ICT (information and communication technologies) based children's protection in Serbia

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Abstract

The ICT development has introduced a new form of violence among children and juveniles, generally described as cyber bullying, but also known as electronic violence, online violence, cyber violence et al. It is regularly manifested through the following pattern: sending the threatening, insulting, vulgar or otherwise inappropriate messages either directly to victims, or through the public announcements available to larger groups (social networks in particular). It also includes libels, indiscreet behavior and revealing one's secrets, in the form of data, photos or videos, as well as the exclusion from the virtual social groups (forums, chat rooms etc.). However, some of the more specific forms of ICT-related exploitation are frequent as well: so-called grooming is the process in which children are persuaded or incited to participate in sexual interactions through Internet or electronic devices, thus being exposed to ill-favored pornographic texts or images, which in itself constitutes a criminal offence; sexting is an act of sending disturbing and sexually explicit content to another person, most often via SMS, MMS, electronic mail, or social networks and chat rooms.

Keywords: *ICT, cyber bulling, datas, grooming, indiscreet behaviour, children exploitation.*

Introduction

The most common aspect of the child exploitation phenomenon – *i.e.*, the abuse and violence against children through the information and communication technologies (ICT), especially Internet – is attributed to the area of the criminal law. In this case, the general legitimacy of such an approach is enhanced to the highest extent, in regard to the utmost importance of the subject of protection itself. Namely, when physical and mental integrity of children are being violated and threatened through the criminal acts of exploitation – punishable in accordance to the domestic legislation – the very necessity of the legal coercion is asserted as one of the ultimate protective bulwarks of humane values as the core societal tenet. Furthermore, it represents the primary

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legislative mechanism in every country, with respect to the defense against the socially damaging practices.

Nonetheless, the ICT-related child exploitation greatly predates and exceeds the sphere exclusively defined by the criminal law. There are, in fact, numerous activities linked to the "virtual world" that surpass the protective and institutional limits of the criminal law, exert a detrimental influence on children, and constitute violations of their rights. Possible consequences of such practices may be compared with the results of criminal acts, particularly in regard to the age-related psychological sensitivities of children. As demonstrated throughout the history of the prominent human achievements, the ICT – primarily the Internet – may serve as "the double-edged sword" and be misused for the illicit purposes. A fitting explanation of this paradox can be found in the old proverb: "Fire is a good servant, but a dreadful master". In addition to the various learning and development opportunities, modern technologies also provide a plethora of means used for "social cruelty" (Shariff, 2008). Mark Prensky (Prensky, 2001) - an American expert on the hi-tech focused age groups – has coined the term "digital natives". In recent decades, diverse authors have devised several neologisms (e.g. the Google generation, instant-message generation, new millennium students) in order to emphasize the unique experience of the generations raised in a digitally reshaped world. As a groundbreaking new force, Internet has presented a range of the entirely new prospects, most notably in the studying and thinking patterns, and has become a dominant communication platform among the younger age groups (Kuzmanović, Lajović, Grujić, Medenica, 2016). In terms of the psychological and social advance – availability of information, learning opportunities, communication, creative development – as well as education and social inclusion of the young people, benefits provided by the new technologies are indisputable. However, the unsafe use of digital technologies includes various risks, especially for children and juveniles.

The ICT development has also introduced a new form of violence among children and juveniles, generally described as cyber bullying, but also known as electronic violence, online violence, cyber violence et al. It is regularly manifested through the following pattern: sending the threatening, insulting, vulgar or otherwise inappropriate messages either directly to victims, or through the public announcements available to larger groups (social networks in particular). It also includes libels, indiscreet behavior and revealing one's secrets, in the form of data, photos or videos, as well as the exclusion from the virtual social groups (forums, chatrooms etc.). However, some of the more specific forms of ICT-related exploitation are frequent as well: so-called grooming is the process in which children are persuaded or incited to participate in sexual interactions through Internet or electronic devices, thus being exposed to ill-favored pornographic texts or images, which in itself constitutes a criminal offence; sexting is an act of sending disturbing and sexually explicit content to another person, most often via SMS, MMS, electronic mail, or social networks and chat rooms. The child safety risks on Internet are numerous. They can be broadly classified as commercial, aggressive, sexual and value-oriented, in regard to the child as a recipient, a participant, or an actor. As a recipient, a child is exposed to the commercial risks of advertising, sponsorship and spam; aggressive risks of the violent and hateful content; sexual risks of pornographic and otherwise inappropriate sexual content; value risks of racism and misleading info (e.g. regarding the drug use). As a participant, a child can face commercial risks of tracking and harvesting personal information, aggressive risks of being bullied, harassed or stalked, sexual risks of receiving unwanted contacts from strangers and/or being

groomed, and value risks of inciting self-harm and unwelcome persuasion. Finally, as an actor, a child may be exposed to the commercial risks of gambling, hacking and illegal downloading, aggressive risks of bullying and harassing others, sexual risks of producing and posting pornography, and value risks of providing advice (*e.g.* pro-suicide or pro-anorexia) (Hasenbrick, Livingstone, Haddone, 2009). Without any doubt, sexual abuse of children through ICT poses the criminological problem of the utmost importance (Pavlović, 2016). Among many complexities of digital violence, an important feature stands out; namely, children may not be only the victims, but also the perpetrators of violence, as well as its witnesses. Another significant aspect is the perpetrator's possibility of remaining anonymous, while the victim may be instantly available. The very nature of the anonymous communication and the "invisible presence" may increase the numbers of harassers, witnesses and (seemingly, also anonymous) victims. Also, the long-standing online presence of the hurtful content may cause the long-term effects to the victim's integrity and dignity, and result in the feeling of the utmost shame, given the psychological sensitivity in this age group. In conclusion, the illusion of invulnerability in the virtual space – due to the absence of direct physical interaction – is among the most decisive factors in the complex issue of child safety in the ICT environment. By virtue of being "invisible" within the confines of virtual reality, children become all the more exposed to the great many dangers lurking therein. Family and social surroundings – the foremost safe havens – cease to exist by entering the virtual space. A considerable paradox lies in the fact that children join that space willingly and with deliberation, driven by the unique and genuine curiosity, spirit of exploration and yearning to discover new facts. Unfortunately, what may look like the newfound freedom beyond the parental control – and reinforced with the youthful earnestness and sincerity – may also lead to the loss of the key defense mechanism: childhood itself.

Therefore, this paper will present – in addition to the penal legislative measures – other forms of the institutional protection from the ICT-related child exploitation in the Republic of Serbia.

Target group, or the protected subject are children: in the more specific meaning of the term, and in accordance with the Criminal Code of the Republic of Serbia, children are persons under fourteen years of age. A juvenile is a person who has attained fourteen years of age and has not attained eighteen years of age. According to the the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, a younger juvenile is a person who at the time of commission of the criminal offence has attained fourteen and is under sixteen years of age, while an elder juvenile is a person who at the time of commission of the criminal offence has attained sixteen and is under eighteen years of age.

