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Victimological and Criminal Aspects of Juvenile Crime in Bosnia and Herzegovina

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Abstract. In this paper the authors focus on the victimological and criminal aspects of juvenile delinquency in Bosnia and Herzegovina, respect the protective model of law enforcement agencies and entities according to this specific age category. In the centre of interest are juveniles as perpetrators of criminal offenses and on the other hand juveniles as victims, ie victims of committing criminal offenses (police warning and educational recommendations). In the juvenile criminal law of Bosnia and Herzegovina, the component of humanity is clearly recognized and articulated, given that certain international standards have been adopted and accepted, so that the treatment of juveniles differs significantly from the treatment of adult perpetrators of criminal offenses.

Keywords: juveniles, victim, crime, Bosnia and Herzegovina

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Научная статья

Виктимологические и криминологические аспекты преступности несовершеннолетних в Боснии и Герцеговине

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Аннотация. В данной статье авторы фокусируются на виктимологических и криминальных аспектах преступности несовершеннолетних в Боснии и Герцеговине, рассматривают протективную модель правоохранительных органов и структур в отношении этой специфической возрастной категории. В центре внимания находятся несовершеннолетние как исполнители уголовных преступлений и, с другой стороны, несовершеннолетние

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как жертвы, т. е. пострадавшие от совершения уголовных преступлений (предупреждение полиции и воспитательные рекомендации). В уголовном праве Боснии и Герцеговины в отношении несовершеннолетних четко признается и формулируется компонент гуманности, учитывая, что были приняты и признаны определенные международные стандарты, поэтому обращение с несовершеннолетними существенно отличается от обращения со взрослыми лицами, совершившими уголовные преступления.

Ключевые слова: несовершеннолетние, жертва, преступление, Босния и Герцеговина
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1. Juvenile criminal law in Bosnia and Herzegovina – general considerations

Minors as a special age category deserve special attention of the scientific, professional and general public from the aspect of protection of basic human rights and freedoms when it comes to adequate treatment, attitude and access of specialized law enforcement agencies and entities according to this specific category. Juveniles appear as perpetrators of crimes, but they can also be perpetrators and victims at the same time. The legislator in Bosnia and Herzegovina has shown a special sensibility and interest when it comes to more favourable and adequate treatment, approach and attitude towards minors precisely because of their age.

Juvenile delinquency is sociologically-criminologically distinguished as a special category within general crime due to the specifics related to biological, psycho-social, criminal-political and special place that minors have in the legal system [13]. Finding the most effective way of social response to juvenile delinquency is much more demanding task than simply applying the norms of juvenile criminal law. It seems in no social area is the role of prevention and comprehensive consideration of all criminogenic factors as important as in the case of juvenile delinquency, because juvenile delinquents, due to their age and the life ahead, usually have enough time to adopt proper patterns of behaviour and life, in the society of regulated relations, if the same society helps them in the right way [2, c. 375]. Even in Roman law, the age and criminal responsibility of perpetrators of criminal acts were taken into account [11, c. 31]. Also, the intention of the legislator is aimed at harmonizing the substantive, procedural and executive legislation in Bosnia

and Herzegovina with international standards relating to a more favourable criminal position of minors in relation to adults. The essential differences between the criminal procedure against a juvenile and the regular (general) criminal procedure are reflected in the more favourable procedural position of the juvenile in relation to the adult suspect or accused [7, c. 196]. With the adoption and entry into force Law on Protection and Treatment of Children and Juveniles in Criminal Procedure at the level of the entities of the Federation of Bosnia and Herzegovina¹ and Republika Srpska² and the Brčko District of Bosnia and Herzegovina³, juvenile criminal law in Bosnia and Herzegovina has gained partial autonomy and independence, giving that the legal provisions relating to the specific criminal status and position of minors have been set aside. However, at the state level in Bosnia and Herzegovina, provisions from the general part of the law to a special law that would legally regulate the specific criminal status, status and treatment of juveniles have not yet been separated. The Criminal Code of Bosnia and Herzegovina prescribes the treatment of juveniles in the general part of the law, in a special chapter relating to the juveniles.

