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ANNULMENT OF THE EFFECTS OF CRIMINAL SANCTIONS IMPOSED ON JUVENILES[1]

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Abstract:
The role of the juvenile court does not end with imposing an educational measure, which is the specificity of the court's position in criminal proceedings against juveniles. Formally speaking, although the legal provisions on supervision over the implementation of educational measures fall within the scope of the implementation of criminal sanctions, they are regulated in the procedural part of the Juvenile Justice Act. When supervising the implementation of educational measures, the juvenile court may annul the effects of this criminal sanction during the enforcement procedure. For the suspension of the implementation of an educational measure or the modification of this decision, there is no need to declare claim for legal remedies. The supervisory role of the juvenile court allows for the annulment of the effects of educational measures regardless of the procedure for initiating a review of the factual and legal basis of decisions (made in proceedings against juveniles) in proceedings on legal remedies. However, this does not mean that decisions on criminal sanctions made in proceedings against juveniles cannot be challenged by legal remedies. On the contrary, the effect of criminal sanctions imposed in proceedings against juveniles (especially juvenile prison sentences) may be annulled in proceedings initiated by claiming legal remedies.

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1. Suspension of the enforcement of educational measures and modification of the decision on educational measures

A final and enforceable judgment, rendered in regular criminal proceedings, may be set aside exclusively in proceedings initiated by an extraordinary legal remedy. Hus, by the amendments and supplements to the CPC of September 2009, the legislator abolished the extraordinary legal remedy (the request for extraordinary mitigation of punishment) and added the former basis for extraordinary mitigation of punishment as a new ground of this non-devolutive repetition of criminal proceedings. The decision on the sentence may also be modified based on the invalidation of the factual or legal basis of the final judgment rendered in the proceedings on other extraordinary legal remedies. However, in proceedings against minors, the annulment of the effects or modification of the educational measure by the court that imposed the educational measure is also possible. This is a direct consequence of the court's obligation, stipulated by law, to supervise the implementation of the educational measure imposed.

Educational measures may be amended, and their enforcement may also be suspended if, after the educational measure is awarded by the first instance court, the circumstances arise that did not exist or were unknown at the time of the decision to impose the educational measure, but which would be important for selecting the educational measure, or if the imposed measures cannot be enforced. Under the Act on Juvenile Offenders and Criminal-law Protection of Minors (hereinafter: the Juvenile Justice Act, 2005),

[1] the first instance court that imposed the educational measure may modify the decision on the imposed educational measure, acting either on its own initiative or upon the proposal of the public prosecutor for minors, the minor and his parents, adoptive parent, guardian, director of the institution, or guardianship authority (Art. 85 §1 of the Juvenile Justice Act). Otherwise, the court has a legal obligation to periodically review the need for a possible suspension or modification of the imposed educational measure.

In order to be able to make a valid decision on the fate of the imposed educational measure, the juvenile court panel is obliged to hear the public prosecutor for juveniles, the juvenile and his/her parents, adoptive parent, guardian, as well as to collect the necessary reports from the director of the institution or facility where the educational measure is being implemented. If the juvenile court panel fails to act in this way, it constitutes a significant violation of the provisions of criminal procedure.

The procedures for suspending the implementation of educational measures and for releasing a juvenile on parole are identical. This also applies to the procedure for re-decision on imposing educational measures. Decisions on the amendment or suspension of educational measures, or decisions on parole, are made by the juvenile court panel that tried the juvenile in the first instance. The decision is made in the form of a ruling, and an appeal may be filed against it (Art. 85 § 4 of the Juvenile Justice Act). This panel also decides even if the educational measure is imposed on a minor, which should be explicitly specified by supplementing this legal provision. The legal provisions on the modification or suspension of educational measures, or on the conditional release of minors, do not specify whether decisions on these measures are made in a session of the juvenile court panel or at the main hearing. The very initiative to modify or suspend an educational measure indicates that the factual situation has changed, and that the survival prospects of the imposed educational measure have decreased. In case the court concludes that the survival of the imposed educational measure depends on a more detailed determination of the decisive facts, the court may order the main hearing. However, Art. 85 § 5 of the Juvenile Justice Act stipulates the subjects who have to be summoned to the judicial panel session (without mentioning the main hearing); by enacting such a provision, it seems that the legislator implicitly determines the institutional form for making these decisions.

