Original Research Paper
UDK: 343.91-053.6:340.13(497.11)
343.8-053.6(497.11)

PENALIZING MINORS WITHIN THE FRAMEWORK OF THE INTERNATIONAL HUMAN RIGHTS PROTECTION STANDARDS

Saša Knežević
LL.D., Faculty of Law, University of Niš,
e-mail: sknez1963@gmail.com

Aleksandar Luković
PhD student, Faculty of Law, University of Niš,
e-mail: al.lukovic@gmail.com

Abstract

In the legal system of the Republic of Serbia, the Act on Juvenile Criminal Offenders and Protection of Minors in Criminal Law[366] (hereinafter: the Juvenile Offenders' Act), fully regulates the criminal law status of juvenile delinquents. Thus, autonomous juvenile criminal law was established as an instrument for protecting the society from juvenile delinquency, but also as a set of rules on the criminal law protection of juveniles. Although the Juvenile Offenders' Act envisages diversion measures, the judiciary's reaction to juvenile delinquency most frequently entails educational measures, but there is also an exceptional possibility of punishing juvenile offenders. International law standards pertaining to the rights of children and minors mandate a restrictive approach to punishing juvenile offenders. Therefore, this paper will look at the conformity of the normative framework of juvenile prison in Serbian law with the guidelines provided in the international catalog of juvenile rights.

Keywords: minors, prison, punishment, standards, measures

1. Introduction

In the spectrum of measures of social reaction to juvenile delinquency, punishment is an exceptional possibility. From the point of view of the legal doctrine, the legislation and judicial practice, educational measures are the adequate social response to a crime committed by a young person of insufficient psychological and social maturity. In recent times, the range of measures of social reaction to juvenile offenders has been enriched with diversion measures, the *ratio legis* of which is to redirect the treatment of this category of offenders outside the context of criminal proceedings. The instruments of the diversionary criminal model in Serbian law are educational orders, where juvenile delinquency is addressed by applying alternative methods of a non-criminal nature.

[366] Act on Juvenile Criminal Offenders and Criminal Law Protection of Minors, *Official Gazette of the RS,* no. 85/2005.

Observed in a historical context, special punishments for juvenile delinquents are of a more recent date. In the earliest epochs of legal history, criminal offences committed by minors were punishable bye penalties which were prescribed for adult offenders, and sometimes there was a possibility of imposing a more lenient sentence.

The Serbian Penal Code of 1860 envisaged criminal sanctions for minors but a distinction was made between the punishment of younger minors aged 12-16 and older minors aged 16-21. Younger minors were punished if it was established that they had committed the crime or offense with forethought (§ 57). If these persons committed a crime, the imposed penalty could at the most amount to half of the amount of the penalty provided for adult offenders, but there was also a possibility of imposing a penalty involving a lesser amount than the special minimum. If a person aged 12-16 committed a crime which was punishable by death penalty or imprisonment, he could be sentenced to a term of imprisonment ranging from one to ten years. The delinquent or criminal behavior of older minors (aged 16-21) was punishable by a maximum of two-thirds of the amount of the sentence provided for adult offenders; if the committed crime was punishable by death penalty, older minors were sentenced to detention or a term of imprisonment ranging from ten to twenty years (§ 58).[367]

A special punishment for minors was introduced into the Serbian legislation for the first time by the amendment to the Criminal Code in 1959. By introducing this punishment into the register of criminal sanctions, normative assumptions were created for a differentiated treatment of juvenile offenders during the execution of the imposed sanction. In comparative law, there are legislations that have the same approach to punishing juvenile offenders as Serbian law, but there are also legislations that envisage a uniform prison sentence for all categories of offenders, but provide for a different treatment of offenders during the execution of the sentence. Otherwise, it is a principle of modern juvenile criminal law that the punishment of juvenile offenders is an exceptional and the last measure available in response to juvenile delinquency.

2. International law sources on penalizing minors

The Convention on the Rights of the Child (CRC), which entered into force in 1990, sets standards for the protection of the human rights of children and minors. Persons under the age of 18 (who are terminologically referred to as children) may not be sentenced to death or life imprisonment. The contracting parties also undertook to prohibit inhumane practices and punishments. Children and minors may not be unlawfully or arbitrarily deprived of their liberty. Arrest, detention and imprisonment of a child is possible only in accordance with the law and may be taken as the last possible measure, and for the shortest possible period of time (Art. 37 CRC).