The legislator also showed a special protective attitude towards minors when it comes to the use of certain legal terms in

¹ Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina, no. 7/14.

² Law on Protection and Treatment of Children and Juveniles in Criminal Procedure of Republika Srpska, Official Gazette of the Republika Srpska, no. 13/10,63/11,61/13.

³ Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Brčko District of Bosnia and Herzegovina, Official Gazette of the Brčko District of Bosnia and Herzegovina, no. 53/11.

order to avoid stigmatizing the personality of minors in society, or in a particular local community. In this sense, the use of certain classical terms specific to classical criminal law is avoided (eg the use of the term guilt is avoided, the term re-education is used instead of the term punishment, etc). A comparative analysis of the individual national criminal justice systems shows that juvenile criminal law in many European countries (Germany, France, Austria, Spain, Belgium, Italy, the Czech Republic, England, etc.) has gained its criminal independence and autonomy, due to special or specific legal solutions towards juveniles that differ significantly in relation to adult perpetrators of criminal offenses [9, c. 110]. Regarding the (non) existence of individual criminal responsibility, the provisions related to this issue are identical in content at all laws at different levels in Bosnia and Herzegovina, so that a child who was under 14 years of age at the time of the crime cannot be prosecuted, sanctioned or apply other measures provided by criminal law.

What is important to emphasize for the new juvenile criminal law in Bosnia and Herzegovina is the introduction and application of alternative, diversionary or informal treatment of juveniles in conflict with the law. This means that the legislator did not emphasize the expediency of punishing minors, but expressed a special protective or protective approach and attitude that is directly manifested or manifested in re-education, proper development, assistance, care and various forms of support for minors, respecting his age, insufficient psychophysical development and other individual specifics or personal characteristics. Given the very complex constitutional structure of Bosnia and Herzegovina, it is necessary to note that the classical criminal legislation exists at four levels of exercise of legislative power: state level of Bosnia and Herzegovina, entity level: Federation of Bosnia and Herzegovina and Republika Srpska and Brčko District of Bosnia and Herzegovina. At all levels of legislature, special criminal laws and criminal procedure laws are prescribed, which are identical in content with certain slight differences.

2. Application of alternative criminal law measures in juvenile criminal law of Bosnia and Herzegovina

Modern tendencies of humanization of criminal law by their nature require a different approach when it comes to the treatment of bodies or subjects of juvenile justice towards juvenile perpetrators of criminal offences. The prevailing view in scientific knowledge is that the antisocial behaviour of young people is a complex psychological, sociological, criminological and medical problem. For these reasons, the criminal behaviour of young people, both from a phenomenological and etiological point of view, should be viewed as a special legal-moral and social phenomenon [4, c. 401]. The criminal status of juveniles and young adults is directly conditioned and determined by age or age and certain specifics or personal characteristics of juveniles as perpetrators of criminal offences. Reform processes in Bosnia and Herzegovina as well as in the surrounding countries (Serbia, Croatia, Montenegro) have been particularly pronounced in the last two decades. Youth is a period of increased emotionality [6, c. 152].

In this sense, alternative measures as special or specific criminal measures should be viewed precisely through the prism of protection that is directly manifested in a more favourable criminal status, position and treatment of juveniles, when it comes to mild or so-called trivial crimes, respecting above all the proper psychophysical development of minors [10, c. 584]. By comparative analysis of legislation in European countries, we notice that an alternative or diversionary model is present. However, this model is not unified or unique but differs in individual countries, so there are different types or (sub) models of the diversion model. Each country has adopted this model to its conditions, specifics and needs, so that within the diversion of this model there are certain differences. Also, the situation is identical when it comes to the states created by the disintegration of the former Yugoslavia (Bosnia and Herzegovina, Serbia, Croatia, Montenegro) which have adopted a diversionary model of treatment of minors in conflict with the law where we recognize certain differences in certain legal solutions. The mentioned diversion

model of criminal law response is by its nature aimed at avoiding classic criminal proceedings and imposing criminal sanctions, and implies “turning” and redirecting actions to other branches of law (family law, social law, etc). Following the current tendencies in juvenile criminal law, which among other things, are characterized by wide application of the diversionary model of treatment, as a concept reflected in avoiding or redirecting juvenile criminal proceedings to out-of-court mechanisms for solving juvenile criminal cases, domestic legislation has existed for decades known as educational recommendations [12, c. 72].