There is, nonetheless, an ongoing issue that has contested various societal segments for a long time; namely, defining the age boundary that separates childhood from adulthood remains a crucial task in establishing the legal safety in general. At the same time, it poses a rather ungrateful challenge, given the largely subjective element of psychological and physical development that shape and define every person on an entirely individual level. In this context, this question needs to be broadly analyzed, as it substantially determinates a degree of legal and working capacity, as well as penal, misdemeanor, contractual and tort liability. This becomes acutely relevant when various – innumerable, even yet undiscovered – dangers of the virtual spaces are taken into

account, including the increasing vulnerability of children online, along with the fact that violent acts are sometimes being perpetrated by children themselves.

In accordance with the international law – the Article 1, the UN Convention on the Children's Rights – every human being under the age of eighteen is defined as a child. This definition is accepted by the majority of European legal instruments related to children. Examples include the Article 4 (d) of the European Council Convention on Action against Trafficking Action against Trafficking in Human Beings or the Article 3 (a) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention). The European Human Rights Convention (EHRC) does not define children in particular, but its Article 1 demands that the rights are guaranteed by every country, to "everyone" under its jurisdiction. Article 14 of the EHRC warrants the exercise of the rights defined by the Convention as "without discrimination on any ground", including age. European Human Rights Court (EHRC) has accepted petitions submitted by children, or on their behalf, regardless of age. In its legal doctrine, the Court has adopted the definition of a child from the UN Children's Rights Convention, therefore reinforcing the designation quoted above, of any person "under eighteen years of age" (Priručnik, 2015).

Penal legislative protection

Legal foundations of the child protection in the Republic of Serbia are embedded in the constitutional clauses which guarantee the human rights to children; in accordance to their age and maturity level, children are particularly protected from the psychological, physical, economic (and any other) exploitation and abuse. The Republic of Serbia regulates and protects the systemic child care. The rights of children and their protection are regulated within the state legislation. Basic general legal acts which regulate the legislative child protection, as well as the main sources in regard to the material and process criminal law in the Republic of Serbia, Criminal Code and The Criminal Procedure Code**.** In addition to the articles pertaining to the juvenile criminal offenders, the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles also contains separate segments dedicated to the protection of children and juveniles as injured parties in criminal procedure**.**

Through the Law on Ratification of the Convention on Cybercrime ("The Official Gazette of the RS – International Agreements", No. 19/2009) the Republic of Serbia as a contractual party has pledged to adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: producing child pornography for the purpose of its distribution through a computer system; offering or making available child pornography through a computer system; distributing or transmitting child pornography through a computer system; procuring child pornography through a computer system for oneself or for another person; possessing child pornography in a computer system or on a computer-data storage medium. The term "child pornography" shall include pornographic material that visually depicts: a minor engaged in sexually explicit conduct; a person appearing to be a minor engaged in sexually explicit conduct; realistic images representing a minor engaged in sexually explicit conduct.

Through the Law on Ratification of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse ("The Official Gazette of the RS – International Agreements", No. 1/2010), whose introduction

observes that the sexual exploitation and sexual abuse of children have grown to worrying proportions at both national and international level, in particular as regards the increased use by both children and perpetrators of information and communication technologies (ICTs), it is prescribed that each Party shall take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new information and communication technologies. Each Party shall encourage the private sector, in particular the information and communication technology sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation. Each Party shall encourage the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children, with due respect for the independence of the media and freedom of the press. Also, the participation of children shall be encouraged, according to their evolving capacity, in the development and the implementation of state policies, programs or others in initiatives concerning the fight against sexual exploitation and sexual abuse of children. Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child - who, according to to the relevant provisions of national law**,** has not reached the age below which it is prohibited to engage in sexual activities with a child -for the purpose of committing any of the pornography-related offences against him or her, where this proposal has been followed by material acts leading to such a meeting.

In relation to the final obligation from the Convention stated above, Criminal Code of the Republic of Serbia, in the Article 185b, incriminates the ICT abuse itself, as the Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles, when the offender arranges to make an appointment with a juvenile, and appears at the place of the appointment. This criminal offence **pertains to** the intented criminal acts **against the rights with the sexual freedom as the common protective denominator**: a rape that results in death of the person against whom it was committed, or it was committed against a child; copulation against a helpless person (mental illness, mental retardation or other mental disorder, incapacity or some other state due to which the person is incapable of resistance), if the offence results in death of the person against whom it was committed, or was committed against a child; copulation or an equivalent act against the child, if it results in grievous bodily harm to the child against whom the act was committed, or if the act was committed by several persons, or the act resulted in pregnancy; copulation or an equivalent act committed through abusing the position or authority, by teachers, educators, guardians, adoptive parents, parent**,** stepfathers, stepmothers or other persons against a juvenile entrusted to them for instruction, education, guardianship or care, or if the offence is committed against a child; other sexual acts, committed under the circumstances pertaining to the criminal offence of rape, copulation with a helpless person, or the sexual intercourse through abuse of position. Clearly, **the definition of this criminal offence penalizes the preliminary acts of some other criminal**

offences against the sexual freedom of juveniles. The twofold nature of this offence is noteworthy as well, as it primarily includes the act of proposing an appointment, followed by the offender's appearance. According to this, both actions would constitute the **committed act,** while the attempted offence is comprised of a proposed appointment by itself and via computer and/or other contemporary communication technology. This is particularly significant in the context of the article that incriminates the qualified (*i.e.,* harder) type of this criminal offence – committing the act against a child (a person under fourteen years of age), especially given the length of the **sentence** (1 to 8 years of prison) and its obligatory form in case thayt the punishment consists of the five-year or longer prison term (Pavlović, 2013). In regard to the fact that this criminal offence incriminates the use of ICTs for the arrangement of – and the appearance at – the appointment with a juvenile or a child, and with the intent of committing the criminal offence, the adequacy of the lawmaker's decision in this case may come into question. Namely, the inclusion of the cases resulting with the gravest outcomes (death and grievous bodily harm) among these criminal offences, may conflict with the law's insistence on the offender's negligence (Đorđević M, Đorđević Đ, 2010), while the intent to commit a criminal offence always requires premeditation. A critical overview of this legal solution is not limited to the necessity of the simpler and more clarified normative terms, in the context of their sufficiency in expressing the intent of these criminal offences (rape, copulation against a helpless person, copulation or an equalent act against a child). Such phrasing may also bring the very existence of an act into question, as well as the incrimination of the ICT abuse, e.g. in case that the offender has used the computer network or other technical communication means in order to arrange a meeting, has appeared on the arranged location with the intent of committing a basic form of a criminal offence, but not its grave consequence.

Since the vast majority of the ICT-related criminal offences against children includes child pornography[1], we will now offer an abstract of the criminal offence of the Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, as proscribed by the Article 185 of the Criminal Code, that incriminates selling, showing, publicly displaying or otherwise making available texts, images, audio-visual or other items of pornographic content to a juvenile (or a child) or showing them a pornographic performance. It also incriminates obtainining, for oneself or others, possessing, selling, exhibiting privately or publicly, or electronically or otherwise making available pictures, audio-visual or other items of pornographic content resulting from the abuse of juveniles.

Starting from June 1, 2017, an addition to this article comes into being, along with its use; whoever intentionally accesses pictures, audio-visual or other pornographic items resulting from the abuse of a juvenile, would be punished with a fine or a prison sentence of six months or less. This is the first instance in the Republic of Serbia that the very ICT-related access to the child pornography is being criminalized. In addition, a definition of the pornographic content resulting from the abuse of a juvenile (or a child) is also provided: it includes every material that visually depicts a juvenile engaged in a real or simulated sexually explicit behavior, and every depiction of a child's intimate organs for sexual purposes.

