

Juvenile Prison Sentence in the Juvenile Law of the Republic of Serbia

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Abstract

The idea, legal sources and major characteristics of contemporary juvenile criminal legislation of the Republic of Serbia are the issues that have been analysed within this paper. Particularly, following the tendencies expressed in numerous international legal documents adopted lately beneath and within the United Nations Organization (The Convention on the Rights of the Child), as well as acts adopted by regional organizations (Council of Europe), The Republic of Serbia has adopted in 2005 specialized Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles. That way, one single legal document in a comprehensive way entirely regulates legal position (substantive, procedural and executive) of juveniles as offenders or victims of the crime. For that purpose, Republic of Serbia has been codified juvenile criminal legislation in a way that this has been done by other European countries lately: France, Italy, Swiss, Germany, Montenegro, Germany, Croatia, Macedonia, Bosnia and Herzegovina and many others.

The new juvenile criminal law anticipates two basic types of the juvenile criminal sanctions. These are: a) the educational measures and b) the juvenile prison. They are legally anticipated measures of the social reaction towards the juvenile committers of the crime activities that are sentenced the legally determined organs (the district court – the judge for the juveniles and the tribunal for the juveniles) in aim to protect the society from the criminality trough the education, reeducation and proper development of the juvenile. Beside and instead of sanctions, the new criminal legislature recognizes also the special type of measures – the educational dictates (orders) as the alternative measures that have the aim the deflecting of the criminal proceeding towards the juveniles (la diversion) to the other measures application. In this paper the author has analysed the juvenile prison sentence in the new criminal law of Republic of Serbia with theoretical, practical and comparative law aspects.

Key words: law, juvenile, crime, criminal liability, sanctions, prison.

1. Introduction

Juvenile criminal legislation (substantial, procedural and executive) entered into force in the Republic of Serbia at the beginning of 2006¹. That opened an entire new chapter in the development of our country's criminal law and represented a radical twist when it comes to the establishment and functioning of a modern legal state and

¹ D. Jovašević, *Maloletničko krivično pravo*, Niš, 2011, pp. 12-18.

rule of law. Juvenile criminal law² is a part i.e. a segment of criminal law that has lately gained a status of an independent legal and scientific discipline in a series of European countries due to a multitude of its specific solutions. It represents a special, coherent and autonomous entity comprised of a number of solutions that differ from those referring to adult offenders.

Juvenile criminal law represents a set of legal provisions that determine the criminal-legal status of juveniles (as offenders but also as the victims of criminal offences)³. This term (that legal theory often refers to as a postulate of criminal policy), stands for a branch of law comprised of criminal legal provisions that are applied to juvenile offenders and that depict its particular and specific character. This field of law is focused on the personality of the offender (*Taterstrafrecht*), rather than on the offence itself (*Tatstrafrecht*). In other words, it is a set of legal provisions that determine the system of sentences for juvenile offenders⁴, but, under specific circumstances, for adult offenders as well, and the procedure for imposing and executing these sentences by competent state authorities. Therefore, it can be said that juvenile criminal law goes beyond the frames of criminal law because it does not include only substantial criminal legal provisions but the provisions of procedural and executive criminal law as well, in the extent in which they deal with juvenile perpetrators.

Juvenile criminal law⁵ represents a set (a system) of legal provisions that regulate the position (i.e. rights and obligations) of a juvenile in criminal legal system. These provisions primarily refer to : a) the definition and the types of juveniles as subjects of criminal law (active and passive), b) types, conditions, purpose and methods for prescribing and imposing sentences on juvenile offenders, c) the procedure for imposing sentences on juveniles (that represents a specific type of criminal procedure because of the authorities that are competent for its initiation and conduct as well as for the enforcement and execution of sentences) and, finally, d) the procedure of the execution of imposed juvenile sentences⁶.

² The term "juvenile criminal law" is common in legal theory (G.Marjanovik, *Makedonsko krivično pravo*, Opšt del, Skoplje, 1998., p. 361.; Lj.Bavcon, A. Šelih, *Kazensko pravo*, Splošnij del, Ljubljana, 1999, p. 230; M. Simović *et al.*, *Maloljetničko krivično pravo*, Istočno Sarajevo, 2015., pp. 21-28.). However, the term "criminal law for juveniles" is also used in legal theory for this branch of law. Both terms imply that there is a criminal law of "juvenile character" as a contrast to criminal law that refers to adults. It is worth mentioning that there are standpoints in a part of German legal theory claiming that juvenile criminal law includes the cases of offenders who are under 25.

³ In Germany (Jugendgerichtsgesetz of 1974, with addition of 1990), France (Ordonnance No. 45-174 du 2. fev. 1945, with addition of Law No. 2002-1138 of 2002.), Croatia (Zakon o sudovima za mladež – Official gazette of Republic of Croatia No. 111 of 1997), Macedonia (Zakon za maloletničku pravdu – Official gazette of Republic of Macedonia No. 87 of 2007) and Serbia (Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica – Official gazette of Republic of Serbia No. 85 of 2005), this branch of law has been officially separated from their Criminal Laws (Codes).