Although it is not explicitly provided in the Juvenile Justice Act (hereinafter: JJ Act), the decision to modify or suspend educational measures may be challenged by filing an appeal. The possibility of filing an appeal is envisaged in the general provisions of the Criminal Procedure Code

[1] Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica (Act on Juvenile Offenders and Criminal Protection of Minors; hereinafter: Juvenile Justice Act), *Sluzbeni glasnik RS*, br.85/2005; https://www.refworld.org/legal/legislation/natlegbod/2005/en/85767

(hereinafter: CPC). Thus, people who have the right to appeal in criminal proceedings also have procedural legitimacy (legal standing) to file an appeal against a decision of the juvenile court on the modification or suspension of an educational measure.[2]

The provisions of the Juvenile Justice Act also envisage certain restrictions relating to the adoption of decisions on the suspension and replacement of imposed educational measures, and the juvenile court must observe these restrictions. The execution of the educational measure of referral to an educational institution cannot be suspended before the expiry of a period of six months. However, within the six-month period, this educational measure may be replaced by a measure of increased supervision or daily stay in an appropriate institution for the education and upbringing of minors, as well as by a measure of referral to an educational and correctional home for minors or to a special institution for juvenile treatment and rehabilitation (Art. 24 § 2, Item 1 of the JJ Act).

Suspension of the execution of the measure of referral to a correctional institution is not possible before the expiry of a six-month period; within this period, suspension may be replaced by a measure of referral of the minor to an educational institution, or to a special institution for juvenile treatment and rehabilitation. Suspension or replacement of the imposed educational measures are also envisaged in comparative law solutions. In French law, suspension of educational measures is possible at the initiative of the minor, parents, guardian, after the expiry of one year from the execution of the educational measure, outside the minor's family. The officer supervising the execution of the educational measure, the public prosecutor's office and the court *ex officio* request the replacement of the imposed measure with another educational measure at any time (Art. 27 of the Juvenile Delinquents Act). [3] This possibility is also provided for in Swiss Criminal Code (Art. 93 of the CC), the Croatian Youth Courts Act (Art. 18 of the YC Act), and the Macedonian Juvenile Justice Act (Art. 49 of the JJ Act). [4]

2. Legal remedies in proceedings against minors

The issuance of a judgment or decision by the juvenile court panel does not necessarily mean that the decision on the merits of the proposal to impose criminal sanctions against a juvenile is final. The interests of legality, correct court proceedings, and fairness require the existence of the right to initiate a proceeding for reviewing the factual and legal basis of the juvenile court decision. Under the conditions provided by law, a juvenile may challenge the criminal sanction imposed in the first instance proceeding (Art. 80 § 1 of the JJ Act). On the other hand, the public prosecutor for juveniles may initiate a procedure for reviewing the decision to discontinue criminal proceedings against juveniles (Art. 70 § 1 of the JJ Act). The instruments used to initiate a review of the factual and legal basis of the decisions of the juvenile court are legal remedies. Decisions of the juvenile court may be challenged by appeal and extraordinary legal remedies.