[1] According to INTERPOL, 50% of criminal offences committed online is related to the transmission, distribution and sale of the child pornography.

The Law on the Organization and Competences of Government Authorities Combating Cybercrime, enacted in 2005 (with changes from 2009) regulates the formation, organization, competencies and powers of special organizational units of government authorities for the purposes of detection, prosecution and trying of criminal offences specified in the law, which includes the criminal offences against the sexual freedom.

Cybercrime for the purposes of this law shall mean committing criminal offences where computers, computer systems, computer data and products thereof in hard or electronic form appear as the objects or the means of committing a criminal offence.

The Higher State Attorney's Office in Belgrade shall have the jurisdiction for the territory of the Republic of Serbia.

The Higher State Attorney's Office in Belgrade shall form a special cybercrime department to proceed in the cases of criminal offences referred to in the present law (hereinafter: Special Prosecutor's Office). The provisions regulating public prosecution shall apply to the Special Prosecutors Office.

For performance of work of the internal affairs department for the fight against cybercrime shall be established within the ministry responsible for internal affairs, while jurisdiction performs the High Court in Belgrade (Department for combating cybercrime).

In 2013, the Republic of Serbia has enacted the Law on Special Measures for the Prevention of Crimes against Sexual Freedom of Juveniles, better known by its colloquial title, "Maria's law", in the memory of an eight-year old girl who tragically lost her life as a victim of rape and murder. This law regulates the enactment of the special measures toward the perpetrators of criminal offences against the sexual freedom of the juveniles **and children**, including the criminal offence of showing, obtaining and possessing child pornography, or abusing a juvenile for the pornographic purposes. "Maria's Law" also enacts the measures against the criminal abuse of the computer networks or other technical means, against the sexual freedom of juveniles. This law also **prescribes** the means of maintaining directories of the persons legally sentenced for criminal offences of such nature. The law's purpose is in restraining the known offenders from repeating criminal offences against the sexual freedom of juveniles. Perpetrators of such offences cannot receive **judicial clemency**, nor be **pardoned or paroled** during their prison sentences. Criminal prosecution and punishment given by a lawcourt for the crimes committed against juveniles are not subject to statutes of limitations. Such a judicial sentence includes the following legal consequences: resignation from any publicly elected office; termination of any type of employment that might require interacting with the juveniles; banishment from any nomination for a public office; banishment from obtaining any new type of employment, if juvenile-related. After the full prison sentence is served, the perpetrator is required to comply to the following special measures: compulsory reporting to the designated police office and the **Administration of Criminal Sanctions** bureau; banishment from visits locations frequented by juveniles (kindergartens, schools etc.); obligatory visits to the professional counsellors' offices and institutions; compulsory reports of any changes of the home address, location of living or place of employment; compulsory reports in case of traveling abroad. These measures are being used up to 20 years from the cessation of prison sentence. Convicted persons are subjected to the special type of registry that contains their data on physical appearance - relevant in case of the identification process – as well as the DNA profile. This law does not apply against the juvenile criminal offenders

against other juveniles' sexual freedoms. Despite the lawmaker's commendable intentions, introduction of the non-**limitation** status in regard to the criminal prosecution and legal punishment for the criminal offences against the sexual freedom of juveniles, still represents a major deflection from the general legislative practices, especially in light of the fact that most of European states – like our own country, until now – maintains the non-limitation institute for the very special criminal cases against humanity and other goods protected by the international law, e.g. genocide as a singular "crime among crimes" (Škulić, 2013). Also, the Constitution of the Republic of Serbia acknowledges the statute of limitation for the criminal prosecution and legal punitive measure in cases of war crimes, genocide and the crime against humanity, whereas the Criminal Code maintains that the statute of limitation cannot be established for the criminal offences regulated through the international agreements. Such a stipulation partially refers to the the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, that does not prescribes the absolute non-limitation of the criminal offences against sexual freedom; in the Article 33, it determines that each Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the particular offences in this group shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.

Taking these factors into account, **the constitutional adequacy** of this legal solution can be justifiably questioned. On the other hand, the solution that prohibits paroling persons imprisoned for committing one of the criminal offences (mentioned above) has also caused certain practical dilemmas. For example, since the criminal legislation cannot be retrospectively implemented (except when the latter solution benefits the perpetrator), a question arises whether "Maria's Law" could be implemented in case of relevant criminal offences which have taken place prior to the enactment of this law.

Other forms of legislative, otherwise normative and institutional protection

Violence of any kind is forbidden in the educational institutions, in accordance to the Law on the Bases of Education and Upbringing („The official Gazette of the RS", Nos. 72/09 and 52/11) and the Regulation on the Protocol of Practices and Reactions in response to the Violence, Abuse and Negligence ("The Official Gazette of the RS, No. 30/10). These regulations provide the foundation of practices and reactions on violence in every form and shape. According to the Regulation on the protocol, violence and abuse – in addition to the traditional forms (physical, mental and social violence) also include electronic (digital) violence, and sexual violence (online and offline).

According to the Regulation, electronic violence and abuse pertain to the ill-treatment of the information technologies that might result with hurting other people's personality and violating their dignity. This type of violence takes place via email messaging, SMS, MMS, through the websites, online chats, participating on Internet forums and social networks, etc. Sexual violence and abuse is a behavior that sexually disturbs a child / pupil, suggests the participation in sexual activities or forces such unwanted behavior upon him or her, despite the absence of maturity and interest. Also,

sexual violence includes the abuse for prostitution, pornography and other forms of sexual exploitation.

In the research conducted by the expert team from the Institute of Psychology (the Faculty of Philosophy, University of Belgrade) as a part of the project "Let's Stop the Digital Violence", within the program "School without Violence – Toward the Safe and Motivated Children's Environment", it was discovered that, through the last year, one-fifth of the primary-school 4th grade pupils has been exposed to the online violence at least once (19% via mobile phones and 12% via Internet). One-third of the older primary-school pupils has experienced digital violence of some form at least once (32% via mobile phone, 39% over Internet). Among the high-school students, the percent is higher: even two-thirds has experienced some form of online violence at least once (42% over the mobile phones, a 56% via Internet) (Popadić, Kuzmanović, 2016).

Along with the legal and institutional measures directed toward the creation of a successful protective mechanism from the digital crime, the Republic of Serbia has enacted the national Strategy of Information Society Development until 2020.

In addition to the estimates that all aspects of information security would be regulated within the proper institutional framework by 2020, one of the main goals of the Strategy is the development of information security and a simultaneous creation of users' trust in the safe function of the information systems. Citizens' trust in the personal data protection is equally important, as well the awareness of the necessity of implementing the measures that would lead toward the information security, safety of telecommunications systems and electronic transaction. Also, the creation of functional protective mechanisms would increase the safety of new businesses online, along with electronic data exchange (Vilić, 2016).

In the introduction to the Strategy, it is emphasized that the ICTs have managed to revolutionize way of life, studying, work and leisure, within a single human generation. ICTs maintain the decisive influence on further transformation of human interaction, as well as businesses and public institutions. Among the priorities within the information safety area, this strategy envisions the enhancement of its legal and institutional framework, in order to have the entire body of information safety fully regulated in the Republic of Serbia until 2020. At this point, the creation of an institution that would focus on the verification and certification of methods, software applications, devices and systems - as well research and development – is of the essential importance. Such an institution should oversee the implementation of the information safety in the state services. Foundation of the national CSIRT (Computer Security Incident Response Team) is also necessary, with the goal of acting preemptively, and coordinating the solution of security-related online risks.