⁴ There are standpoints in the history of criminal law according to which the first penitentiary institution for juvenile offenders was established in Rome in 1703 upon the initiative of the Roman Pope Clement IX. Later on, other similar institutions were established in other countries as well, such as Germany, France, Switzerland and United Kingdom.

⁵ B. Đukić, D. Jovašević, *Kriminalitet maloljetnika i mjere društvene reakcije u Republici Srpskoj*, Banja Luka, 2010. pp. 34-45.

⁶ D.Jovašević, *The System of Criminal sanctions for Juvenile Offenders in the New Criminal law of the Republic of Serbia*, Journal of eastern European Criminal law, Timisoara, No. 2/2016, pp. 182-188.

Juvenile criminal law can be singled out from the criminal law that is generally applied to adult offenders because of the character of its numerous provisions. However, it can, by way of exception, be applied to adult offenders as well, if specific conditions determined by the law are met.

2. The Juvenile Criminal Law System

The definition of juvenile criminal law⁷ indicates that this branch of law includes several parts, each of them representing an independent and autonomous field of law. Still, due to their contents, their form and the aim they are intended to accomplish, all these provisions constitute an integral branch of positive criminal law. Accordingly, the system of juvenile criminal law is comprised of⁸:

1) substantial criminal law-the system of legal provisions that determine the criminal legal status and the position (rights and obligations) of a juvenile offender and the system of sentences (educational measures, juvenile prison sentence and security measures) and alternative measures (educational orders, as a means of a diversion model in juvenile criminal law);

2) procedural criminal law-the system of legal provisions arranging the definition, the organization and the competence of juvenile criminal jurisdiction authorities, the initiation and the conduct of criminal procedure against juveniles, the course and the structure of the criminal procedure against juveniles in the 1st degree and after legal remedies; and

3) executive criminal law-the system of laws and subordinate legislation dealing with the organization and the jurisdiction of state authorities and the procedure of execution of criminal sentences and other alternative measures (educational orders) imposed on juvenile offenders.

Finally, legal provisions dedicated to the protection of children and juveniles as victims in criminal procedure can also be singled out within the frames of the system of juvenile criminal law.

Following the tendencies that have been present for the past decades in some European countries (Germany, France, Italy, Swiss, Montenegro, Macedonia, Croatia, and Bosnia and Herzegovina), Serbia also adopted a special (*lex specialis*) Law on Juvenile Criminal Offenders and Criminal Justice Protection of Juveniles (ZOMUKD)⁹ in 2005, which represented the codification of its juvenile criminal law. In that manner, juvenile criminal law was formally separated from the Criminal Code, the Criminal Procedure Code and the Law on Execution of Criminal Sentences. Nowadays, the above mentioned law represents a fundamental and a direct source of juvenile criminal law, which is the primary law to be applied to juvenile offenders and, in some cases, on adults as well.

However, The Criminal Code of the Republic of Serbia¹⁰ and “subsidiary” or “auxiliary” criminal legal provisions can also appear as sources of juvenile criminal law, especially when it comes to the definition, the elements and the characteristics of

⁷ D.Jovašević, *Leksikon krivičnog prava*, Beograd, 2011, p. 270.

⁸ D.Jovašević, *Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica sa uvodnim komentarom*, Beograd, 2005, pp. 3-29.

⁹ Official gazette of the Republic of Serbia No. 85/2005.

¹⁰ Official gazette of the Republic of Serbia No.: 85/2005, 88/2005, 115/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

criminal offences committed by juveniles (either as direct perpetrators or co-perpetrators or accomplices). Other legal sources (international treaties, judicial practice, subordinate legislation, legal theory and customary law) can also appear as indirect sources of this branch of law, in the way and in the extent in which they represent supplements of criminal legal provisions (of substantial, procedural and executive criminal law).

3. The basic characteristics of juvenile criminal law

When it comes to national criminal law, the Law on Amendments and Changes of the Criminal Code of FNRJ from 1959 was the first to single out the provisions dealing with juvenile criminal sentences in a separate chapter. Furthermore, The Criminal Procedure Code included special provisions dedicated to the criminal procedure against juveniles, whereas the Law on the Execution of Criminal Sentences regulated the procedure, the manner and the conditions of the execution of criminal sentences imposed on juveniles. That was the beginning of the establishment of juvenile criminal law, which nowadays has the following characteristics¹¹:

1) Criminal legal provisions do not refer to a person who was under the age of fourteen¹² at the time of commission of an unlawful act provided under law as a criminal offence. (Paragraph 2, ZOMUKD). Such persons are referred to as children (infants) and are not treated as active subjects of criminal law. Criminal legal provisions cannot be applied to them, but provisions of other branches of law (such as Family Law and Social Welfare Law) can;