2.1. Appeal against decisions or judgments rendered in proceedings against minors

2.1.1. Filing a complaint

In criminal proceedings against juveniles, an appeal is a regular legal remedy aimed at challenging decisions of the juvenile court. An appeal may be filed on all grounds provided for challenging court decisions in regular criminal proceedings. According to Serbian positive law, in criminal proceedings against juveniles, an appeal may be filed: a) against a judgment of the juvenile panel of the first instance court, by which a juvenile was sentenced to juvenile imprisonment; b) against a decision by which a juvenile is sentenced to an educational measure; c) against a decision by which the proceedings against a juvenile are suspended (Art. 80 of the JJ Act). From the standpoint of judicial practice (case law), an appeal may be filed both against decisions to suspend enforcement and against decisions to modify the educational measure imposed. This procedure is also prescribed in the Criminal

[2] Decision of the Supreme Court of Serbia - Kžm, 9/70, Collection of Court Decisions in the field of Criminal Law, 1973-86, No. 955, Belgrade, 1987, pp. 257.
[3] Wyvekens, A, (2017) The French Juvenile Justice System, Paris, pp. 183.
[4] Zakon o sudovima za mladež, Narodne novine Zagreb, br. 126/19; Закон за правада за децата, Скопје, Службени весник, бр. 66/24, https: www.fedlex.admin.ch;

Procedure Code, under which an appeal against a judgment or decision issued in the first instance is permitted, except in cases where it is expressly prohibited (Art 465 & 1 of the CPC).

An appeal may be filed by all people who are procedurally authorized to file an appeal in regular criminal proceedings (Art. 433 of the CPC), including parties to the criminal proceedings, defense counsel, legal representative of minors, injured parties, and people whose property has been confiscated or whose property benefit has been confiscated (Article 364 of the CPC). Although the guardianship authority plays a significant role in criminal proceedings against minors, it cannot file appeals against decisions of the juvenile panel, as it does not have the status of a party. In proceedings against minors, an appeal may be filed on behalf of a minor by the minor's defense attorney; spouse or a person with whom the minor lives in an extramarital or other permanent union; the minor's blood relatives in the direct line: siblings (brother, sister); adoptive parents, foster parents, and the guardian. (Art. 433 § 2 CPC). These people may file an appeal even against the will of the minor/ without explicit authorization by the defendant, but not against his/her will (Art. 433 § 6 CPC). However, these persons may not withdraw the appeal or waive the right to appeal against the will of the minor (Art. 434 § 3 CPC).

The public prosecutor may file an appeal, both in favor of and to the detriment of the minor (Art. 433 § 3 CPC provided that he/she has the right to appeal even when criminal proceedings against the minor are initiated by a decision of the juvenile court. When proceedings are conducted against a younger adult, the authorized subjects of the appeal are the persons specified in Article 364 of the CPC. Given that the injured party cannot have the status of an authorized prosecutor in criminal proceedings against minors, the injured party cannot appeal against the decisions of the juvenile court on all grounds. In line with the provisions of Art. 364 of the CPC, the injured party may only appeal the decision on the costs of criminal proceedings against minors, in case the juvenile court sentences the minor to juvenile prison (Art. 433 § 4 CPC). The injured party and the persons whose property or proceeds from a criminal offense have been seized are entitled to appeal the decisions of the juvenile court (Art. 433 § 5 CPC) but in a limited capacity, only in terms of their material interests.

The judicial practice has yielded certain positions on the interpretation of the possibility of filing an appeal to the detriment of a minor. According to the case law, a parent of a minor does not have the right to file an appeal to request the imposition of an educational measure of an institutional nature on a minor against whom criminal proceedings have been discontinued in the first instance proceeding. Likewise, a minor cannot file an appeal to request referral to a correctional institution instead of a measure of enhanced supervision imposed by the juvenile court in the first instance.[5]

The time limit for filing an appeal in criminal proceedings against minors is eight days from the date of receipt of the court decision (Art. 509 § 1 of the CPC). It is shorter than the deadline in regular criminal proceedings, where authorized persons may file an appeal against a first-instance judgment within 15 days from receiving the judgment (Art. 432 § 1 of the CPC); it is understandable considering the obligation to act urgently in this procedure. The time limit for filing an appeal against a court decision is even shorter (3 days) from the date the decision is issued (Artile 466 § 21 of the CPC). Decisions of the juvenile panel, as a rule, resolve the criminal cases on the merits, unlike the majority of decisions made in regular criminal proceedings, which mainly resolve procedural issues. Therefore, it is justified that the time limits for filing these appeals differ. Otherwise, the deadline for filing an appeal against decisions of the juvenile panel runs from the date of delivery of the decision to the minor, i.e. the defense attorney.