As a result of the activities prompted by this Strategy, the Republic of Serbia has enacted the Law on Information Security, in January 2016. It regulates the protective measures against the security risks in the information-communication systems, responsibilities of legal entities through the management and use of these systems. Also, the law appoints the competent official bodies to implement the protective measures, coordinate between the protective agents, and supervise the quality of implementation. The governmental body responsible for the safety of the ICT systems is the state ministry competent in the areas of information security. In order to achieve the full cooperation, adjust the functionality and enhance the general information security level – and, also, initiate and follow the relevant preventive activities in this area- the Government of the Republic of Serbia establishes the Body of Coordination on the

Information Security Activities, as a coordinating governmental body, that would include the representatives of various information security-related ministries (Defense, Internal Affairs, Foreign Affairs, Justice, as well as the representatives of the security services, Office of the Council of the National Safety and Secret Data Protection, General Secretariat of the Government, Directorate of the Joint Affairs of the Governmental Bodies, and the National CERT). The National Center for the Security Risk Prevention in the ICT Systems coordinates the national-level activities on prevention and protection of the ICT systems in the Republic Serbia. With the advancement of certain information security areas as a main goal, expert groups are organized within the Body of Coordination, and include the representatives of other public authorities, economic entities, academia and non-government sector. The Regulation Agency for the Electronic Communications and Postal Services is competent for the activities of the National CERT.

In regard to the Law on the Information Security, the Government of the Republic of Serbia has issued the Ordinance on the Safety and Protection of Children During the Use of Information-Communication Technologies, that regulates the preventive measures for the safety and protection of children during the use of information-communication technologies, i.e. on Internet, as well as the procedures in cases of violations of or menaces to their safety online. The aim of this ordinance consists of raising the levels of awareness and knowledge on the advantages and risks of the Internet use, as well as the means of the safe Internet use; advancing the digital literacy among children, i.e. pupils, parents, custodians and teachers; improving the intersectional cooperation in the area of safety and protection of children on Internet. The Ministry of Trade, Tourism and Telecommunications undertakes the preventive measures for the safety and protection of children on Internet - as activities of the public importance – by informing and educating children, parents and teachers, and establishing an integrated location that provides advice and receives concerns related to the children safety on Internet. The topic of interest in informing and educating children, parents and teachers, includes the benefits of the Internet use, risks of Internet use, and means of the safe Internet use. These activities are being employed through the organization of seminars, workshops, and presentations, as well as the information provided through print, electronic and other media, as well as the cooperation with the competent organizations and the civil society representatives. The public media service, in accordance with the laws and other statutes, promotes the children protection, i.e., produces and shows programs in the public interest, related to the children safety and protection on Internet, and in collaboration with the ministry of competence. In order to raise the level of awareness and knowledge on the children safety on Internet, the ministry undertakes the activities related to providing advice to children, parents and teachers over the telephone, about the benefits and risks of the Internet use, and the safe means of the Internet use; this includes the information on the risks of developing addiction to the use of videogames and Internet. The ministry ensures the reception of complaints about the damaging, inappropriate and illegal content and behavior on Internet, and reports of the violations of the rights and interests of children, via the telephone or the electronic form on the website. Based on the report, the ministry undertakes the following activities: it provides the information about the filed report to the administrator of the website **in question**, in case that the report details refer to the inappropriate or damaging content; proceeds the report – if the allegations in the report refer to the existence of the criminal offence – to the competent public prosecutor, and provides the information about the

filed report to the ministry of competence in the internal affairs (Service of cybercrime), in order to inform and with the purpose of fighting the cybercrime; proceeds the report to the competent social service in case that the allegations in the report refer to the violation of rights, health status, well-being and/or the general integrity of a child, as well as the notification to a competent public health center about the filed report, if the allegation in the report refer to the risk of developing an addiction to the Internet use; proceeds the report to the information security inspection, in case that the allegation from the report refer to the violation of safety or an inadequate behavior of the ICT system operator toward the information of the special significance. The ministry informs the report applicant about the activities undertaken. After the report is filed, the social work centers evaluate – within their area of competence - the attitudes of the persons who take care of a child (parents, foster parents), assess the level of influence of the illegal ICT-related content on a child, and provide help in accordance to the law and their competence. After the report is filed, a competent health center, that is capable of providing the professional help, establishes – in case that the patient, their attorney or custodian, agrees – whether there is a risk of developing addiction, or the addiction already exists to the use of Internet; the help is provided in accordance to the law. The employees of the social work centers and health centers become informed of the risks and damaging consequences that may take place for children through the use of ICT, so they receive the training about the means of providing help to children in case that the damaging consequences occur. The ministry of competence in the internal affairs, social work centers and health centers provide the competent ministry the data on responding to the filed reports, related to the children safety on Internet.

In accordance to the aforementioned, the National Contact Center on the Children Safety on Internet has been established in the Republic of Serbia in 2017; therefore, all citizens, including children and juveniles, can call the center for advice regarding the Internet safety, or report the violation of the children safety. Through the establishment of this center, the necessary preventive measures have been undertaken in order to obstruct the spread of the Internet-related child safety problems any further. The existence of such a unique center was needed so the relevant actors could report any problem at one place, in relation to the child safety on Internet. The competent governmental authorities involved in the activities of this center are the Ministry of the Education, Science and Technological Development, Ministry of Health, Ministry of the Internal Affairs, as well as the Office of the Public Prosecutor.

Conclusion

Based on the evidence presented above, digital crime and the abuse of Internet – along with the socially damaging behavior – is reinforced by the high degree of the perpetrators' anonymity, as well as the instant availability of victims, great extent of discrimination possibilities, along with the difficulties experienced by the cybercrime prosecutors while collecting evidence, etc. As the most widespread contemporary means of communication, social networks are challenged with a considerable deficiency: their users, especially children, are exposed to the various forms of abuse.

The existing legislative regulations - international and national alike – are focused mainly on the abuse of computer hardware and software, either as tools or targets of criminal acts, while some other types of exploitation are not being penalized whatsoever.

Prior to 2016 – when the Law on Information Security was enacted along with the legislative additions that have criminalized the very access to the child pornography through ICT – there has not been a single legal act on the national level to define the ICT – related child exploitation as a distinctive form of child abuse. Until then, international and national computer systems have been regulated exclusively as the means of sexual exploitation of children (Protector of Citizens, 2013). By the enactment of this law, as well as the amendment to the aforementioned article of the criminal code, the initial and fundamental steps has been taken toward defining and determinating the ICT – related child exploitation as a separate form of violence.

While putting an end to the cyber violence in total may be too difficult, solutions must exceed strictly technological levels. By founding the centers and free telephone lines mentioned above, a significant step in the prevention of digital violence has been taken; nevertheless, prevention needs to be implemented on all levels, starting with individuals and families, educational institutions, telecommunications, service providers, state institutions, and the society as a whole. The necessity of education in this area needs to reach the parents and teachers, and every other societal segment focused on the direct work with children.