2) According to linguistic and grammatical interpretation, the term “juvenile perpetrator of a criminal offence” is not valid, since there is no criminal offence without perpetrator’s guilt (according to the objective-subjective theory of criminal offence from paragraph 14 of the Criminal Code of the Republic of Serbia). Also, the term “guilt” is not in accordance with the expressions such as “infant” and “juvenile”. That is the reason why the Criminal Code itself uses a rather vague formulation: “a juvenile who has committed an illegal act that is prescribed as a criminal offence by the law”. Moreover, the presence and the assessment of guilt during a criminal procedure are excluded in the case of juvenile offenders;

3) Juvenile criminal law, as a consistent system of criminal legal provisions that are applied to juvenile offenders, is unfamiliar with numerous terms and institutions that are commonly present in the “classical i.e. standard” criminal law that is applicable to adult offenders, such as: guilt, punishment, penal and retributive system, the proportion between the punishment and the grade of offender’s hazard and the determination of punishment for joinder of criminal offences;

4) The system of juvenile criminal law¹³ is supposed to be ruled by the goals of criminal policy such as juvenile offender’s education and re-education, emphasizing the principle of education instead of the principle of punishing. This has highlighted the preventive character of this branch of law and led to the abandonment of its previous “therapeutic” concept. In theory, it is pointed out that juvenile criminal sentences

¹¹ D.Jovašević, *Krivično pravo*, Opšti deo, Beograd, 2016, pp. 287-296.

¹² It is worth mentioning that there are standpoints in a part of German legal theory claiming that juvenile criminal law includes the cases of offenders who are under 25.

¹³ B.Petrović, D.Jovašević, A.Ferhatović, *Krivično pravo 2*, Sarajevo, 2016, pp. 167-186.

primarily represent measures of help and socialization containing a smaller amount of coercion, repression and limitations of rights and freedoms and a greater amount of help, guardianship, supervision, prevention of disturbances and establishment of preconditions for juvenile's normal and uninterrupted development and maturation. This is in accordance with the so-called "Havana Rules", adopted by the OUN in 1990 that insist on exclusion or at least minimization of any form of deprivation of liberty when it comes to juvenile offenders. (Paragraph 11, Point 6);

5) Among criminal sentences applied to juvenile offenders, educational measures are more preferable in comparison to punishment¹⁴ (i.e. juvenile prison sentence) that represents an exception. The Law is familiar with nine educational measures divided into three groups: a) the measures of admonition and guidance (that have replaced former disciplinary measures), b) the measures of intense supervision and c) institutional measures;

6) Juvenile prison sentence can be imposed solely by way of exception on an elder juvenile who has committed a serious criminal offence, for which a penalty of imprisonment exceeding five years is prescribed by the Law. Educational measures are the most common form of society's reaction to juvenile offenders. Yet, the enforcement of educational measures should be conducted gradually. That is the reason why the priority is given to milder educational measures (such as measures of admonition and guidance), whereas more severe ones such as measures of intense supervision and, finally, institutional measures are imposed as subsidiary. Moreover, the priority is not even given to criminal sentences but to their substitutes (informal sentences) whose enforcement is also reduced to the smallest possible amount¹⁵;

7) Contemporary criminal legislations (such as Germany, France, Macedonia, Croatia and Bosnia and Herzegovina) are familiar with various measures of alternative character (substitutes of criminal sentences) that can be imposed either along with or instead of criminal sentences. According to the non-intervention theory, their enforcement is recommended, whenever it is possible to avoid the criminal justice system through the diversion of a criminal procedure¹⁶, especially in the case of petty, sporadic, primary, occasional or accidental crime. They include various *sui generis* measures such as educational orders, instructions, prohibitions or recommendations for juvenile offenders. Actually, the aim of the enforcement of these measures is the diversion of a criminal procedure against a juvenile offender from the field of Criminal

¹⁴ According to official statistics, institutional educational measures represent 1-2,7% and juvenile prison sentence represents 0,6-1,7% of the total amount of criminal sentences imposed on juvenile offenders in the Republic of Serbia between 1997 and 2002.

¹⁵ Although imposing punishments on juvenile offenders represents an exceptional legal possibility, there are criminal legislations prescribing a wide range of punishments that can be imposed on juvenile offenders. For example, Paragraph 87 of Russian Criminal Code prescribes that either a punishment or educational measures can be imposed on juveniles who committed a criminal offence. Several punishments that can be imposed on juveniles are enumerated in its Paragraph 88: a fine, prohibition from practicing a profession, compulsory labor, correctional labor, isolation and deprivation of liberty up to 10 years.

¹⁶ Legal theory disapproves the use of the term "diversion model" of criminal procedure against juveniles, especially when taking into consideration the practical significance of the principle of opportunity in criminal procedure against juveniles that is referred to as "diversion" in German legal theory. Diversion represents a form of turning from a general, common and regular criminal procedure. A diversion model means solely that the procedure ends in a way that differs from the one that is common according to general rules.