Analyzing the legal provisions, we note that juvenile criminal law in Bosnia and Herzegovina recognizes two types of alternative measures: 1) police warning and 2) educational recommendations. The introduction and application of a police warning as an alternative measure against juveniles avoids classic criminal proceedings, and on the other hand opens the possibility that out-of-court measures by police officers may affect the personality and behavior of juveniles. The police warning aims to: a) not to initiate criminal proceedings against a juvenile and b) to influence the proper development of a juvenile and strengthen his personal responsibility so that he does not commit criminal offences in the future¹. In addition to police warnings as alternative measures, juvenile criminal law in Bosnia and Herzegovina also recognizes educational recommendations which, by their legal nature and practical application, contain a protective or protective component in relation to juveniles as perpetrators of certain criminal offences. If the plaintiff deems that the imposition of educational recommendations is possible and justified, he may make one of the following recommendations: a) personal apology to the injured party, b) compensation for damages to the injured party, c) regular school attendance, etc... d) if the juvenile made the educational recommendation in

a timely manner, the prosecutor shall make a decision that the request for initiating the preparatory procedure will not be submitted. However, if the prosecutor, for any reasons, submits a request to initiate preparatory proceedings to a juvenile judge, the judge has the obligation to consider the possibility and justification of imposing some of the educational recommendations with his competence before deciding the prosecutor's request (under the same conditions) which are: a) work for the benefit of a humanitarian organization or local community, b) acceptance of appropriate employment, c) placement in another family, home or institution and d) treatment in an appropriate health institution [5, c. 560].

It follows from the above that the legislator has justifiably prescribed numerous and varied educational recommendations which, in their content, nature and purpose, are adapted to the real needs and certain individual specifics of the minor, depending on the realistic and adequate assessment in each case.

3. Juveniles – victims of criminal offences

What increasingly burdens and worries the scientific, professional but general public is the fact that the juveniles are increasingly appearing as victims of a very wide catalog of crimes (property crimes, drug abuse, human trafficking, prostitution, terrorism, etc). Unfortunately, more and more often juveniles of different ages appear as victims of certain crimes with a very destructive component which leaves very long-term and harmful consequences on the juvenile's personality (various mental and physical problems, trauma, stress, inability to adopt the environment, etc). Also, what is worrying is that the rights of minors are also being abused by close relatives (eg. parents or guardians or the other close relatives). However, appreciating the phenomenological diversity and number of criminal offences, juveniles very often appear at the same time as perpetrators and victims of certain criminal offences (eg. criminal offences in the field of human trafficking, drug abuse, etc). It is particularly impossible to quantify all the negative and harmful consequences of crimes where juveniles appear

¹ Article 22, para. 4 in connection with Article 25. of the Law on Protection and Treatment of Children and Juveniles of Criminal Proceedings of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina.

as victims. Namely, numerous studies show that children who have been victims of abuse acquire numerous frustrations and emotional scars, which often acts as a strong impulse to develop their own aggression and tendency to abuse others [6, c. 348].

Despite all the efforts of the legislator and all preventive activities of a legal and social nature, we must state that crime is increasingly improving and modernizing with even more destructive modalities and consequences... economic, demographic, cultural and other conditions and specifics. Young people most often commit property crimes with a pronounced line of aggression. Unlike adults, those crimes are often committed in groups of two or more juveniles, which are mostly informal in nature. They unite in order to commit a certain act or a series of criminal acts, so that stronger ties are not established between them [3, c. 187]. The ways of operationalization of criminal activities are changing and adapting to the stated conditions and specifics, especially when it comes to specific forms of organized crime. In this sense, there are numerous and varied forms of abuse of the rights of the minors. The victimological aspect of the abuse of the rights of the minors in the last two decades is increasingly in the centre of attention and interest of society and the state in order to find the most adequate solutions and answers of a preventive nature. One of the essential problems in Bosnia and Herzegovina, when it comes to the protection of the rights of the minors, is the fact that the reaction of the competent authorities is mainly focused on the consequences. Insufficient attention is paid to etiological or causal factors that affect or lead to the occurrence of consequences, i.e. committing a certain criminal offence where minors appear as victims.