2.1.2. General features of an appeal against decisions of the juvenile court

An appeal against the decision and judgment of the juvenile court panel is a complete legal remedy. This means that, in criminal proceedings against juveniles, an appeal can be filed on all grounds envisaged for challenging a judgment in regular proceedings. Accordingly, the grounds for filing an appeal against decisions of the juvenile court are: a) substantive violations of the criminal procedure provisions; b) violations of criminal law provisions; c) an incorrect or incomplete finding of facts; d) decisions on criminal sanctions and other decisions (Art. 437 of the CPC), including decisions on security measures, confiscation of property and proceeds of crime, costs of criminal proceedings, and

[5] Decisions of the Supreme Court of Serbia, Kžm. 612/63 i Kžm. 21/67, cited after: Lazin, Đ (1995) *Posebni krivični postupci*, Belgrade, pp. 111.

awarded restitution or property claims (Art. 441 of the CPC),. In criminal proceedings against juveniles, the decision on publishing the judgment or decision in public information media may not be used as a basis for an appeal because the general public is excluded in proceedings involving juveniles. The basis for the appeal should also be an erroneous decision to suspend criminal proceedings against minors, made on the basis of an assessment of the expediency of further proceedings. As a rule, an appeal suspends the execution of the decision of the juvenile court to impose criminal sanctions. Therefore, in proceedings against minors, this regular legal remedy is suspensive. In principle, an appeal against a judgment imposing a sentence of juvenile detention has a suspensive effect. Likewise, an appeal against a decision imposing an educational measure of an institutional nature postpones the execution of this decision. However, after hearing the minor and with the consent of his parents, the court may decide to refer the minor to the execution of criminal sanctions even before the decision becomes final (Art. 80 § 2 of the JJ Act). This possibility is a concretization of the obligation to act urgently in criminal proceedings against minors.

The legal provisions do not prescribe the procedure and form of the decision on the derogation of the suspensive effect of the appeal on the decisions of the juvenile court. According to the logic of things, in this situation, the juvenile court which imposed a correctional institution measure or a sentence of juvenile detention on a juvenile should issue a decision which would *de facto* have the character of a clause on the legal force and enforceability of the aforesaid decisions. The waiver of the suspensive effect of the decisions of the juvenile court should be unambiguously manifested in the procedure by ensuring that parents' consent is recorded in the minutes. An appeal filed against the juvenile court decision on the imposed correctional and other measures (warning and caution, increased supervision), as a rule, suspends the execution of these measures.

The decision on appeal filed against a decision of the juvenile court is rendered by the second-instance juvenile court (Art. 446 of the CPC). Therefore, this regular legal remedy also falls under the category of devolutive legal remedies.

2.1.3. Disposing of appeals against juvenile court decisions

Legal remedies, as instruments for challenging court decisions, enable the initiation of a proceeding for reviewing the factual and legal basis of court decisions. The right to an effective legal remedy falls into the group of fundamental human rights, contained in the catalogues of universal, regional and internal human rights. It includes the possibility of claiming ordinary and extraordinary legal remedies but also the right to dispose of these remedies at all stages of deciding on the fate of the contested decisions.

Generally, disposing of an appeal implies the possibility of waiving the right to appeal (after the first-instance court judgment has been delivered), and the possibility of abandoning (withdrawing from) an already filed appeal (before the second-instance court render its decision) (Art. 434 of the CPC). Legal provisions do not explicitly provide for the possibility for a minor to waive the appeal, nor to withdraw from a filed appeal. This possibility of disposing of an appeal exists in regular and summary criminal proceedings.