Law to other branches of law such as Family Law and Social Welfare Law. Such solution is in accordance with Paragraph 40 Subpart 3 Point 6 of the OUN Convention on the Rights of the Child that requires the member states to implement all the possible measures in order to deal with children and minors in conflict with the law without initiating a criminal procedure;

8) New legal provisions prescribe judicial protection of juveniles in the process of execution of imposed juvenile criminal sentences instead of former administrative protection;

9) The provisions dealing with the supervision of the execution of educational measures also represent an innovation. The judge for juveniles (who has imposed an educational measure) and the public prosecutor for juveniles supervise the enforcement of the imposed educational measure. They are obliged to: a) keep up with the results of the enforcement of the imposed educational measure, b) visit the juvenile in the institution he is placed into, c) conduct direct inspection and d) review reports on the course of execution of the imposed educational measure. The competent social welfare centre is also obliged to send his report on the course of execution of other educational measures (special obligations and measures of intense supervision) to the court and to the public prosecutor for juveniles every 6 months. The judge for juveniles can require the social welfare centre to deliver these reports in shorter periods of time, but he can also demand similar reports to be written by other competent persons such as a social worker, a psychologist, a pedagogue or a special pedagogue, if some of them are employed in the court. Finally, the administration of the institution a juvenile is placed into is also obliged to send the report on the results of the execution of the imposed educational measure to the court and the public prosecutor every 6 months. However, the court can require this report to be delivered in a shorter period of time;

10) The assistance offered to the juvenile after an institutional educational measure or juvenile prison sentence has been executed, is now arranged in a different way. Post-institutional treatment and acceptance of the juvenile are also set differently by emphasizing the significance of the role and the activities of the competent social welfare centre. During the entire period of the enforcement of the imposed juvenile criminal sentences, social welfare centre maintains continuous cooperation and contact not only with the institution the juvenile is placed into but also with his family in order to prepare and enable them to reintegrate the juvenile in his previous social surroundings as well as to infiltrate him in the course of normal and socially acceptable life and activities.

4. Criminal sentences for juvenile offenders

4.1. *The definition and the purpose of juvenile criminal sentences*

Juvenile criminal law in the Republic of Serbia from 2006. is familiar with two basic types of juvenile criminal sentences¹⁷: a) educational measures *and* b) juvenile prison sentence. They are defined as measures of social reaction to juvenile offenders that are prescribed by the law and imposed by the authorities determined by the law (superior court-judge for juveniles and council for juveniles) in order to protect the society from

¹⁷ D.Jovašević, *Maloletničko krivično pravo*, Niš, 2011, pp. 145-159.

crime through education, re-education and regular development of juveniles. Educational measures represent the most common type of juvenile criminal sentences. They are imposed regularly i.e. most frequently. They can be imposed on all juvenile offenders, younger as well as elder¹⁸.

Only subsidiary and by way of exception, when the conditions prescribed by the law are fulfilled and when the court comes to the conclusion that the purpose of juvenile criminal sentences cannot be accomplished by the enforcement of educational measures, can the court impose on an elder juvenile a penalty of a special kind-juvenile prison sentence. Such sentence can be imposed solely on an elder juvenile who has committed a serious criminal offence. Therefore, the sentence of juvenile prison is not compulsory; it can neither be imposed on any juvenile offender nor for any criminal offence. The purpose of juvenile criminal sentences is determined in two ways. Their primary purpose is equal to the purpose of all the other criminal sentences, defined by paragraph 4 of the Criminal Code of the Republic of Serbia and includes suppressing the acts that violate and threaten the values protected by criminal legislation.

Therefore, the general purpose of juvenile criminal sentences is the suppression of all types, varieties and forms of crime. Within this general purpose of all criminal sentences (including juvenile criminal sentences), paragraph 10 of ZOMUKD separately defines the purpose of juvenile criminal sentences as: a) influencing juveniles' development and the establishment of their personal responsibility; b) influencing their education¹⁹; c) regular development of their personality in order to enable them to reintegrate in the community. Such purpose can be accomplished in three ways²⁰: a) through supervision, b) through offering protection and assistance and c) through providing general and professional education. When determining the aim of these sentences, the law highlights education, re-education²¹ and regular development²² of juveniles, particularly through special preventive measures²³.

¹⁸ D.Jovašević, *Krivično pravo*, Opšti deo, Beograd, 2016, pp. 234-239.

¹⁹ It is process that includes juvenile's training to build his own attitude towards various social values through gaining knowledge in various fields.

²⁰ The purpose of educational measures prescribed by the law can be accomplished in different ways such as: separating a juvenile from his social surroundings or family because of the negative impact they have on his development and education; guidance and assistance in education or particular medical treatments; supervision conducted by a parent, by an adopter, by a custodian or by a representative of state authority in order to keep up with his activities and notice and attempt to prevent negative influences and causes of his unacceptable behavior; juvenile's professional training that includes obtaining socially useful skills and abilities through various forms of education; the development of juvenile's personal responsibility through a diversity of tasks and duties making the juvenile personally responsible for the quality and the efficiency of their fulfillment.