The provisions of this Convention mandate humane treatment of every child deprived of liberty, with respect for innate human dignity and in a manner that respects the needs of persons of their age. Children deprived of their liberty must be separated from adults deprived of their liberty, unless the interests of the children dictate a different approach. Children deprived of their liberty have the right to maintain contact with their family through correspondence and visits, except in exceptional circumstances. (Art. 37 CRC) The Convention also provides that every child deprived of liberty has the right to legal and other appropriate assistance, the right to challenge the legality of such an act before a court or other competent, independent and impartial authorities, as well as the right to a quick decision in any such procedure. (Art. 37 CRC)

[367] Kneževina Srbija (1860) Kazniteljni zakonik za Knjažestvo Srbiju. Beograd: Praviteljstvena pečatna, čl. 1-40.

The UN Standard Minimum Rules for Juvenile Justice (the "Beijing Rules"), adopted in 1985, also envisage the standards of treatment of juveniles deprived of liberty. Like the Convention on the Rights of the Child, these rules prohibit sentencing minors to death penalty and life imprisonment. In addition, prison sentences against minors should be the last resort, and imposed for a short period of time, when the minor needs to be separated from adult offenders. Under the "Beijing Rules", institutional treatment of minors should be a subsidiary measure of social response to juvenile delinquency. Priority should be given to alternative methods of social response from the so-called diversionary criminal model (community work, compensation for damage, social counseling, semi-institutional treatment, etc.). Under these rules, institutional treatment of minors must be accompanied by an educational process aimed at the resocialization of minors.[368]

The standards and procedure for the protection of human rights of children and minors deprived of liberty are most fully expressed by the UN Rules for the Protection of Minors Deprived of Liberty (the "Havana Rules"), adopted in 1990. These rules envisage "the basic assumptions" for protecting the interests of juveniles deprived of liberty through juvenile justice. Among other things, deprivation of liberty of minors must be the last resort in the process of social response to criminal acts committed by minors. Under these rules, states have the obligation to provide for the possibility of conditional release of juveniles deprived of their liberty through national legislation.[369]

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) stipulates that no one may be deprived of their liberty, except in strictly enumerated situations and in accordance with the prescribed procedure. Exceptionally, a minor may be deprived of his liberty by a lawful order for the purpose of educational supervision or lawful detention, or for the purpose of bringing him/her before the competent authority (Article 5. Para. 1.d) ECHR).[370]

3. Juvenile Prison

3.1. Conditions for sentencing a minor to juvenile prison

Juvenile prison is a criminal sanction that is imposed exclusively on the older minors, if they have committed a criminal offense which is punishable by a prison sentence of more than five years, provided that the high degree of guilt, the nature and gravity of the criminal offense do not justify the application of an educational measure (Art. 28 of the Juvenile Offenders' Act). The exclusivity of this punishment does not impair the legal possibility to impose it on an adult who committed the crime as a minor (Art. 40, para. 2 of the JO Act). In Serbian law, there is no possibility of imposing a juvenile prison sentence on younger adults.

When determining the conditions for imposing the sentence of juvenile prison, the legislator concluded that this type of social reaction towards minor perpetrators of criminal offenses is legitimate if it is a question of criminal offenses of greater abstract gravity. It follows from many provisions of criminal substantive and procedural law that the boundary that separates serious criminal offenses of minor and medium abstract severity is established by the provision of a prison sentence of more than

[368]The UN Standard Minimum Rules for Juvenile Justice adopted by UN General Assembly resolution 40/33 of November 29 in 1985.

[369] See: Simović, M. (2006). Krivično procesno pravo II (Criminal Procedure Law–special part). Banja Luka, Bosnia and Herzegovina, pp. 254-255.

[370] The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953.

five years. Accordingly, the primacy of educational measures as criminal sanctions against minors is relativized by the possibility of punishing minor perpetrators of more serious crimes.

The nature of the committed criminal act is also relevant for imposing the sentence of juvenile prison. Depending on the object that is protected by a specific incrimination, the nature of the committed criminal acts aimed at harming or endangering the protected social good is also different. In principle, educational measures are certainly insufficient if the criminal offense is aimed at goods of the highest social value (life, physical integrity, person's dignity and morals, state order, etc.). Therefore, juvenile prison is available as a harsher, highly retributive measure of social reaction.

