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SENTENCING JUVENILE IMPRISONMENT

ABSTRACT: Juveniles represent a sensitive category of delinquents, due to which they enjoy a special criminal-legal status. Their age necessitates different models of criminal-legal reaction in which educational measures dominate as the primary criminal sanctions. In exceptional cases, the legislator has prescribed possibilities for pronouncing a juvenile imprisonment sentence. This compassionate attitude towards juveniles stems from the fact that they are, as yet, psychologically and physically immature individuals. Hence, in literature, they are referred to as "delinquents in miniature" and "great criminals in waiting". However, regardless of this "privileged" status, juveniles may be sentenced to juvenile imprisonment. Its specificity is reflected in the application of the principle of exceptionality in sentencing, a shorter duration, special general and specific rules for determining the sentence, as well as a special method of execution. The specificity of juvenile imprisonment particularly comes to the fore during sentencing. Special rules are applied here, with a simultaneous reference to the application of norms that relate to adults. Consequently, we consider it necessary to present the area of juvenile sentencing from the perspective of our legislator.

Keywords: *juveniles, juvenile prison, sentencing, legal cases, court.*

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1. Introduction

The historical development of juvenile delinquency dates back to the earliest times of human civilization. In older legal monuments, there was no distinction between the criminal behavior of younger and older people. Hence, we can raise the question of how to punish children and minors for offenses that violate customary, moral, and legal norms of good behavior. It should be borne in mind that the age period of childhood and adolescence was not distinguished but instead divided into younger (immature) and older (more mature) offenders. In this way, society referred to the phenomena of early delinquency that had not yet taken on the dimensions of delinquent behavior.

Juvenile delinquency (*delinquere* – to err, transgress, fail) is a form of negative social behavior. It is known that ancient Greek philosophers and Roman lawyers pointed out the importance of a different attitude towards minors as actors of delinquent behavior. However, legal monuments lacked a special treatment of minors in criminal law, which leads to the conclusion that courts in practice punished younger persons more leniently.

The Middle Ages did not bring anything new in the field of special punishment of minors. The preoccupation of the Inquisition courts with punishing heretics and freethinkers is obvious, which left no room for regulating the special penal treatment of minors. Moreover, there was no clear distinction between minor children and adult delinquents. Parents were obviously responsible for re-educating their children so that the parents themselves would not be held responsible for their actions. This is confirmed by the fact that death sentences were pronounced on serious minor offenders, which were carried out in the same way as on adult offenders. In England, children over 12 years of age were punished by hanging for serious offenses (e.g., for stealing something worth more than 12 pence).

The beginning of the 20th century brought changes in the area of juvenile punishment in the leading European countries of the time. In Germany, special judicial chambers for juveniles were formed, which represented a radical departure from the earlier period. The Juvenile Justice Act of 1923 introduced complete criminal non-responsibility for offenders under the age of 14. Educational measures, which represented the basic criminal sanctions against juveniles, gained primacy. This meant that a juvenile could be punished only if the educational measure could not sufficiently achieve the purpose of the criminal law response. Somewhat earlier, in England, in 1908, the Children Act was passed, which abandoned the idea of mandatory severe punishment

of juveniles. Therefore, imprisonment of persons under the age of 14 was not permitted.

The evolution of the criminal law status of minors in Serbia has come a long way. Therefore, a turning point can be considered the Criminal Code of 1869, which established the duty of parents to educate and punish their children up to the age of 12. Although beatings were the main form of punishment, minors could be punished with fines and imprisonment. There were no special rules regarding the sentencing of juveniles, which indicates the application of general rules prescribed for adults. After more than half a century, the Yugoslav Criminal Code of 1929 was adopted, which provided for special rules for sentencing older minors.

2. Models of the criminal legal status of minors

The criminal legal status of minors has undergone fundamental changes. Therefore, we can discuss the specifics of their status, taking into account the temporal and spatial dimensions. In some countries, minors are punished more leniently, in others there are special criminal sanctions intended for their age, while in some countries even the death penalty can be imposed on minors, etc. However, although there are no two countries in which the criminal legal status of minors is regulated in a completely identical way, it is possible to distinguish two basic models of their status, which are: the protective model and the judicial model (Joksić & Radovanov, 2018, p. 158).