²¹ Such process includes the elimination of harmful consequences of the fact that a juvenile has been educationally neglected. It is conducted through a particular individual or group treatment including various methods and procedures.

²² It is the creation of an appropriate social ambient in which the juvenile might accept and respect certain rules of behavior.

²³ Croatian criminal law determines the purpose of educational measures in a similar way: to influence juvenile's education, the development of his entire personality and strengthen his personal responsibility through protection, custody, assistance and supervision. Besides, the purpose of these sentences, as well as of the criminal sentences in general, is to provide that the citizens respect the legal system of the state, that nobody commits a criminal offence and that those who have committed such offence do not repeat it (Ž.Horvatić, *Kazneno pravo*, Opći dio, Zagreb, 2003, p. 247).

The Law on Juvenile Justice of Former Yugoslav Republic of Macedonia²⁴ determines the purpose of juvenile criminal sentences in a similar way-the enforcement of these measures is subordinate to the aims of protection, education, re-education and regular development of juveniles. Namely, Paragraph 29 of this Law defines the purpose of educational measures as providing protection and assistance in order to facilitate juvenile's education and re-education.

Finally, Paragraph 5 of the Law on Courts for Juveniles of the Republic of Croatia determines the purpose of juvenile criminal sentences within the general purpose of criminal sentences as "influencing juvenile's education, development of his entire personality and strengthening his personal responsibility through protection, care, assistance and supervision as well as through providing general and professional education"²⁵.

No matter how preventive the character of these sentences is²⁶, their coercive and retributive features are not completely excluded because the enforcement of these sentences does not depend on juvenile offender's consent and they do contain certain limitations, prohibitions, conditions and obligations for the juvenile to act in accordance with specific instructions and orders. Besides, the purpose of juvenile prison sentence is to influence a juvenile offender more intensely not to commit criminal offences in the future as well as on other juveniles not to commit criminal offences. This means that the purpose of juvenile prison sentence is determined in two ways²⁷: a) as special prevention-influencing the perpetrator not to repeat criminal offences *and* b) as general prevention-influencing other juveniles not to commit criminal offences. That is how the protective model²⁸ and the justice model²⁹ (i.e. special preventive purpose of juvenile criminal sentences) have been implemented in new juvenile criminal legislation instead of the previously supported therapeutic conception.

²⁴ More: Lj.Arnaudovski, L.Nenev, *Juvenile Penal Code*, Kavadarci, 2001.

²⁵ Ž.Horvatić, *Kazneno pravo*, Opći dio, Zagreb, 2003, p. 247.

²⁶ In order to accomplish the purpose of educational measures prescribed by the law, juveniles are supposed to be treated in a special manner that is adjusted to their age, personal characteristics and the type and the gravity of the criminal offence they have committed. Such treatment is based upon contemporary principles of pedagogy, psychology and andragogy. Through the course of diverse treatments for juveniles, it is especially taken into account that a juvenile should be enhanced (encouraged) to participate actively in his education and upbringing, changing his attitudes and habits and developing the sense of responsibility for his own acts.

²⁷ B.Petrović, D.Jovašević, *Krivično (kazneno) pravo Bosne i Hercegovine*, Opći dio, Sarajevo, 2005, pp. 189-213.

²⁸ The protective model emphasizes juvenile's personality, his condition and needs. Namely, it is based upon the standpoint that a criminal offence solely causes the initiation of a criminal procedure against a juvenile, whereas his personality and interests have vital impact on the court's decision. The victim or the injured party is of secondary significance. The duration of criminal sentences in this model is not strictly determined and their effective duration depends upon the results achieved in juvenile's re-education, with the option to replace or suspend the imposed educational measures, which significantly increases court's active role in the process of execution of the imposed juvenile criminal sentences.

²⁹ The justice model accentuates the victim of the committed criminal offence as well as the interest of the society. Juvenile, his personality and interests have some but not predominant significance for the course of criminal procedure. This model requires the enforcement of alternative measures that lead to the diversion of criminal procedure against a juvenile offender; it rejects the indeterminate duration of the imposed criminal sentences; juvenile's deprivation of liberty is of exceptional character and the purpose of the measures consists of victims' restitution and compensation.

4.2. Types of juvenile criminal sentences

Basic types of juvenile criminal sentences³⁰ prescribed by our criminal legislation include nine educational measures divided into three groups. These are the following: a) measures of admonition and guidance; b) measures of intense supervision; and c) institutional measures.