Regarding the adequate protection of the rights of the minors and the reduction of the number of criminal offences where juveniles appear as victims, it is necessary to identify certain causes, and take timely, proportionate and adequate actions to eliminate the causes or at least reduce their negative effects. The preventive process includes, in addition to institutional forms of legal response by the competent bodies of juvenile justice, the

participation of all other social (non-legal) entities (eg. family, school, sports teams, religious communities, media, etc) that can significantly contribute to preventing abuse of juvenile rights and reducing the number of recorder crimes where juveniles appear as victims. The most important risk factors at the individual level are hyperactivity, impulsivity, poor behaviour control, problems of attention and concentration, history of aggressive behaviour, early consumption of alcohol and drugs, antisocial beliefs and attitudes, low intelligence and educational attainment, low commitment to school and school success, parental separation or divorce and exposure to domestic violence [3, c. 198]. Observed from the aspect of prevention, it is very important to timely identify and recognize all risky behaviours and react in a timely manner, in order to prevent negative (harmful) consequences and adequately protect the rights of minors. First of all, we must emphasize the preventive role and importance of the family. It is very important when determining the structure of the family as a risk factor for criminal behaviour, to take into account the cause of the structural disorder-whether the parent died, whether the parent left the other parent, whether the parent also abandoned the children [8, c. 216]. However, the problem of juvenile delinquency in a certain society is not only a legal problem, but it is a multidisciplinary problem that it is of interest to experts of various profiles (pedagogy, social work, psychology, etc). Regarding the timely and effective protection of the rights of minors as victims of certain crimes, it is very important to emphasize the necessary specialization and professional competence of all entities that treat minors (police, court and prosecutor's office, social welfare services).

Modern phenomenological forms of crime that include various forms of misuse of information and communication technologies (use of the Internet, use of social networks and applications for communication exchange of information and data) enable various phenomenological forms of victimization of young people. In this sense, the use of the Internet, in addition to its positive characteristics, also has its negative or

destructive side, given that in this way various forms of criminal activity (pedophilia, illegal trafficking in drugs, weapons) can be operationalized. The Internet is also suitable for spreading radical and destructive ideas, and recruiting and engaging young people for the realization forms of destruction, including criminal acts of terrorism as the most destructive form of human activity. Also, peer violence is still current in schools, on the street, in sports stadiums and other suitable places where minors appear as victims.

Conclusion

The treatment of juvenile criminal justice bodies towards juveniles as perpetrators and victims of criminal offences is in the centre of attention of the scientific and professional public. The legislator recognized and expressed a special protective sensibility towards this specific age category with a clear intention to provide timely and adequate protection, as well as proper action to provide assistance, support, proper re-education, re-socialization, social adaptation, and other forms of assistance and support appropriate to that age. In that sense, the legislator

has prescribed alternative or diversionary treatment, ie. Alternative measures (police warnings and educational recommendations) towards juvenile perpetrators of criminal offences, so that the treatment of the juvenile differs significantly from that of adult perpetrators. Previous experiences in practice and analysis of the effects of juvenile treatment are quite pessimistic, because the number of recidivists is not decreasing, on the contrary, reintegration into the social environment is increasing or absent, and juveniles who have been sanctioned, very soon after coming of age enter other court proceedings as adults [2, c. 178]. On the other hand, juveniles are increasingly appearing as victims, ie victims of crimes with very destructive and long-term consequences. However, we must emphasize that the problem of juvenile delinquency is a multidisciplinary problem that requires the involvement of experts of various profiles (lawyers, victimologists, criminologists, pedagogues, psychologists, social workers, etc.) so that the specific problem can be comprehensively and fully clarified and solved.

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