The judicial practice which referred to the provisions of former regulations took positions on the possibility of a minor to waive the right to appeal or to abandon the declared legal remedy. It follows from certain court decisions that a minor is not entitled to waive the right to appeal or abandon the declared appeal. It was considered that the protection of the interests of the minor, as one of the goals of the criminal proceedings initiated against him, requires the adoption of such a decision, which had its foundations in the previously valid legislation.[6] After the enactment of the *lex specialis* in the field of juvenile delinquency, the view emerged that the general rules on waiver and withdrawal of appeal, as provided for in Article 365 of the Criminal Procedure Code of, should be applied accordingly. If the legislator had thought otherwise, he would have provided for a deviation from the general provisions on waiver and withdrawal of appeal in the provisions of the Juvenile Justice Act.[7] By accepting this position, the right of minors to appeal may be exercised in full. At the same time, the procedural position

[6] Jekić Z, (1994) Krivično procesno pravo, Belgrade, pp. 438.

[7] Perić, O. (2005), Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, Belgrade, pp. 199.

of minors is equalized with the status of the accused in regular criminal proceedings. Yet, the key question is whether a minor, as a person with an insufficiently developed intellectual capacity, may freely dispose of the right to waive the procedure for reviewing the juvenile court decisions. The disposal of minors' right to appeal could be legally regulated, by using an analogy with the provision on the possibility of derogating from the suspensive effect of juvenile court decisions. This practically means that the parents or the guardian's consent may be required for waiving or withdrawing the appeal by a minor.

2.1.4. Appeal procedure

The procedure for appealing decisions of the first-instance juvenile court may take place in a session of the panel or at the main hearing (Art. 445§ 3 of the CPC). Under the Juvenile Justice Act, a minor is summoned to appear in the second-instance bench session only if the president of the panel assesses that his/her appearance would be useful (Art. 80 § 3 of the JJ Act). There is no legal obligation to summon the minor's parents or guardianship authority. However, given that defense in criminal proceedings against minors is mandatory, the presence of a defense attorney is mandatory at the panel session (Art. 85 § 5 of the JJ Act). As the Juvenile Justice Act does not explicitly prescribe the procedure in a panel session for minors, the CPC provisions at the beginning of the session and its course, the procedural position of the parties to the criminal proceedings, recording the actions carried out in the minutes (etc.) should be applied accordingly.

In regular criminal proceedings, the main hearing before a second-instance court in the appeal procedure is held when it is necessary to present new evidence or repeat previously presented evidence due to an incorrectly or incompletely established factual situation, and if there are justified reasons for not returning the case to the first-instance court for a decision Art. 449 § 1 CPC). Yet, the purpose of holding the main hearing in the appeal procedure is not the same as in criminal proceedings against minors. In juvenile proceedings, the main hearing is held if, based on the appeal of the public prosecutor for minors, it is possible to impose a more severe sentence of juvenile prison or a correctional institution measure, provided that these criminal sanctions had not been imposed in the first-instance procedure (Art. 81 of the JJ Act).

In the appeal procedure, the first-instance judgment or decision is examined within the limits of the legal grounds and reasons stated in the appeal, with the expansion of the scope of the rebuttal of the contested decision, in accordance with the general provisions of Art. 451 of the CPC. In the procedure against minors, the expansion of the scope of the rebuttal of a court decision beyond the limits of the appellant's allegations is an embodiment of the legislator's intention to ensure the optimal protection of minors. However, the examination of individual shortcomings of a decision imposing educational measures *ex officio* implies a departure from the rule not to expand the scope of review of the contested decision beyond the allegations of the appeal. This change in the general physiognomy of an appeal against a decision imposing educational measures is a logical consequence of the fact that the decision on imposing educational measures is made on the merits, unlike most decisions related to procedural issues. In addition, as the primary goal of proceedings involving minors in the protection of their rights, a minor defendant cannot have fewer rights than an adult defendant.