Although the law does not draw such distinction between them, there are standpoints in legal theory suggesting that educational measures can be divided into milder and more severe measures. Accordingly, measures of admonition and guidance are considered as milder, whereas institutional measures are considered as the most severe ones. Such division of educational measures is in accordance with the principle of their gradual enforcement, which means that a milder measure will be applied whenever it is considered as sufficient to accomplish the purpose of educational measures, whereas more severe measures will be imposed as subsidiary. This differentiation among educational measures is based upon their contents, conditions and criteria for their implementation as well as upon their duration and means of enforcement.

A special form of punishment known as juvenile prison sentence can be imposed on an elder juvenile in particular cases. However, all security measures apart from the prohibition from practicing a profession, activity or duty can be imposed on juveniles under circumstances prescribed by the law (Paragraph 39 ZOMUKD). Security measures can be imposed on a juvenile offender solely as subsidiary or supplementary sentences along with an educational measure or a juvenile prison sentence. In some cases, security measure of compulsory psychiatric treatment and confinement in a medical institution can be imposed on a juvenile as an autonomous sentence provided that conditions prescribed by the law are fulfilled (Paragraph 81, KZRS).

The law has also limited the use of security measure of compulsory alcohol addiction treatment and of security measure of compulsory drug addiction treatment, so these measures cannot be imposed along with an educational measure of admonition and guidance. New juvenile criminal law is also familiar with a particular type of measures-educational orders that can be imposed either along with criminal sentences or instead of them, as alternative measures intended to enable the diversion (*la diversion*) of criminal procedure and its replacement with other non-penal measures³¹.

Among all the criminal sentences prescribed by our criminal law, the following cannot be imposed on juvenile offenders: a) punishments, b) judicial caution and c) suspended sentence. The precondition for the enforcement of a punishment is perpetrator's guilt. Since juvenile's age excludes the presence of guilt as the subjective element of a criminal offence, it is logical that punishments cannot be imposed on juveniles. Within the system of juvenile criminal sentences, the law is familiar with a specific measure of admonition and guidance known as "judicial reprimand", whose contents, manner of enforcement and purpose completely correspond to judicial caution as a criminal sentence for adult offenders. But, it has remained unclear why the legislator excluded the possibility of imposing a suspended sentence on a juvenile offender in spite of the reasons of criminal policy for it to be applied (especially to elder juveniles when it could intensify the exceptional character of juvenile prison sentence).

³⁰ D.Jovašević, Lj.Mitrović, V.Ikanović, *Krivično pravo Republike Srpske*, Opšti deo, Banja Luka, 2017, pp.312-322.

³¹ D.Jovašević, *Krivično pravo*, Opšti deo, Beograd, 2016, pp. 302-308.

5. Juvenile prison sentence

5.1. Definition and characteristics of juvenile prison sentence

Juvenile prison sentence is the only type of punishments in the system of juvenile criminal sentences in the Republic of Serbia (Paragraphs 28-38 of ZOMUKD). It is a particular type of punishment that includes deprivation of liberty of an elder juvenile, who committed a more serious criminal offence, for a certain period of time determined by a court decision³².

The form of this punishment is comprised of the deprivation of liberty, which is similar to the prison sentence that the court imposes on adult offenders³³. However, its purpose makes it seem closer to educational measures. Fundamental characteristics of juvenile prison sentence are the following³⁴:

1) It is the most severe kind of juvenile criminal sentences and the only punishment that can be imposed on a juvenile offender. Nevertheless, this punishment cannot be imposed on any juvenile (but solely on an elder juvenile) and cannot be imposed for any criminal offence (but only for a more serious criminal offence for which the law prescribes more than five years' imprisonment);

2) This sentence is intended to accomplish preventive purposes (special as well as general), since its enforcement makes a more intense impact on a juvenile offender not to commit criminal offences in the future as well as on other juveniles not to commit criminal offences;

3) The enforcement of juvenile prison sentence requires two preconditions to be fulfilled: a) a committed criminal offence and b) a high degree of offender's guilt. This is the only juvenile criminal sentence that obliges the court to estimate the presence and the degree of offender's culpability when imposing it;

4) Juvenile prison sentence is determined according to particular rules. Among them, subjective circumstances related to offender's personality and objective circumstances related to the nature and the gravity of the criminal offence he committed are of special significance;

5) Juvenile prison sentence can be imposed in the period ranging from 6 months to 5 years. It is always determined in full years and months. Apart from this general maximum, the law is familiar with another maximum of 10 years' imprisonment. Juvenile prison sentence lasting up to 10 years can be imposed in two cases: a) when a criminal offence is committed, for which the law prescribes 20 years' imprisonment or a more severe punishment and b) when there is a joinder of at least two criminal offences, for which the punishment prescribed by the law exceeds 10 years' imprisonment. The duration of juvenile prison sentence is limited by the law and cannot exceed the punishment prescribed for the committed criminal offence;

³² D.Jovašević, *Maloletničko krivično pravo*, Niš, 2011, pp. 173-186.