Safety of all online users, especially children and juveniles, is an imperative of modern society, primarily because the vast majority of criminal acts against children takes place on Internet. Preventive measures should include the all-encompassing educational strategy (parents, children, schools), as well as the establishment of a system of control and deterrence, through the strict penal policy; its primary achievement would be the successful obstruction of criminal perpetrators, while the whole society would witness the firm determination of the state in protecting its youngest members.

Prevention of the ICT-related child abuse is, in fact, a difficult task. While the process of digital transformation is unstoppable, it is necessary to steer it toward the goal of a large-scale societal progress. So-called digital gap between parents and children is self-evident, but we all belong to the "digital generation" regardless of age. Therefore, it is crucial that all Internet users are timely informed about threats and protection techniques, because the general level of online safety greatly depends on raising awareness in these areas. In order to prevent and deter the child exploitation through ICT, establishing an obligatory form of intersectional cooperation - the institutional, collective and individual participants in the state and civil sector – is necessary.

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Perspectives on the Application of Diversion Program Measures within the Criminal Juvenile System of Serbia

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Abstract:

In this paper, we briefly discuss who is considered a minor in terms of age in Serbia today under the applicable legal provisions, and which regulations apply to minors in conflict with the law. Special attention is focused on the implementation of diversion orders in the application of the provisions of the Law on Juvenile Offenders and Criminal Protection of Minors (hereinafter: LJ) as well as to the current prosecutorial or judicial practice of the existing official data. We have also pointed out some specifics and perspectives in the implementation of diversion orders which are expected to be part of the new draft of the law in this area.

Keywords: *juveniles, criminal legislation, rehabilitation measures, diversion program measures.*

Introduction

The start of implementing the Law on Juvenile Offenders and Criminal Protection of Minors (hereinafter: JL)[2] in the Republic of Serbia also means that the provisions of this act will incorporate and include the concept of restorative justice. For the first time in Serbia, conditions have been met for the implementation of a new approach in juvenile justice which promotes restorative justice principles, as well as the "application of the principle of subsidiarity of criminal sanctions, giving priority to out-of-court interventions."[3]

Prior to this, the basic framework for minors in Serbian law was made back in 1953. This was when Criminal Law adopted as a 'patronizing – protectionist' model whose focus was primarily to help the minor offender, get him/her back on track socially, emotionally, and intellectually without considering how to, in the first place, protect society from committed prohibited actions - criminal acts.

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[2] The Law on Juvenile Offenders and Criminal Legal Protection of Minors, Official Gazette No. 85/05 published October 6, 2005 and passed into force on January 1, 2006.

[3] Stevanović, I., Milošević, N. (2006) "Necessary conditions for the implementation of the Law on Juvenile Offenders and Criminal Protection of Minors" and Radovanović, D. (ed.) The new criminal legislation: dilemmas and problems in theory and practice, Belgrade: Institute of Criminological and Sociological research and the College of Internal Affairs, pp. 487-496.

Although the provisions of JL contain many other innovative solutions, some of which specifically mention the introducing of alternative measures, we focused exclusively on rehabilitation measures and the specific obligations within the system of rehabilitation, since the analysis of particular commitments would require much more space than it is available in this study of a limited scope.

General information on juvenile criminal legislation in Serbia

Until the adoptation and implementation of JL, neither the Republic of Serbia nor all the legal state predecessors of the present state have ever had a unique law regulating juvenile justice. However, all the previous provisions of criminal legislation involving the juvenile issue,[4] in the same way as JL, had regulated the issue of minors i.e., children and a certain age group.

For the first time and in a unique way, the new JL regulates the issue of minors – material, physical, procedural and enforcement provisions, and the Serbian legal system for the first time contains specific provisions which regulate the protection of minors as victims in criminal proceedings.

A juvenile or minor is an individual who at the time of committing the offence was 14 years of age, *i.e.* under 18 years of age. A younger juvenile is someone who at the time of committing the offence was 14 but under 16 years of age and an older juvenile is considered to be an individual who at the time of committing an offence was 16 years old, i.e. under 18. The possibility of imposing criminal sanctions against children has been ruled out, i.e. individuals who at the time of committing an unlawful act are under 14 years of age.

Previous provisions, the herein mentioned regulations of a material legal character prior to the implementation of JL failed to foresee the possibility of applying any diversion measures – *i.e*. any diversions (avoiding pre-trial procedures) for juveniles in conflict with the law committing crimes. This is reflected in the provisions and the types of rehabilitation measures that can be applied to juvenile criminal offenses under Criminal Law of SRS.[5]

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[4] Criminal Law of SFRY, Official Gazette of the SFRY Nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 and 54/90; Official Gazette of FRY Nos. 35/92, 16/93, 31/93, 37/93, 24/94, 61/01; Official Gazette of RS No. 39/03; Criminal Law of Serbia, Official Gazette of SRS Nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89 and 42/89; Official Gazette of RS Nos. 21/90, 16/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10 / 02, 11/02, 80/02, 39/03 and 67/03; Vojvodina Criminal Law, Official Gazette of Vojvodina No. 17/77 and 24/77; Criminal Law of Kosovo, Official Gazette of Kosovo No. 20/77; The Law of Criminal Procedure, Official Gazette of the SFRY Nos. 4/77, 36/77, 60/77, 14/85, 74/87, 57/89 and 3/90; Official Gazette of FRY Nos. 27/92 and 24/94; The Code of Criminal Procedure, Official Gazette of FRY Nos. 70/01, 68/02; Official Gazette of RS Nos. 58/04, 85/05 and 115/05; Law on Execution of Criminal Sanctions, Official Gazette of SRS Nos. 26/77, and the Law on Execution of Criminal Sanctions, Official Gazette of RS Nos. 16/97 and 34/01.

[5] Art. 12, Criminal Law of SRS, Official Gazette of SRS Nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89 and 42/89; Official Gazette of RS Nos. 21/90, 16/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10 / 02, 11/02, 80/02, 39/03 and 67/03.

Possibilities of application of diversion measures within the provisions of juvenile law

The reforms which started in 2005 in the Republic of Serbia and began their implementation from January 1, 2006 regarding juvenile justice[6] were aimed at improving the situation of children's rights in general. The basis for the existence of rehabilitation measures has its foundation in the provisions of the UN Convention on the Rights of the Child (hereinafter: UNCRC)[7] wherein Article 40, p. 3, item B provides the obligation of the state to endeavor to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children and dealing with children alleged as or accused of committing criminal offence, and to adopt measures, whenever possible and desirable, for dealing with such children without resorting to judicial proceedings, and by respecting human rights and legal protection. The Republic of Serbia, in adopting JL, has made an important step in harmonizing national legislation with UNCRC, but also with other relevant European and international standards regarding the protection of Children in Conflict with the Law, as well as children and minors who are victims of criminal acts.

The following selected international documents which have found application in the provisions of JL are the following: the UN Standard Minimum Rules for the administration of the Juvenile Justice system from 1985, and three documents from 1990 – the UN Rules for Juveniles Deprived of Liberty, UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh guidelines) and the UN Standard minimum rules for Non-custodial measures (The Tokyo Rules).