The welfare model appeared and became publicly recognizable in the world at the beginning of the 20th century. In it, the judge has broad powers in conducting the court proceedings, which deprives him of strictly formal conduct in carrying out actions. There is no proportional system of imposing criminal sanctions and an arbitrary approach to sanctioning minors. We can find the representation of this model in criminal legislation in the period after World War II.

The justice model was first applied in the second half of the 20th century. It was preceded by deeper political and economic factors in European countries that led to a loss of confidence in the traditional system of punishing juveniles. Instead of the juvenile perpetrator, the focus of the criminal legal response is the victim as the object of the committed criminal act.

The mixed (welfare-justice) model emerged as a result of the shortcomings of the previous two models. The criminal legal essence of the mixed model is the application of the so-called traditional criminal sanctions, accompanied

by a reduction in the maximum sentence of juvenile imprisonment and the abolition of existing indeterminate sentences (Banović & Joksić, 2012, p. 16).

3. Determining the juvenile detention sentence

Juvenile detention is a special type of criminal sanction intended for older juveniles, the imposition of which is preceded by criminal proceedings against juveniles, legally prescribed conditions for imposing and imposing sentences, as well as special correctional institutions for juveniles (Joksić, 2019, p. 440). This definition of juvenile detention stems from the current Act on Juvenile Perpetrators of Criminal Offenses and Criminal Protection of Juveniles from 2005 (hereinafter: ZOM). This Act entered into force on 1 January 2006, when the Criminal Code also came into force. It is noticeable that our legislator, in this legal act, gives priority to extrajudicial forms of criminal-legal response. Therefore, the inclusion of minors in the criminal justice system, through the imposition of institutional sanctions, should have been the last resort of the state in responding to juvenile crime (Stevanović, 2024, p. 68).

According to the provisions of Article 9, paragraph 3 of the Law on Youth, it is stipulated that a juvenile may, only exceptionally, be sentenced to juvenile imprisonment. This is a legal provision that clearly seeks to make a difference in relation to adult perpetrators of criminal acts. From this, it can be concluded that the punishment of minors is of a secondary nature and only when educational measures cannot achieve the purpose. In the above context, the legal nature of juvenile detention in our criminal law should be understood. In criminal doctrine, there are opinions according to which juvenile detention is a hybrid criminal sanction, which in its form is a punitive measure with pronounced elements of repression, but in terms of its content, essence and the goal it is intended to achieve, it is an educational measure (Jovašević, 2010, p. 152).

Our legislator prescribes that an older juvenile who has committed a criminal offense for which the law prescribes a prison sentence of more than five years may be sentenced to juvenile imprisonment if, due to the high degree of guilt, the nature and gravity of the criminal offense, it would not be justified to impose an educational measure (Article 28 of the LOY). In this way, the conditions that must be met in order for an older juvenile perpetrator of a criminal offense to be punished with imprisonment have been specified. This has led to the application of general and special rules when determining the sentence, taking primarily into account the interest of the juvenile and the

possibilities of their successful resocialization. Since it is an institutionalized criminal sanction, juvenile imprisonment greatly changes the role of the family in the resocialization of juveniles (Joksić & Rajaković, 2020, p. 50).

3.1. General circumstances during sentencing

Sentencing is a legally regulated method of determining the right measure of imprisonment in a particular criminal case. Regardless of the differences that accompany each individual case, it is necessary to prescribe the rules within which the court must operate. Accordingly, the provision of Article 30 of the LOY stipulates that the court shall impose a sentence of juvenile imprisonment on an older minor within the limits prescribed by this law, bearing in mind the purpose of juvenile imprisonment and taking into account all circumstances that affect the amount of the sentence (Article 54 of the CC), and in particular the degree of maturity of the minor and the time required for his education and professional training. From the verbiage of the aforementioned provision, we can see the determination of the legislator to ensure the application of two groups of circumstances when imposing a sentence of juvenile imprisonment. Hence, such a complex system of sentencing allows the judge to adapt the most adequate measure of punishment to the minor in a specific criminal case.