The provisions of the Juvenile Justice Act do not envisage the possibility of the so-called subjective expansion of the scope of review of a judgment in proceedings on appeal against decisions of the juvenile court panel. It entails an extensive effect of the filed appeal, by applying the institution of *beneficium cohaeseionis*. In proceedings on appeal against decisions of the juvenile court panel, there is no rationale that would prevent the court from extending the positive effects of the filed appeal in favor of one juvenile to another juvenile, if a single proceeding was conducted and if the conditions stipulated in Art. 454 of the CPC have been met.[8]

2.1.5. Decisions of the second instance court upon appeal

When deciding on an appeal, the second-instance panel for juveniles may make the following decisions: a) to reject the appeal as untimely submitted or inadmissible; b) to reject the appeal as ill-

[8] Više o ovoj ustanovi vidi: Knežević, S. (2005) Povlastica povezanosti u krivičnom postupku, Pravni život-tematski broj, Pravo i univerzalne vrednosti, 2005, Tom I, br. 9, Belgrade, pp. 991-100.

founded and confirm the first-instance decision; c) to annul the first-instance decision and return the case to the first-instance court for a retrial; and d) to reverse the first-instance decision (Art 455 CPC). In principle, the second-instance panel for juveniles may make the same decisions as the panels of the court of appeal in regular criminal proceedings. However, there is a specificity in terms of reversing the first-instance decision of the panel for juveniles. The second-instance panel for juveniles may overturn (reverse) the first-instance decision (judgment or ruling) by imposing a more severe sanction (juvenile detention or educational measure), only if this is proposed in the appeal (Art. 81§ 1 of the JJ Act). If the first-instance decision does not impose a prison sentence or a juvenile prison sentence, and the second-instance panel finds that these measures should be imposed, the imposition of these sanctions is possible only at the main hearing. However, if the first-instance decision (judgment or resolution) imposes a prison sentence or a prison sentence, the second-instance panel may also modify the first-instance decision in a panel session and impose a longer-term prison sentence or a more severe prison sentence (Art. 81 § 2 JJ Act).

The second-instance panel for juveniles decides by judgment when it imposes a longer-term prison sentence in a panel session, or when it imposes a juvenile prison sentence after a hearing. In all other cases, the decision is in the form of a resolution. As provided in Article 453 of the CPC, the prohibition of *reformatio in peius* (modification for the worse, i.e. reversing the first-instance judgment to the detriment of the defendant) applies in the second-instance proceedings against a minor. This is an institution whose *ratio legis* is to stimulate the filing of an appeal in favor of the accused/defendant, without fear of negative repercussions on him/her. In regular criminal proceedings, if an appeal has been filed only on behalf of the defendant, the judgment may not be changed to his/her detriment in respect of the legal qualification of the criminal offence and the criminal sanction (Art. 453 of the CPC). *Mutatis mutandis*, it means that, if the appeal is filed only in favor of the minor, the minor cannot be sentenced to a more severe educational measure, i.e. a sentence of juvenile prison, nor can the decision be modified to the detriment of the minor, in terms of the legal qualification of the criminal act. However, in proceedings against minors, the prohibition of *reformatio in peius* has a broader scope. Namely, in the appeal procedure involving minors, the contested first-instance decision may be modified by imposing a more severe sanction on the minor but only if it is explicitly requested in the appeal (Art. 81 § 1 CPC). It means that the minor enjoys procedural benefits not only when the appeal is filed in his favor but also due to the inability of the court to impose a more severe sanction if it is not expressly requested in the public prosecutor's appeal. Such designation of the content of this procedural concession to the minor embodies an intention to revive protective tendencies in the proceedings against minors.

2.2. Extraordinary legal remedies

The legal force of a final court decision made in criminal proceedings against minors does not mean that the decision is permanently unchangeable. Under the prescribed conditions, legally binding court decisions can be challenged by filing extraordinary legal remedies. The system of extraordinary legal remedies provides opportunities for invalidating legally binding court decisions made by the juvenile court.