The legislator envisages a "high degree of guilt" as a condItion for imposing the sentence of juvenile prison. This condition of a subjective nature must be cumulatively fulfilled with conditions of an objective nature (severity and nature of the criminal act). According to the new conception of criminal responsibility, established by the Serbian Criminal Code (applicable since 1 January 2006), guilt is the basis and condition of criminal responsibility, and it cannot exist without sanity, which is a necessary presumption of guilt. Therefore, it is redundant to enter sanity as a component of criminal responsibility.[371]

Since the Juvenile Offenders Act does not provide special rules for determining the guilt of juvenile offenders, it is clear that the general rules provided in the Criminal Code apply. A juvenile offender must, first of all, be able to understand the significance of his actions and to manage them. It is interesting to note that the legislator does not envisage mental maturity as a condition for imposing the sentence of juvenile prison. It is a question of the psychological quality of minors, which roughly corresponds in content to the sanity of adult offenders.

In order to be sentenced to juvenile detention, a juvenile perpetrator must demonstrate a certain psychological attitude towards the criminal act which can be characterized as "a high degree of guilt". Grading of guilt is the task of the court, which assesses the mental attitude of the juvenile offender towards the committed criminal act. Demonstrated brutality, insensitivity, self-interest, lack of remorse, and organized forms of action during the commission of criminal acts are some circumstances that indicate a high degree of guilt.

The presumption of guilt, and thus of a high degree of guilt, is that the juvenile perpetrator of the crime has a functioning mental apparatus. Thus, the question arises whether a significantly reduced mental capacity can be the basis of a high degree of guilt, as a condition for punishing minors. The position of judicial practice is that significantly reduced sanity can result from imposing the sentence of juvenile prison.[372] In theory, there is also the position that even reduced sanity does not indicate a high degree of guilt, and, therefore, it cannot be a basis for imposing a juvenile prison sentence.[373]

Guilt is manifested through intent or negligence. While acting with intention can be unambiguously characterized as an expression of a high degree of guilt, it is debatable whether the negligent commission of a criminal offense can constitute the basis for punishing a minor. Undoubtedly, negligence is a lesser form of guilt. However, the consequences of actions may also be severe, and they can manifest recklessness and the absence of minimum attention necessary for socially acceptable behavior. Therefore, in principle, even negligent behavior could be the ground for imposing the sentence of juvenile prison. However, there is a small number of criminal acts of negligence for which

[371]Stojanović Z.(2005). Krivično pravo-opšti deo (Criminal Law- general part), Beograd, pp. 174.
[372] Odluka Vrhovnog suda Srbije (Decision of the Supreme Court of Serbia), Kžm br. 72/95.
[373]Perić O. (2005). Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica (Commentary on the Juvenile Offenders' Act). Beograd, pp. 87.

the law prescribes a special maximum of over five years of imprisonment. For this reason, the possibility of punishing minors for criminal acts committed out of negligence has been reduced. The legal framework on sentencing juvenile prison allows the juvenile to be punished even if the crime has only been attepted because only the nature and severity of the criminal offense stand out from the conditions of an objective nature. On the other hand, a high degree of culpability can be manifested even in case of an unfinished criminal act because the consequence may be absent due to conditions beyond the will of the minor.

Pursuant to the Juvenile Courts Act of the Federal Republic of Germany (*Jugendgerichtsgesetz*, JGG), juvenile offenders may be sentenced to "juvenile punishment" (§17). The first condition for punishing a juvenile offender is expressed "harmful tendencies", manifested by the commission of criminal acts. Punishment is a subsidiary measure of responding to the criminal behavior of minors because it is applied if "harmful tendencies" of minors could not be suppressed with educational measures. Another requirement for sentencing juveniles is the "high degree of culpability" of the juvenile. When assessing the degree of guilt, it is necessary to look at the objective and subjective elements related to the delinquent behavior of minors.[374]