All circumstances provided for by law when determining the sentence of juvenile imprisonment can be divided into two groups: general circumstances that also apply to adults and special circumstances that apply only to minors.

The general circumstances in the determination of a juvenile prison sentence include several legal aspects. First, the judge is required to take into account (have in mind) the purpose of juvenile prison when determining the sentence (see Article 10 of the Criminal Procedure Code). The judge is then required to take into account all the circumstances that affect the amount of the sentence prescribed in Article 54 of the Criminal Code (hereinafter: the Criminal Code). This is the guiding norm that ensures the application of the general rules for determining a prison sentence for adults. Given that the punishment is essentially the same, the legislator's position on this issue is understandable. There are opinions in the doctrine that, although the provision of Article 30 of the Criminal Procedure Act does not contain a reference norm for the appropriate application of Article 55 of the Criminal Procedure Code, the court should take into account the recidivism of juveniles when determining the juvenile prison sentence (Knežević, 2010, p. 88).

According to the provision of Article 54 of the Criminal Code, the court shall impose a sentence on the perpetrator of a criminal offense within the

limits prescribed by law for that offense, taking into account the purpose of the punishment and taking into account all circumstances that influence the sentence to be lower or higher (mitigating and aggravating circumstances), and in particular:

- degree of guilt,
- motives from which the offense was committed,
- severity of the threat or damage to the protected property,
- circumstances under which the offense was committed,
- the perpetrator's previous life,
- his personal circumstances,
- his behavior after the criminal offense was committed, and in particular his attitude towards the victim of the criminal offense,
- as well as other circumstances relating to the personality of the perpetrator.

Although the (mitigating and aggravating) circumstances are listed in detail, the court is left with the option to take other circumstances into account by applying the principle of free judicial discretion. This legal solution can be considered a compromise because it follows the line of a mixed model. In practice, this means that the court is allowed freedom in determining the sentence, but within clearly established legal frameworks. In this way, the possibility of arbitrary action by the court is prevented, which would call into question the objectivity of its decision-making.[1]

3.2. Special circumstances during sentencing

The special rules for sentencing minors contain the mandatory application of two (additional) circumstances, which are: the degree of maturity of the minor and the time required for his or her upbringing and professional training. From the verbiage of the provision of Article 30 of the Criminal Procedure Act, one can clearly see the imperative character with the targeted intention

[1] The importance that the American judicial system attached to the proper and objective sentencing was evident in the 1980s. In the USA, the Sentencing Reform Act was passed in 1984, which provided for the formation of a special Sentencing Commission, as an independent body within the judiciary, to review existing case law. The Commission's task was to formulate exact numerical rules that would be applied when imposing prison sentences. Based on the given powers, the Commission created the Sentencing Guidelines Manual, which came into force in 1987. Although it had only consultative force and significance, the Guidelines are applied by many judges to this day (Miladinović Stefanović, 2019, pp. 207–208).

that the court, in addition to the circumstances relating to the sentencing of adults, use two additional circumstances determined only for minors.

The degree of maturity of a minor involves determining the level of his maturity at the time of committing the criminal offense. Maturity in the conceptual sense can be defined as the totality of his psycho-physical, emotional, social, and intellectual capacities (Radulović, 2010, p. 155). Given the individuality of each person, it is not possible to build a universal model in assessing their maturity. The same happens with the degree of maturity of a minor, which shows different varieties in each specific case. Therefore, special caution should be exercised when determining this circumstance in order to justify the application of a prison sentence.[2]

The time required for his education and vocational training is a circumstance that is determined *in futuro*. Here, the court is required to foresee the future course of the resocialization process, in which, it should be noted, the penitentiary institution itself plays an important role. Therefore, determining the time required for the education and vocational training of a minor must be assessed, both in terms of the personality of the minor and in relation to the possibility of organizing treatment in a juvenile correctional institution.