The introduction of rehabilitation measures as alternative measures for resolving criminal cases where the minor is a perpetrator is a novelty, since rehabilitation is not a penalty, but *sui generis* measures.[8]

Rehabilitation measures can be applied or imposed by the public prosecutor for juveniles and the juvenile judge when two types of conditions are met: objective and subjective. The objective condition is that it is a criminal offence which is punishable by a fine or imprisonment for up to 5 years. The subjective conditions are acknowledgment of the offence by the minor and the attitude of the juvenile offender towards the act and the injured party.

Having in mind the provisions that relate to the objective condition for the implementation of rehabilitation measures, it can be concluded that these measures can be enforced against the juvenile who has committed so-called petty and medium crimes.

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[6] The Criminal Code of RS, Official Gazette No. 85/05 published on October 6, 2005 entered into force on January 1, 2006 (hereinafter: CC); The Law on Juvenile Offenders and Criminal Legal Protection of Minors, Official Gazette No. 85/05 published on October 6, 2005 entered into force on January 1, 2006.

[7] The Law on Ratification of the UN Convention on the Rights of the Child, Official Gazette of the SFRY - International Treaties, No. 15/90; Official Gazette of the FRY - International Treaties No. 4/96 and 2/97.

[8] Perić, O. (2005) Commentary on the Law on Juvenile Offenders and Criminal Protection of Juveniles, Belgrade: Official Gazette, pp. 27-28.

The most common crimes within the Criminal Code and the most prevalent in the judicial practice in the Republic of Serbia are the following: theft, minor bodily harm, beatings, bullying, domestic violence, endangering public traffic, and so on. Minors who commit these crimes are usually the primary perpetrators who upon the implementation of the procedure will most likely face one of the following outcomes: warning and guidance as corrective measures – a court reprimand or specific obligations or a suspension of the proceedings against the juvenile.

When it comes to subjective conditions, we believe that the recognition of the crime and the relationship of the minor towards the damaged party i.e. the committed act, which is manifested in real regret, justifies the application of rehabilitation rather than the traditional criminal proceedings, in which the above-mentioned circumstances in the process of pronouncing the sentence could mitigate the minor's circumstances so that more lenient criminal sanctions are imposed, especially one of the rehabilitation measures laid down in the JL. Bearing in mind this kind of juvenile behavior which has met all the subjective conditions, the very process of indicating to the minor the harmful effects of his actions and criticism for the committed act can enable the minor to avoid having a criminal record with the authorized higher courts. In this way, the positive effects of the application of rehabilitation measures come to the fore, particularly in avoiding the court and court proceedings, regardless of the length of the proceedings, whereupon it is up to the court to apply any of the rehabilitation measures in a situation where the minor has committed a number of offences.

The provision of Article 6 of JL defines *the purpose of diversion orders*. On the one hand, there is no act of prosecution; on the other hand, it suspends the proceedings already in progress against a juvenile. In both cases, there is a tendency to use rehabilitation measures to affect the correct development of character and to strengthen the minor's personal responsibility and avoid committing crimes in the future. In this respect, by reducing recidivism and providing support to a minor in the process of reintegrating into the community, the goal of rehabilitation measures is achieved. The application of rehabilitation measures decreases stigmatization and increases the efficiency of the judge and the prosecutor by speeding up the process, while at the same time it reduces the costs of court proceedings, considering the interests and needs of the victim.[9]

In the provisions of Article 7 of JL, the following five rehabilitation measures have been stipulated:

1) Settlement with the injured party so that detrimental consequences can be alleviated either in full or partly by damage compensation, an apology, work or otherwise;
2) Regular attendance of classes or work;
3) Engagement, without remuneration, in the work of humanitarian organizations or community work (welfare, local or environmental);

[9] Cerović, I., Bašić, K. (2016) "The experience of piloting diversion orders as diversion mechanisms in Serbia in the context of international law", in LVI Counseling Serbian Association for Criminal Theory and Practice, Zlatibor, p. 618.

4) Undergoing relevant check-ups and drug and alcohol treatment programs;
5) Participation in individual or group therapy at suitable health institutions or counseling centers.

The application of rehabilitation measures is not mandatory, but rather, they represent a procedural option, which is an issue freely assessed by the civil body applying rehabilitation, *i.e.* the competent public prosecutor for minors or the competent court in the appropriate functional form – the juvenile court judge (upon a request for initiating preparatory proceedings), *i.e.* or juveline court (upon the completion of the preparatory proceedings, whereupon the public prosecutor files for an appropriate proposal for the pronouncement of criminal sanctions, thus initializing the proceedings before the court).[10]

This indicates that rehabilitation measures can be imposed before the initiation of preparatory proceedings by the juveline public prosecutor, so that the minor with his legal representative needs not even come to court. In addition, a rehabilitation measure may be pronounced upon the prosecutor's proposal in preparatory proceedings to the juvenile court judge, with the consent of the minor and the consent of his legal representatives and with respect for the objective conditions, in view that the juvenile has committed a criminal offense which is punishable by a fine or imprisonment of up to five years. The third possibility is that rehabilitation can be imposed even after the completion of the preparatory proceedings in the proceedings before the juvenile justice panel with the meeting of other conditions mentioned herein. In doing so, the competent authority implementing the rehabilitation measures regardless whether it is the juvenile public prosecutor or the competent juvenile court or juvenile judge, takes special care when applying one or more measures so that there is no interference with the schooling or employment of minors. The selection of rehabilitation measures is based, on the one hand, on the overall comprehensive analysis of the personality and the interests of the minors, and on the other hand, on the interests of the damaged party as well.

Rehabilitation measures may not exceed 6 months. The selection and application of these measures is done in collaboration with parents, adoptive parent, or the guardian of the minor and the competent guardianship authority. This legal provision obliges the guardian with the authority to participate in the selection of rehabilitation measures, although the role of this body is not clearly defined in terms of its supervisory and controlling role over the implementation of these measures.

Rehabilitation measures under the provisions of JL may be applied by prosecutors and juvenile court judges. In terms of the application of these rehabilitation measures, Article 62, p. 1 of JL provides the public prosecutor with the possibility of making a decision against initiating the proceedings (under the conditions of Article 58, Paragraph 1, JL) by having the consent of the minor and his parents or adoptive guardians as well as the readiness of the minor to accept and fulfill one or more rehabilitation measures from one of the first three afore mentioned measures as referred to in Article 7. In case the juvenile fully carries out the rehabilitation measure, and a report is submitted by the guardian, the public prosecutor will dismiss all criminal charges, *i.e.* the proposal initiated by the damaged party to institute criminal proceedings (Article 7, p. 4, JL). In addition, the public prosecutor may submit a proposal

[10] Škulić, M. (2011) Juvenile Criminal Justice, Belgrade: Faculty of Law, University of Belgrade & Official Gazette, pp. 281-282.

for the suspension of the proceedings against the minor under the condition that the minor accepts one or more of the three above-mentioned rehabilitation measures which he is able to carry out. Also, the obligation of the guardian is to supervise the implementation of the rehabilitation measures, in a situation where the court accepts the above proposal of the prosecutor. In contrast to the juvenile public prosecutor who can apply only the first three mentioned rehabilitation measures, the juvenile court judge may exercise all five measures.