The Austrian Juvenile Court Act (JGG) also envisages criminal sanctions for juvenile offenders. Juvenile offenders (aged 14-18) may be sentenced to imprisonment if they are capable of understanding the significance of their actions and managing them (§ 10). French law provides for a general regime of punishment for juvenile perpetrators of criminal offenses, which is identical to the punishment of adult perpetrators, whereby the offenders' minority is treated as a mitigating circumstance. However, a juvenile offender who has reached the age of sixteen cannot be treated more leniently. Otherwise, in French law, the retributive nature of sentences imposed on minors is mitigated by a special regime for the execution of sentences imposed on minors. The Croatian Juvenile Courts Act envisages the possibility of sentencing an older minor to juvenile prison for criminal offenses punishable by a prison sentence of five or more years if, given the nature and severity of the offense, he showed a high degree of culpability (Art. 23). The Macedonian legislator envisages the same provision (Art. 86 of the Criminal Code of North Macedonia). According to the Criminal Code of Bosnia and Herzegovina, an older minor can be sentenced to juvenile prison if he/she has committed a criminal offense punishable by a prescribed prison sentence of more than five years, and if it would not be justified to impose an educational measure (Art. 95), (Škulić, 1999).[375]

3.2. Imposing the sentence of juvenile prison

The Serbian Juvenile Offenders' Act also provides for the duration of this criminal sanction for minors. The general minimum sentence of juvenile imprisonment is six months (Art. 29 of the JO Act). This corresponds to the position of the legislator that a minimum of six months is needed for re-education and accomplishment of other goals of criminal sanctions against minors; this position is also materialized in the provisions on the duration and suspension of educational measures.

As a rule, the general maximum sentence of juvenile imprisonment is five years. However, if the committed criminal offense is punishable by a term of 20 years' imprisonment or a heavier sentence, juvenile imprisonment may last up to ten years. A juvenile prison sentence of up to ten years may be imposed if the juvenile has committed at least two criminal offenses in a row, which are punishable by a prison sentence of more than ten years. By interpreting the legal provision on the duration of a juvenile prison sentence (Art. 29 of the JO Act), it can be concluded that juvenile prison can last up to ten years

[374] Jugendgerichtsgesetz in der Fassung der Bekanntmachung vom 11. dezember 1974 (BGBI. I S. 3427), das zuletzt durch Artikel 21 des Gesetzes vom 25. juni 2021 (BGBI. I S. 2099) geandet worden ist.
[375] Škulić, M. (1999) Osnovni tipovi krivičnog postupka prema maloletnicima u uporednom pravu. Pravni život: Beograd 9/1999.

even in case the juvenile has committed more than two criminal offenses at the same time. Regardless of the number of individual criminal acts, the condition for the maximum duration of this sentence is that a prison sentence of more than ten years can be imposed for at least two acts committed concurrently.

Juvenile prison sentences are imposed in full months and years. Persons who have been sentenced to juvenile prison can remain in a penitentiary institution specializing in the execution of criminal sanctions for minors until they reach the age of 23 (Art. 139 of the JO Act). Exceptionally, due to completion of education or professional training, this sentence may be served in institutions for minors until the convict reaches the age of 25.

According to the German Juvenile Courts Act (*JGG*), a juvenile offender can be sentenced to a sentence ranging from six months to five years. Exceptionally, if the committed criminal offence is punishable by a prison sentence of more than ten years, a minor can be punished with a term of imprisonment of up to ten years (§ 18). A minor may be imposed an indeterminate sentence if the time needed for the juvenile's educational treatment cannot be predicted at the time of sentencing, provided that a sentence longer than four years cannot be imposed in the specific case (§ 19).

In Austrian law, the sentence for minors up to the age of 16 can last up to ten years, or up to fifteen years for minors over the age of 16. The maximum amounts of imprisonment are provided for minors who commit crimes punishable by life imprisonment. In other cases, the maximum prison sentence is reduced by half (§ 11 of the Austrian *JGG*).

In Croatian law, the maximum duration of juvenile imprisonment is five years, and exceptionally ten years, while the minimum duration is six months (Article 24, para. 1 of the Juvenile Courts Act). The Macedonian law envisages the possibility of imposing the 198arvo198ce of juvenile prison ranging from one to ten years (Art. 87 of the Criminal Code). In Bosnia and Herzegovina, juvenile imprisonment can last from one to ten years. When imposing this criminal sanction, the court is bound by a special maximum but not by a special minimum of the punishment prescribed for a specific criminal offense (Art. 96 of the Criminal Code of B&H).