4. Sentencing for concurrent criminal offenses

Juvenile delinquency often involves the participation of multiple persons who commit criminal offenses in conjunction. As a result, it is necessary to provide methods for determining a single juvenile prison sentence for all criminal offenses included in the concurrent offense. Our criminal legislation uses a mixed approach that includes the application of several different legal rules, depending on the prescribed legal possibilities, as provided for in the provision of Article 31 of the Criminal Procedure Act.

The first legal possibility exists if an older juvenile commits multiple criminal offenses in conjunction, and the court finds that a juvenile prison sentence should be imposed for each criminal offense, it will freely assess a single sentence for all offenses within the limits set forth in Article 29 of this law (paragraph 1 of the Criminal Procedure Act). Here, the legislator was

[2] Here, the help of a psychological expert is necessary, who, acting according to the rules of his profession (lege artis), provides assistance to the court in assessing the personality of the perpetrator of the criminal act. Although his engagement includes a wide range of "services", his opinion is undeniably important in determining the sentence (See more: Drakić, 2014, pp. 253–254).

guided by simple legal logic according to which a single sentence is assessed without prior determination of individual sentences for criminal offenses included in the conjunction. Therefore, there is a departure from the rule of assessing a prison sentence for the conjunction of criminal offenses in adults. However, this does not exclude the court's obligation to take into account and evaluate all mitigating and aggravating circumstances provided for by law.

The second legal possibility exists *if the court finds that, in case of a concurrent criminal offense, a juvenile should be sentenced for one offence while for others an educational measure should be imposed, it will impose only a sentence of juvenile detention for all the offenses committed in conjunction* (paragraph 2 of the LOY). The meaning of this legal provision is that juvenile detention, as the only punishment and at the same time the most severe criminal sanction against minors, also includes educational measures that should be imposed for one or more criminal offenses included in the conjunction. In this case, the court resorts only to imposing a sentence of juvenile detention, considering it a type of umbrella criminal sanction in a given criminal case.[3]

The third legal possibility exists *if the court has determined prison sentences and juvenile detention for concurrent criminal offenses and will impose prison as a single sentence by applying the rules set forth in Article 60, paragraph 4 of the Criminal Code* (paragraph 3 of the Criminal Code). In this legal situation, the same perpetrator committed one or more criminal offenses during his or her childhood and adulthood when he or she should be tried for them. The legal logic of our legislator is that a single prison sentence should be imposed for all criminal offenses included in the concurrent offense. In doing so, the general rules for determining prison sentences for concurrent criminal offenses from Article 60, paragraph 4 of the Criminal Code apply. This includes the application of the principle of asperation, which applies to prison, although the principle of absorption may also be applied (Stojanović, 2006, p. 294).

The fourth legal possibility exists *if the court finds that for some criminal offenses in concurrence a correctional measure should be imposed, and for others a prison sentence, it will impose only a prison sentence* (paragraph 4 of the Criminal Procedure Act). The legislator behaves the same way as in another legal situation (Article 31, paragraph 2 of the Criminal Procedure Act)

[3] In this case too, the sentence of juvenile detention is subject to the rules of Article 29 of the Criminal Code, regardless of the number of criminal offenses for which it is being considered (Perić, 2007, p. 81).

because these two criminal sanctions cannot be cumulative. This practically means that the court will impose a single prison sentence for all criminal offenses included in the concurrence.

The fifth legal possibility exists if the court, after the sentence has been pronounced, determines that the convicted person committed another criminal offense before or after its pronouncement (paragraph 5 of the Criminal Procedure Code). Due to the lack of special rules for sentencing a convicted person serving a sentence in juvenile detention, it is necessary to apply the general rules for sentencing a convicted person from Article 62 of the Criminal Procedure Code, which foresees three possible situations (Joksić, 2019, p. 447):

The first situation exists if a convicted person is tried for a criminal offense committed prior to the start of the sentence under a previous conviction or for a criminal offense committed while serving a prison sentence or juvenile detention, the court shall impose a single sentence for all criminal offenses by applying the provisions of Article 60 of this Code, taking the previously imposed sentence as already determined. The sentence or part of the sentence that the convicted person has served shall be included in the imposed prison sentence (paragraph 1).