Official data on application of rehabilitation measures

The first official figures regarding rehabilitation measures applied by judicial authorities in 2009 can be found in the Report from the Statistical Office of the Republic of Serbia,[11] a part of Justice Statistics - Juvenile Offenders, for 2005-2009. Previous data on the rehabilitation measures applied by judicial authorities was not presented for 2008 in the Report from the Statistical Office of the Republic of Serbia in the statistics section of the judiciary. However, the Statistical Office of the Republic of Serbia has data on the number of rehabilitation measures applied in 2008, during which "the public prosecutor for juveniles applied rehabilitation measures in 55 cases, and in 14 cases, rehabilitation measures were applied by a juvenile court judge."[12]

Certain authors from the ranks of public prosecutors have suggested that after a period of six years from the date of application of JL and taking into consideration the entire practice, rehabilitation orders are used in relatively small numbers and have not been implemented in all prosecutorial areas in Serbia, according to the data which is not the official data of the Statistical Office but which has been submitted by the higher public prosecutor to the public prosecutor's Office of the Republic of Serbia as part of its annual reports for 2010 and 2011.[13] This data has been confirmed in 2011 within the project funded by an NGO, the International Management Group of the Kingdom of Norway and implemented in the 10 biggest cities in Serbia. During the project, an interview was conducted with public prosecutors and juvenile court judges, whereupon it was found that most of the public prosecutors and juvenile court judges, apart from trainings organized by the Judicial Training Center-Judicial Academy, had no other

[11] Announcement of the Republic Statistical Office, number 213 dated July 16, 2010 from the Justice Statistics - Juvenile Offenders, 2005-2009. At the end of the statement in the footnote, there is the following Note: "In 2009, the following rehabilitation measures were applied for juvenile offenders: the juvenile public prosecutor stipulated rehabilitation measures in 72 cases and juvenile court judges in 38 cases (Article 7 of the Law on Juvenile and Criminal Protection of Minors). This data relates to Serbia without Kosovo.

[12] Satarić, N. Obradović, D. (2011) "Analysis of practical application of rehabilitation measures and specific obligations in Serbia," Belgrade, in the following Program: "Improving access to justice in Serbia"; Project: Mapping of resources in local communities for the implementation of corrective orders/special obligations, pp. 7 – 8. European experience shows that rehabilitation measures were applied in the case of 20-30% of juveniles who committed criminal offenses.

[13] Vučković - Janković, J., (2012) "The application of corrective orders in prosecutorial practice" in Juvenile Justice in Serbia, Proceedings, Belgrade, pp. 155-156. Thus, 77 corrective measures were applied in 2010, and in 2011, some 178 rehabilitation measures. The number of applied corrective measures in 2011 increased by more than twice compared to 2010. When this is compared to the 64 rehabilitation measures applied in 2008 and 69 measures in 2009, according to the Republic Public Prosecutor's Office (KST 9), there appears to be a trend of increasing application, its positive dynamics and adequate representation in certain prosecution occurrences in recent years.

training in the application of rehabilitation measures for minors, in terms of monitoring, record-keeping and reporting.[14] Other authors in other works have suggested that the incidence of rehabilitation measures also varies greatly from city to city and region to region, and that in certain courts and public prosecutor's offices rehabilitation measures have never been applied.[15],[16]

Data from the Republic Bureau of Statistics in 2014[17] show an increase in the application of rehabilitation measures, which had continued during 2015. The last officially published data for 2015[18] by the Statistical Office of the Republic of Serbia shows that a total of 324 rehabilitation measures tasks have been applied.

Some specificities in the application of rehabilitation measures

Among the total number of applied rehabilitation measures, the most frequently used are the following two: settlement with the injured party so that by damage compensation, an apology, work or otherwise, the detrimental consequences are alleviated either in full or in part, and engagement without remuneration in the work of humanitarian organizations or community work (welfare, local or environmental). These measures are usually applied not only by the juvenile public prosecutor but also by the judges and the juvenile panel of higher courts. Therefore, we will point out the specific features of two rehabilitation measures.

What is specific about the *rehabilitation measure regarding settlement with the injured party so that by damage compensation, an apology, work or otherwise, the detrimental consequences are alleviated either in full or in part*, is that these measures are applied with minor criminal offences, i.e. peer bullying, minor bodily harm, bullying among pupils in the category of younger juveniles. As a rule, minors have extreme difficulty in accepting responsibility for offences involving violence, apologizing and reaching out to other minor, the damaged party. This is because at this age, minors are not critical enough, and the very act of apologizing is perceived as humiliation. But in the

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[14] Satarić, N., Obradović, D. (2011) Ibid., p. 16.

[15] Cerović, I., Brašić, K. (2016), Ibid., p. 619.

[16] Stevanović, I., (2016) "The reform of juvenile justice in light of the accession of Serbia to the European Union," in LVI Counseling Serbian Association for Criminal Law Theory and Practice, Zlatibor, p. 591: "Diversion orders in 2014 were largely implemented in Novi Sad, Niš, Kragujevac and Belgrade, with the support of the IMG Project. The four centers are currently implementing projects funded by the EU and implemented by UNICEF in partnership with the Ministry of Justice and Ministry of Labor, Veterans and Social Affairs, entitled "Improvement of children's rights through the strengthening of the judicial system in the Republic of Serbia." Improving the quality of implementation of pedagogic and rehabilitation measures outside of detention centers, which is the realization of the aforementioned project, includes primarily the formation and team support to improve the application of corrective measures, to support service providers responsible for the implementation of corrective measures and realize training for judges, prosecutors, experts from centers for social work and service providers."

[17] Announcement of the Republic for Statistics, number 191, LXV, dated July 15, 2015, Judicial Statistics - Juvenile Offenders, 2010-2014. During 2014, 206 corrective measures were applied. Of that number, the juvenile public prosecutor applied 176 rehabilitation measures and juvenile court judges 30.

[18] The Bulletin of the Republic Institute for Statistics, number 618 dated July 15, 2016, juvenile offenders in the Republic of Serbia, 2015 - applications, prosecutions and convictions. Of the total 324 rehabilitation measures, juvenile public prosecutors implemented corrective measures in 246 cases in 2015, and a juvenile court judge in 78 cases.

case that this action reflects their sincere will and not a dishonest deed to avoid criminal proceedings, this kind of sincere behavior indicates that the minor is aware of behavior not in accordance with the law, and that she or he is ready to change and accept responsibility. In this way, a positive message is sent not only to the damaged party but also to the community where he is living, showing that he has accepted the opportunity given to him and that he will make the most of it.

The problem in applying this type of rehabilitation measure was noted in groups for criminal offence against property and in criminal groups against public transport security.

In terms of crimes against property carried out by minors, the outcome is most often material damage to the property of individuals (housing, residential buildings, offices, cottages, etc.). There are very few instances when the victim of such crimes gives consent to implement this measure against the minor, as they have little trust in the effectiveness of the police and judiciary system due to media hype that juvenile crime is increasing, when in fact unambiguous indicators show that in the last few years the trend has been stagnating and a slight decrease in juvenile crime has been reported in the Republic of Serbia, according to official figures of the Ministry of Interior and the Statistical Office of the Republic of Serbia.

When it comes to criminal acts committed against road traffic safety, the outcome is not only material damage to the vehicle, but also non-material damage in the form of light or serious injury. In these situations, the damaged party who has suffered injuries in road accidents, is very suspicious of the minors who caused the accident, and very often blame the parents of these minors for not taking sufficient care of them. For this reason, they only accept legal proceedings against minors and not an apology, not even as a theoretical possibility, nor do they wish to choose from a range of possible rehabilitation measures to apply any form of enforced labor.