3.2.1.1. Determining the sentence of juvenile prison

When determining the sentence of juvenile imprisonment, the court is obliged to consider the purpose of this sentence, the legal provisions on the duration of juvenile imprisonment, the general rules for determining the sentence provided for in the Serbian Criminal Code, and in particular the degree of maturity of the minor and the time required for his re-education and professional training (Art. 30 of the JO Act).

The provisions of the Serbian Criminal Code prescribe general sentencing rules (Article 54 CC). The aggravating and mitigating circumstances influence the sentence (including juvenile imprisonment) to be higher or lower within the framework of the general minimum and maximum. The circumstances which are relevant in determining the punishment are: the degree of guilt, the motive(s) for committing the crime, the severity of the injury or threat to the protected goods, the circumstances under which the crime was committed, the previous life of the perpetrator and his personal circumstances, the behavior of the perpetrator after the crime was committed, and especially his attitude towards the victim of the crime, and other circumstances related to the offender's personality (which is particularly important for sentencing a minor criminal offender).

Although the provision of Article 30 of the Serbian Juvenile Offenders' Act does not provide for the corresponding application of the provisions of Article 55 of the Serbian Criminal Code, it may be

considered that the court should take the recidivism of an older minor as an aggravating circumstance when determining the sentence of juvenile prison. Re-offending is an expression of a clearly rooted criminal will of a minor, and it should be treated as such when determining the sentence of juvenile prison.

When determining the sentence of juvenile prison, the court must particularly take into account the maturity of the juvenile in all aspects of this psychological category (intellectual, social, emotional, physical, etc.). This is, after all, a consequence of the specific nature of the criminal responsibility of juvenile perpetrators of criminal acts. The amount of the juvenile prison sentence is conditioned by the purpose of this criminal sanction, as well as the court's assessment of the length of the necessary penitentiary treatment of the juvenile, aimed at his re-education and professional training.

When determining a juvenile prison sentence on an older juvenile, the court is bound by the general maximum and minimum of this sentence. Yet, the court is obliged to respect only the individual maximum but not the individual minimum sentence for a specific criminal offense. This practically means that, in case the maximum prison sentence provided for a specific criminal offense is less than ten years (e.g. three years of imprisonment for theft, Art. 203 of the CC), the court can impose a juvenile prison sentence for the maximum period provided for a specific criminal offense (i.e. three years in the aforementioned case). On the other hand, the court can impose a sentence of juvenile imprisonment for a period shorter than the individual minimum, but not the general minimum sentence. Hypothetically, if the Criminal Code provides for criminal offenses with a special minimum sentence of less than six months, the court could impose a minimum sentence of six months in juvenile prison.

The statute of limitations for the execution of this criminal sanction for older minors also depends on the length of the juvenile prison sentence. Under the Juvenile Offenders' Act, a juvenile prison sentence cannot be carried out if the following time limits have expired: a) ten years from the conviction to juvenile prison for a term of more than five years; b) five years from the conviction to juvenile prison for a term of more than three years; c) three years from the conviction to juvenile prison for a term of up to three years (Art. 33 of the JO Act). This legal provision regulates the relative statute of limitations for the execution of a juvenile prison sentence, while the provisions on the absolute statute of limitations, interruption and impossibility of applying the statute of limitations in certain situations (to certain crimes against humanity and other goods protected by international law, Art. 370-375 of the CC) are applied in accordance with the provisions of the Serbian Criminal Code (Articles 107 and 108 CC).

3.2.2. Determining the sentence of juvenile prison for concurrent criminal acts

Educationally neglected and negatively socialized minors often commit criminal acts. Therefore, the imposition of a juvenile prison sentence appears as a legally prescribed form of social reaction towards juvenile offenders. The provisions of the Serbian Juvenile Offenders' Act envisage special rules for imposing the sentence of juvenile prison to older minors for criminal offenses in progress, and for determining penalties for criminal offenses in progress, some of which were committed at the time when the offenders were older minors and others when they were of legal age.

If an older minor has committed several concurrent criminal acts, and the court establishes that each individual act should be punished by a juvenile prison sentence for, the court will impose a single sentence within the limits of the general minimum and maximum of the prescribed criminal sanction. As there is no legal possibility to determine punishments for each criminal act individually, such an action by the court would constitute a significant violation of criminal procedure provisions. In case at least two criminal offenses are punishable by a prison sentence of more than ten years, the gravity of

individual criminal acts committed concurrently may be expressed by applying the rule on imposing juvenile prison sentences to older minors.