³³ The most serious punishment that can be imposed on juvenile offenders with identical characteristics and conditions of enforcement is present in numerous contemporary criminal laws: Paragraph 101. of the Criminal Code of the Republic of Montenegro, Paragraph 88 of the Criminal Code of the Russian Federation, Paragraph 63 of the Criminal Code of the Republic of Bulgaria.

³⁴ D.Jovašević, *New juvenile criminal law in the Republic of Serbia*, Free Law Journal, Budapest, No. 3/2006, pp. 181-198.

6) In the case of joinder of criminal offences, juvenile prison sentence is determined in line with the following special rules:

a) If an elder juvenile has, by one act or several acts, committed several criminal offences for which he is tried concurrently, and the court finds that for each of the criminal offences a juvenile prison sentence should be imposed, the court shall, by its free judgment, determine a single juvenile prison sentence for all committed offences within the limits determined by the law;

b) If the court finds that an educational measure should be imposed for some of the criminal offences committed by an elder juvenile, whereas a juvenile prison sentence should be imposed for the others, the court shall impose a single juvenile prison sentence for all the criminal offences in joinder;

c) If the court determines a punishment of imprisonment and a juvenile prison sentence for criminal offences in joinder, the court shall impose a single punishment of imprisonment in line with the rules for the determination of punishment in the case of joinder of criminal offences committed by adult offenders (the “aspiration” system-Paragraph 60, subpart 4 KZRS);

d) If the court estimates that for one of the criminal offences in joinder an educational measure should be imposed, while for the other a punishment of imprisonment should be imposed, the court shall impose a single punishment of imprisonment. The court shall act in the same way when determining a sentence for a previously sentenced person (if after the sentence is pronounced the court finds out that the convict has committed another criminal offence before or after his sentence is pronounced);

7) Juvenile prison sentence does not cause legal consequences of conviction that include the prohibition to acquire particular rights;

8) Under the following conditions, the court may release on parole the person on whom juvenile prison sentence has been imposed³⁵: a) if he has served one third of the imposed sentence, but not before a six months’ period has expired and b) if the achieved results suggest that he can be expected to behave well while at liberty and that he will refrain from committing criminal offences. Along with the parole, the court can determine some of the measures of intense supervision with the possibility to apply one or more particular obligations. Such parole can be revoked in the manner and under the conditions prescribed for adult offenders;

9) Limitation on enforcement of juvenile prison sentence takes effect after expiry of: a) 10 years since juvenile prison sentence exceeding 5 years’ period has been imposed, b) 5 years since juvenile prison sentence exceeding 3 years’ period has been imposed and c) 3 years since juvenile prison sentence up to 3 years’ period has been imposed;

10) Data on the conviction to juvenile prison sentence can be disclosed only to the following authorities enumerated by the law: a) the court, the state prosecutor and the authority of internal affairs in respect of criminal proceedings conducted against a person with prior convictions, b) the body involved in the procedure of granting amnesty, pardon, rehabilitation or deciding on termination of legal consequences of conviction and c) social welfare authorities, when they need such data to discharge duties under their competence³⁶;

³⁵ D.Jovašević, *Krivično pravo*, Opšti deo, Beograd, 2016, pp. 320-323.

³⁶ D.Jovašević, *Maloletničko krivično pravo*, Beograd, 2008, pp. 173-175.

11) If the court imposes a juvenile prison sentence on an elder juvenile in the course of execution of an educational measure, the educational measure shall be suspended as soon as the execution of the imposed punishment commences. If the court imposes a juvenile prison sentence or a prison from 1 year on an adult offender in the course of educational measure's execution, the educational measure shall be suspended as soon as the execution of the punishment commences. But, if the court imposes a juvenile prison sentence or a prison up to 1 year, the court shall decide whether the execution of the educational measure should be continued after the punishment has been served or completely suspended;

12) The person on whom a juvenile prison sentence is imposed cannot in the course of serving perform electoral functions in state bodies, bodies of territorial autonomy, bodies of local self-government, administrative bodies, executive bodies or other bodies in companies and other organizations legally entrusted to carry out particular public functions;

13) Records on imposed juvenile prison sentences are kept by the Superior court that made the decision in the first degree; *and*

14) Rehabilitation may be granted to a juvenile sentenced to juvenile prison sentence in the same way, under the same conditions and under the identical procedure as those prescribed for adults.

5.2. Conditions for imposing juvenile prison sentence

Juvenile prison sentence is a "hybrid" criminal sentence. Its form corresponds to penal measures with emphasized repressive elements, whereas its contents, essence and aim make it more similar to educational measures. This criminal sentence was introduced to our criminal law in 1959 with the Amendments of Criminal Code of FNRJ (although imposing punishments on even younger juveniles under particular conditions was possible prior to these amendments)³⁷.

