ima kumulativno nepovoljan učinak na životni put maloletnika (nezaposlenost, korišćenje usluga socijalnih službi, slabije zdravlje itd.).
Smanjenje obrazovnog i školskog neuspeha ima visok prioritet u obrazovnim strategijama i politikama u svetu. I u našim uslovima se usvajanjem i implementacijom različitih strategija i zakonskih rešenja nastoji poboljšati obrazovni status. Smatramo da napori uloženi u prevenciju školskog neuspeha, mogu imati značajan doprinos u prevazilaženju i prevenciji maloletničke delinkvencije.

KLJUČNE REČI: maloletnička delinkvencija / pravo / obrazovanje / prevencija

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