Due to the impossibility of cumulation of educational measures and juvenile prison sentences, as qualitatively different criminal sanctions against minors, the court will only impose a juvenile prison sentence for the commission of concurrent criminal acts for which these different criminal sanctions can be imposed individually (Art. 31, para. 2 of the JO Act). Thus, the juvenile prison sentence absorbs the educational measures.

If the criminal acts in question were committed during the perpetrator's age of minority and age of majority, a special rule envisaged in Article 31, para 3 of the JO Act will be applied for the assessment of punishments. This provision gives primacy to (custodial) prison sentences over juvenile prison. Imprisonment is determined according to the general rules for sentencing criminal offenses in connection with the Criminal Code provisions. This means that the punishment for each criminal offense will be determined individually, and then a single punishment will be imposed, which must not reach the total sum of the individually determined punishments, nor exceed twenty years (Art. 60, para. 4 in connection with Art. 60, para. 2, point 2 of the Criminal Code).

If the court considers that an educational measure should be imposed for some of the criminal offenses in question, while a prison sentence should be imposed for others (in case of criminal offenses committed after reaching the age of majority), the court will impose a prison sentence (Art. 31, para. 4 of the JO Act). Neither a prison sentence nor a juvenile prison sentence can be combined with an educational measure.

The200arvo200ceing rules for criminal offenses are applied analogously in case the court determines that the convicted person committed a criminal offense before or after the sentencing (Art. 31, para.5 JO Act). The general rules for sentencing a convicted person are applied to sentencing a minor for an act committed during penal treatment (Art. 62, para.2 of the Criminal Code). In this situation, the general rules for determining the punishment for the crimes in question are primarily applied. However, if the purpose of punishment would not be achieved in this way, particularly considering the gravity of the crime and the unserved part of the previously imposed sentence, the court will impose a sentence regardless of the previously imposed sentence. A juvenile offender who, while serving a juvenile prison sentence, commits a new criminal offense which is punishable by a fine or a prison sentence of up to one year may be punished exclusively by disciplinary measures (Art. 62, para. 3 of the Criminal Code).

3.3. Effect of and records on the imposed sentence of juvenile prison

The imposition of a juvenile prison sentence and the imposition of educational measures do not entail the legal consequences of conviction, which may imply the prohibition of the acquisition of certain rights (Art. 36. Para. 1 JO Act). Thus, by being imposed a juvenile prison sentence, a minor cannot be prohibited from acquiring certain rights based on the legal consequences of the conviction, provided for adult criminal offenders (Art. 95, para. 2 of the Criminal Code). The application of the legal consequences of a conviction related to the termination and loss of certain rights (Art. 95, para.1 of the Criminal Code), by the nature of the matter, does not apply to minors who have been sentenced to juvenile prison.

In the course of serving a juvenile prison sentence, a minor cannot exercise elective functions in state bodies, bodies of territorial autonomy, local self-government bodies, management bodies, management bodies or other bodies in companies or other organizations that operate with state property,

i.e. organizations which are entrusted by law with the exercise of certain public powers (Art. 36. Para. 2 of the JO Act). Juvenile imprisonment, as a form of deprivation of liberty, restricts the rights arising from the right to personal freedom, including electoral rights. However, by executing the penitentiary treatment, a minor can acquire these rights due to the absence of restrictions based on the legal consequences of the conviction.

Records on juvenile prison sentences are kept by the first-instance court where the case was tried. The manner of keeping records is regulated by a special by-law issued by the Minister of Justice (Art. 37 of the JO Act). Information on juvenile prison sentences can only be given to the court, the public prosecutor's office, the internal affairs authorities in connection with a new criminal proceeding against a person who was previously convicted, the authorities for the execution of criminal sanctions, the authority participating in the procedure for granting amnesty, pardon, rehabilitation, or deciding on the termination of the legal consequences of the conviction, and the guardianship authorities in exceptional cases (Art. 34 of the JO Act in connection with Art. 102, para. 2 of the Criminal Code).