The Juvenile Justice Act explicitly envisages a request for protection of legality and a request for a retrial (Art. 482 of the CPC). Although the request for a review of the legality of a final judgment and the request for an extraordinary mitigation of punishment is not expressly envisaged in the Juvenile Justice Act, they could be filed in criminal proceedings against minors under the general provisions of the Criminal Procedure Code which were in force before the amendments to this Code in 2009. However, when the amendments entered into force in September 2009, there was no normative framework for declaring these extraordinary legal remedies in proceedings against minors.

2.2.1. Request for protection of legality

A request for the protection of legality against final decisions made in proceedings against minors may be submitted when the law has been violated by the a court decision and when a minor has incorrectly imposed a penalty or educational measure (Art. 82 of the JJ Act). In contrast, in regular criminal proceedings, a request for the protection of legality may be filed against a final judgment or for a violation of court proceedings that preceded the final decisions against which the request is being

filed, if they have violated the law (Art. 482 of the CPC). Therefore, in criminal proceedings against minors, the specificity is that an incorrect (not only illegal) decision on a penalty or educational measure appears as the basis for filing this extraordinary legal remedy, which somewhat changes the physiognomy of the request for protection of legality. Based on this specificity, in proceedings against minors, the basis for filing a request for protection of legality may be an irregularity in the choice of the imposed educational measure, if the juvenile court made a mistake in assessing whether in a specific case the minor should be punished or imposed an educational measure, or whether the juvenile prison sentence was incorrectly determined within the existing legal range,

There is no dispute that any illegal and incorrect decision of the juvenile court is a basis for filing a request for protection of legality. However, in theory, there is also a position that a violation of the procedure that preceded the issuance of a final judgment in proceedings against minors cannot be a basis for filing this extraordinary legal remedy.[9] This view is based on the grammatical interpretation of the legal provision on the conditions for filing a request for protection of legality in proceedings against minors (Art. 82 of the JJ Act). It seems that the grammatical interpretation cannot have primacy over the logical and teleological interpretation of the legal norm. No distinction can be made in the effect of absolute legal deficiencies of court decisions, depending on whether they violate substantive or procedural law. An illegal procedure cannot result in a legal decision. Therefore, *de lege ferenda*, the legal provision should be reformulated to make it unambiguously clear that the basis for filing a request for protection of legality also includes violations of the procedure that preceded the adoption of a legally binding decision by the juvenile court.

The expanded procedural scope of the request for protection of legality in proceedings against minors does not meet unanimous approval in the theory of criminal procedure law. It is emphasized that the annulment or modification of incorrect court decisions in this procedure can be prevented by suspending enforcement or modifying the decision on educational measures. In addition, in the procedure initiated by the request for protection of legality, only those illegalities that harm the interests of the minor can be neutralized. Due to the declaratory nature of the decision made in the procedure under this extraordinary legal remedy, filed to the detriment of the minor, the illegal effect of the contested final judgment persists, which would damage the general social interests of the minor.[10] In a way, this understanding expresses a reservation towards the procedural privilege of the accused, in the form of a declaratory effect of a decision made in the procedure upon a request for protection of legality, filed to the detriment of the accused. Anyway, the aforesaid legal possibility represents the revival of the legally recognized procedural privilege of the accused in certain situations (the so-called *favor defensionis*), motivated by reasons of procedural equality of the parties to criminal proceedings.[11] All the more so, the minor should enjoy procedural concessions.