This punishment can be imposed if the following conditions prescribed by the law (Paragraph 28 ZOMUKD) are cumulatively fulfilled³⁸:

1) the perpetrator is an elder juvenile, *i.e.* a person who was between 16 and 18 years old at the time of commission;

2) the juvenile committed a criminal offence for which the law prescribes more than 5 years' imprisonment;

3) the juvenile committed a criminal offence with a high degree of guilt. Such grade of guilt stands above the common, ordinary or average degree of perpetrator's conscious and willing determination towards the committed criminal offence. Whether there is a high degree of guilt of an elder juvenile or not, represents a factual question solved by the judicial council in each individual case. The degree of guilt of such high level is not accomplished if there appear to be some of the subjective grounds for mitigation of punishment (such as substantially impaired mental capacity); *and*

4) the court is convinced that, due to the nature and the graveness of the committed criminal offence and the high degree of guilt, imposing an educational measure would be inappropriate. The graveness of the criminal offence signifies a

³⁷ B.Đukić, D.Jovašević, *Kriminalitet maloljetnika i mjere društvene reakcije u Republici Srpskoj*, Banja Luka, 2010, pp. 105-109.

³⁸ M.Đorđević, Đ.Đorđević, *Krivično pravo*, Beograd, 2014, pp. 98-102.

greater extent and a stronger intensity of injury or, by way of exception, threat of the protected value. This condition indicates the extent and the intensity of the consequences of the criminal offence. However, this circumstance should also be assessed in the scope of the type of the attacked value and society's need to provide its efficient protection, which indicates the nature of the criminal offence³⁹.

This condition⁴⁰ implies that juvenile prison sentence is imposed only as an exception even if the conditions prescribed by the law are fulfilled. Imposing a juvenile prison sentence requires court's assessment based upon personal and material sources of evidence, according to which the enforcement of an educational measure would not be appropriate in that particular case. Therefore, juvenile prison sentence is a subsidiary punishment and its enforcement is always optional. When the conditions prescribed by the law are fulfilled, the court shall determine juvenile prison sentence for an elder juvenile within the limits prescribed by the law for the committed criminal offence, taking into consideration all the circumstances (extenuating as well as aggravating) and especially: a) the degree of juvenile's maturity and b) the time that is necessary for his education and professional training (Paragraph 30 of ZOMUKD).

Juvenile prison sentence imposed by the court cannot last longer than the punishment prescribed for the committed criminal offence, but the court is not limited by the minimal measure of the prescribed punishment.

6. Conclusion

Following the standards proclaimed by a series of universal and regional international documents that have been adopted lately (created under the auspices of The Child's Rights Convention), The Republic of Serbia adopted a special Law on Juvenile Offenders and Criminal Legal Protection of Juveniles in 2005. In that manner, substantial, procedural and executive aspects of the legal position of juveniles as offenders and victims of criminal offences were arranged in a single legal document.

That is the reason why our country conducted the codification of juvenile criminal law in a way similar to the one that other European countries such as: France, Germany, Croatia, Macedonia, Bosnia and Herzegovina and others have been applying in the past couple of years. That initiated an entire new chapter in the development of our country's criminal law in general and represented a radical twist in the establishment and the functioning of a modern legal state and rule of law. Juvenile criminal law is a part, i.e. a segment of criminal law that has lately been gaining the character of an autonomous legal branch and scientific discipline in numerous European countries due to a multitude of its specific solutions. It represents a particular, consistent and autonomous system of legal provisions containing a series of specific solutions that differ from those referring to adult offenders.

Juvenile criminal law is a system of legal provisions that determine the criminal legal status of juveniles (as offenders and as victims of criminal offences). So, this term, that legal theory often refers to as a criminal-legal postulate, represents a branch of law comprised of criminal legal provisions that can be applied to juvenile offenders and that depict its particular and specific character. It is a set of legal provisions that determine

³⁹ I.Simić, M.Petrović, *Krivični zakon Republike Srbije – praktična primena*, Beograd, 2004, pp. 23-25.

⁴⁰ B.Čejović, *Krivično pravo*, Opšti deo, Beograd, 2002, pp. 559-562.

the system of criminal sentences for juvenile offenders (that can also be applied to adult offenders under particular conditions) as well as the procedure for the imposing and the execution of these sentences by competent state authorities.

Juvenile criminal law is familiar with two fundamental types of juvenile criminal sentences: a) educational measures and b) juvenile prison sentence. They are defined as measures of social reaction to juvenile offenders that are prescribed by the law and imposed by state authorities determined by the law (superior court-judge for juveniles and council for juveniles) with the aim to protect the society from crime through education, re-education and regular development of juveniles. Educational measures are the most common type of juvenile criminal sentences. They are most regularly and commonly imposed juvenile criminal sentences. They can be imposed on all juvenile offenders (younger as well as elder juveniles). Subsidiary, and only if the conditions prescribed by the law are fulfilled and when the court estimates that the aim of juvenile criminal sentences cannot be accomplished by the enforcement of educational measures, the court can impose a special type of punishment on an elder juvenile-jvenile prison sentence.

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