Diversional measures, engagement without remuneration in the work of humanitarian organizations or community work (welfare, local or environmental), by its content represents a counterpart to the penalty of labor in the public interest which in the provisions of the Criminal Code is prescribed as one of the possible penalties that may be imposed on adult criminal offenders. We believe that this is a very good and effective measure, considering that its application leads to greater responsibility for committed acts and an incentive for a minor's work habits. Essentially, the minor is primarily developing his working habits through socially useful work, while at the same time also developing responsibility towards his family and the community in which he lives, i.e. his family members.

However, in practice, the application of these measures has numerous difficulties, since in the absence of bylaws regulating the implementation and execution of the diversional measure, there is no uniform procedure for the execution of rehabilitation measures, i.e., there is no efficient control of executing the same. Therefore, in the absence of a detailed regulated procedure for implementation, there is objective fear that the positive effects of this measure may be diminished or taken advantage by the minor who has been assigned rehabilitation. In fact, some organizations, associations, or companies where minors carry out this work in the context of executing the

rehabilitation measure have no developed system of accepting these categories of juveniles, or fail to keep records of minors during the implementation of the measure or fail to control their actions during the execution of measures, whereby these diversional measures and their effectiveness are brought into question.

Perspectives of applying diversional measures

In the context of legislative reforms in general, and in particular of legislation in the field of criminal law, the Ministry of Justice of the Republic of Serbia has among other things established a working group to amend JL, currently the only law in this area, which from the start till this day has not undergone any changes despite the many amendments in other areas of criminal legislation, and especially in the field of criminal procedural law where the implementation of the new Criminal Procedural Code has changed the concept of investigation and criminal proceedings in general.[19]

The Draft of the Law on Juvenile Offenders and the protection of minors in criminal proceedings[20] and the provisions relating to rehabilitation measures have undergone a significant improvement compared to currently existing solutions.

Thus, the prescribed penalty limit for criminal offenses for which rehabilitation measures can be applied against minors is raised from 5 years (currently valid) to 8 years. It is an extremely important innovation, given that minors often commit crimes, such as property crimes – such as aggravated theft by breaking into or entering, for which there is a prison sentence of up to 8 years and whose sole aim is obtaining illegal profits for selling for petty amounts but which according to the type of offence is legally qualified as serious theft. Therefore, the possibility of applying rehabilitation measures is also expanding for numerous other criminal offences punishable by imprisonment of up to 8 years.

Also, a greater number of these measures are stipulated, and in addition to the existing five rehabilitation measures, another two are planned, as follows: attending courses or exam preparation and taking exams for testing certain knowledge or participation in certain sports activities, and certain rehabilitation measures that have been to a certain extent modified or amended. In this way, the possibility of expanding opportunism in the application of criminal prosecutions is greater.

An extremely important novelty is the provision which stipulates the obligation of the public prosecutor to try to implement rehabilitation measures in the case when a minor meets the legal requirements prescribed by this new Draft of the Law, and which is aligned with the presently existing solutions of JL provisions. In case the application of rehabilitation measures fails, the novelty in the draft of the new Law stipulates that the public prosecutors will request initiating preparatory proceedings to the competent court by submitting a report stating the failed attempt of applying the rehabilitation measure.

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[19] The Code of Criminal Procedure, Official Gazette of RS Nos. 72/11, 101/2011, 121/2012, 32/2013, 45/2013, and 55/2014.

[20] The draft Law on Juvenile Offenders and the protection of minors in criminal proceedings of the Criminal Procedure Code, available on the website of the Ministry of Justice of the Republic of Serbia, dated December 11, 2015. http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

Another novelty is the provision in the Draft of this Law stipulating that the juvenile public prosecutor may exercise all rehabilitation measures, unlike the provisions of JL according to which the public prosecutor can apply only the first 3 of 5 measures in the order listed, and which is envisaged by the valid JL. This solution rectifies the provision of JL where the juvenile public prosecutor, who, like the juvenile court judge has specialized knowledge in the field of child rights and juvenile delinquency, was discriminated against conducting juvenile criminal proceedings. In this way, the provision to respect the principle of urgency in criminal proceedings is also being rectified since the same can be applied in the pre-investigation proceedings by juvenile public prosecutors. This is important in respect to reducing the costs of criminal proceedings, but primarily it is important in terms of avoiding or reducing the negative consequences that the criminal proceedings may leave on minors.

In addition, provisions that relate to appropriate record-keeping and statistics are regulated very differently and more completely with respect to the provisions of the valid JL, representing a novelty, as well as rectifying the lack of appropriate bylaws stipulated by the provisions of JL, the only ones not passed into effect even more than eleven years after the implementation of JL.[21]

Conclusion

A rehabilitation measures is a diversional measure *sui generis* which, in accordance with the concept of restorative justice, is desirable and necessary to apply towards juvenile offenders, albeit not all, only towards those which show up as primary or secondary perpetrators of petty *i.e.* medium criminal acts.

After more than ten years of applying the provisions of the Law on Juvenile Offenders and criminal protection of juveniles, we can conclude that these diversional measures in our judicial practice - particularly in the work of juvenile public prosecutors or juvenile court judges, have generally, but not all, in the last three years found their place in the implementation against the juvenile criminal offenders. However, it is not yet applied to the extent of the new rehabilitation measures-special obligations, alternative measures introduced simultaneously with rehabilitations measures, for which we can claim with certainty that they are currently a dominant rehabilitation measure from the group of rehabilitation measures of warning and guidance and very successfully applied independently, as well as with some rehabilitation measures from the group for intensive monitoring.

Whether a lack of bylaws for the implementation of rehabilitation measure is the reason for the delay in the commencement of a wider application of rehabilitation measures, which has for years been an excuse for avoiding the application of these measures by individual prosecutors i.e. supervision of the application thereof by individual centers for social work or on the other hand, a lack of staff, deputy public prosecutors in higher public prosecutor's offices and a lack of adequate training in the application of rehabilitation measures until 2014, primarily a lack of competent public

[21] The by-law on the application of diversion measures specified in Article 7 in conjunction with Article 86 and Article 167, paragraph 1 JL is issued by the Minister of Justice in cooperation with the Ministry of Labor, Employment and Social Policy and the Republic Public Prosecutor.

prosecutors and their extensive workload, especially in the implementation of the new Criminal Procedural Code by public prosecutors who started conducting investigations from October 1, 2013, is at this point less important.

It is necessary in the upcoming period, and upon approval of the National Assembly and the commencement of application of the new Law, which is now in the draft stage and whose provisions regarding rehabilitation measures have been explicated, to begin with their consistent application as soon as possible. In this way, the public prosecutor is aligned with the principle of urgency, as one of the fundamental principles in the treatment of minors in conflict with the law. We believe that there are conditions to make a positive impact, at least with the primary juvenile offenders where perpetrators of crimes after completion of the proceedings do not appear before the public Prosecutor's Office. Acting in accordance with the principle of urgency, the percentage of minors who largely come of age at the time of trial is decreasing, which shows that juvenile proceedings are making less sense. Therefore, we are of the belief that it is necessary to apply rehabilitation measures in all cases that fulfill the statutory requirements.

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