At the beginning of serving the juvenile prison sentence, the effect of the educational measures imposed on the older juvenile ceases. In this situation, juvenile prison actually represents a form of termination of the imposed educational measure.

An older minor who has been sentenced to juvenile prison is considered convicted. Under the conditions stipulated by law, a minor can be rehabilitated. With this criminal-policy measure, as with the conviction of adult perpetrators of criminal acts, the conviction is erased, the legal consequences of the conviction cease, and a fiction is created about the minor's innocence. Rehabilitation can occur on the basis of the law and a court decision. The Juvenile Offenders' Act (Art. 38) provides for the corresponding application of rehabilitation provisions envisaged in Arts. 97-100 of the Criminal Code.

The legal rehabilitation of a minor who has been sentenced to juvenile prison for a term of six months to one year occurs after a period of three years has passed since the execution, expiry of the statute of limitations or remission of the sentence, provided that the minor does not commit a new criminal offense during that period (Art. 98, para. 2, point 4 of the CC). If a juvenile is sentenced to imprisonment for a period of one to three years, legal rehabilitation occurs within ten years after the execution, the expiry of the statute of limitations or remission of the sentence, provided that he does not commit a new criminal offense during that period (Art. 98, para. 2. Point 5 of the CC).

Judicial rehabilitation of a punished minor is possible on the condition that a prison sentence of three to five years has been imposed, based on a court decision made within ten years after the execution, expiry of the statute of limitations or remission of the sentence, provided that the minor does not commit a delinquent act during that period (Art. 99. Para.1 of the CC). Within the decision for rehabilitation, the court should consider the minor's conduct after being sentenced to juvenile prison, the possible compensation for the damage caused, the nature and significance of the offense (Art. 99, para. 2 of the CC). Given the nature of the criminal responsibility of minors, the circumstances related to the minor's personality should also be taken into consideration.

4. Conclusion

The most important international legal documents on the protection of human rights aim to ensure preferential treatment of juvenile offenders. First of all, it is necessary to bring alternative non-punitive reactions to the fore. Certainly, minor perpetrators of criminal acts can only exceptionally be sanctioned with a juvenile prison sentence.

As juvenile offenders are members of a very sensitive population, in the sentencing process, it is

necessary to pay attention to their mental, physical and social maturity, as well as the nature of the crime committed. A juvenile prison sentence is imposed only in cases where there is no other solution, and its purpose and duration must be determined in order to ensure successful resocialization and professional education of minors.

The provisions of the Serbian Juvenile Offenders' Act to the greatest extent respect the international law standards related to juvenile delinquency. Regarding the sentence of juvenile imprisonment, the legal framework is in accordance with the most relevant international legislation in this area.

REFERENCES LIST

1. Convile, M., Wilson, G. (2002) The Handbook of the Criminal Justice Process. Oxford: Oxford University Press
2. Dunkel, F. (2006) Juvenile Justice Systems in Europe-Current Situation, Reform Developments and Good Practices, Greifswald
3. Freeman, M.D.A. (1983) The Rights and Wrongs of Children. London: Francis Pinter
4. Hirjan, F., Singer, M. (1987) Maloljetnici u krivičnom pravu. Zagreb. Globus
5. Knežević, S. (2010) Maloletničko krivično 202arvo-materijalno, procesno I izvršno. Niš: Centar za publikacije Pravnog fakulteta u Nišu
6. Perić, O. (2005) Komentar Zakona o maloletnim učiniocima krivičnih dela I krivičnopravnoj zaštiti maloletnih lica. Beograd: Službeni glasnik
7. Roberts A. (1989) The Emergence and Proliferation of Juvenile Diversion Programs. Juvenile Justice. Chicago: Dorsey Press
8. Simović, M. (2006) Krivično procesno 202arvo II (Krivično procesno 202arvo-posebni dio). Banja Luka
9. Smartt, U. (2006) Criminal Justice. London: The Sage Course Publications
10. Stojanović, Z. (2005) Krivično pravo-opšti deo. Beograd: Pravni fakultet
11. Škulić, M. (1999) Osnovni tipovi krivičnog postupka prema maloletnicima u uporednom pravu. Beograd: Pravni život, 9/1999
12. Winterdyk J. A. (2002) Comparative Juvenile Justice-Juvenile Justice System-International Perspective. Toronto: Canadian Scholars Press, second edition