The second situation relates to a criminal offense committed while serving a prison sentence or juvenile detention. In this case, the court shall impose a sentence on the perpetrator, regardless of the previously imposed sentence, if the application of the provisions of Article 60 of this Code, taking into account the gravity of the criminal offense and the unserved part of the previously imposed sentence, would not achieve the purpose of punishment (paragraph 2).

The third situation provides for special responsibility for minors, whereby a convicted person who, while serving a prison sentence or juvenile detention, commits a criminal offense for which the law prescribes a fine or a prison sentence of up to one year, is subject to disciplinary punishment (paragraph 3).

The above legal rules cover a wide range of legal situations in which a person who committed criminal acts as a minor and/or as an adult may find himself. Therefore, it is necessary to apply general and special rules for determining the sentence of juvenile imprisonment, which create conditions for its more efficient application. The intention of our legislator is to fully preserve the special criminal legal status of minors in this way, although some authors consider such solutions to be painful. The doctrine contains opinions that the graduality in sanctioning minors must take into account the provision

of conditions for their growth. After that, it is possible to talk about their adequate punishment (Kovačević & Vasiljević Prodanović, 2020, p. 112).

5. Conclusion

Juveniles represent a special age category of perpetrators of criminal acts. The age of a minor obliges our legislator to prescribe special rules regarding the regulation of their criminal legal status. This refers to the general position of minors in criminal legislation, which is reflected in the application of a special system of criminal sanctions. An equally important point is the possibility of their punishment, in which the principle of exceptionality in punishment applies. Therefore, the court must show special caution in considering the possibility of punishing a minor instead of imposing an educational measure on him.

The imposition of a juvenile prison sentence involves the application of general and special legal rules. By prescribing a complex system of punishment for juveniles, our legislator has sought to ensure that the process of imposing a juvenile prison sentence in all respects follows the expectation that the legal purpose of the sentence will be achieved by punishing them. The wide catalog of possibilities when imposing a sentence covers various situations in which an older juvenile or younger adult may find themselves when being tried for a criminal offense. The specificity of punishing juveniles is also present when imposing a single sentence for a series of criminal offenses. Here, a different approach is applied when imposing a single sentence in relation to adults.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, I.J.; methodology, I.J; formal analysis, J.R. and B.D.; writing – original draft preparation, I.J. and J.J.; writing – review and editing, I.J and B.D.; All authors have read and agreed to the published version of the manuscript.

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ODMERAVANJE KAZNE MALOLETNIČKOG ZATVORA

APSTRAKT: Maloletnici predstavljaju osetljivu kategoriju delinkvenata usled čega uživaju poseban krivičnopravni status. Njihov uzrast iziskuje drugačije modele krivičnopravne reakcije u kojima dominiraju vaspitne mere kao osnovne krivične sankcije. U izuzetnim slučajevima, zakonodavac je propisao mogućnosti za izricanje kazne maloletničkog zatvora. Ovako bolećiv odnos prema maloletnicima proizilazi iz činjenice da su u pitanju, još uvek, psihofizički nedozrela lica. Otuda se u literaturi nazivaju delinkventima u minijaturi i „velikim kriminalcima" u najavi. No, bez obzira na „povlašćeni" status, maloletnicima se može izreći kazna maloletničkog zatvora. Njena posebnost se ogleda u primeni načela izuzetnosti u kažnjavanju, kraćem vremenskom trajanju, posebnim opštim i posebnim pravilima kod odmeravanja kazne kao i posebnom načinu izvršenja. Posebnost maloletničkog zatvora posebno dolazi do izražaja prilikom odmeravanja kazne. Ovde se primenjuju posebna pravila uz istovremeno upućivanje na primenu normi koje se odnose na punoletna lica. Usled toga, smatramo neophodnim da područje odmeravanja kazne maloletnicima prikažemo iz ugla našeg zakonodavca.

Ključne reči: *maloletnici, maloletnički zatvor, odmeravanje kazne, pravni slučajevi, sud.*

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