Considering the repeatedly emphasized protective role of the procedure for minors, it can be considered that eliminating the expanded procedural scope of the request for protection of legality in the procedure for minors would constitute an act contrary to the legislator's intention. By being able to invalidate a final judgment by filing a request for protection of legality, the minor is given the last opportunity to remove the restrictions that necessarily arise from the survival of a final judgment. The fact that there are possibilities that the juvenile court decision on imposing educational measures can be annulled or substituted, even before it becomes final, does not mean that this possibility should not exist after the decision of the juvenile court becomes final. Otherwise, one could draw the conclusion that legal remedies are superfluous in proceedings against minors! Consistence in the construction of the legal physiognomy of a legal remedy, or even some institute in general, should not have primacy in relation to ensuring the optimal level of minors' protection as one of the most important goals of proceedings against minors.

In regular criminal proceedings, the competent public prosecutor and defendant has the right to file a request for protection of legality (both to the detriment and for the benefit of the defendant) in case of violation of substantive and Procedure Law (Act. 483 and 485 of the CPC). In cases involving

[9] Hirjan, F., Singer, M. (1987), Maloljetici u krivičnom pravu, Zagreb, pp. 504.
[10] *Ibid*.
[11] See: Knežević S. (2002), Prednost odbrane u postupku po pravnim lekovima, Zbornik radova Pravnog fakulteta u Nišu, br. 42, pp. 263-282.

minors, it is the public prosecutor for juveniles, who will file a motion for protection of legality if he/she assesses that the factual situation has been correctly established but the law has been incorrectly applied to the established facts (Art. 485 § 2 of the CPC), or in case of irregularities in the application of penalty or educational measure (Art. 82 of the JJ Act).

Under the Criminal Procedure Code, the Supreme Court of Serbia is designated to decide on the merits of a request for protection of legality (Art. 486 § 1 of the CPC). When deciding on a request for protection of legality, the court is limited to examining violations of the law and irregularities in the application of the law and certain criminal sanctions, indicated by the public prosecutor (Art. 486 § 2 of the CPC), without expanding the scope of review of the final decision (which is the case with an appeal). In cases involving minors, a request for protection of legality can be filed both in favor of and to the detriment of a minor. If the request is filed to the detriment of a minor, only a declaratory judgment may be issued. This ensues from the general provisions on this extraordinary legal remedy (Art. 482-493 of the CPC), which are applied accordingly in criminal proceedings against minors.

2.2.2. Request for reopening criminal proceedings

A request for reopening criminal proceedings is an extraordinary legal remedy by which a final court decision is challenged by the authorized persons (Art. 470 of the CPC) due to deficiencies in the established factual situation, with the aim of eliminating the deficiencies and rendering a correct and lawful decision. However, the reopening of criminal proceedings is not possible against a final decision by which the proceedings against a minor were suspended because this legal remedy can be filed exclusively in favor of the convicted person (Art. 473 § 1 of the CPC), which also applies to minors.

As for the legal grounds for reopening criminal proceedings, the general rules of the Criminal Procedure Code apply accordingly. *Inter alia*, criminal proceedings may be reopened when new facts and evidence emerge (which did not exist at the time when the person was convicted) indicating that the final court decision was based on an incorrect or incomplete factual situation, and that the new facts or evidence would have resulted in conviction under a more lenient law or to a more lenient penalty (Art. 473 § 1, item 6 of the CPC). In that context, criminal proceedings may be repeated if the new facts or evidence may lead to the rejection (dropping) of charges, or an acquittal, or a conviction under a more lenient criminal law (Art. 473 § 1, item 3 of the CPC). In proceedings involving minors, it should be interpreted as follows: the condition for repeating the procedure is the established substantial impact of the new facts on the modification of the imposed penalty or educational measure. Moreover, in the repeated procedure, the court cannot impose a penalty or educational measure less favorable to the minor, since the proceeding may be repeated only to the benefit of the minor. In addition, the legal ground provided in Art. 473 § 1, item 5 of the CPC specifies that criminal proceedings may be repeated if new facts or evidence emerge pertaining to the prior conviction for a prolonged criminal offence or another criminal offence involving several actions of the same or different kind, indicating that the defendant did not commit the offence covered by the final decision. The application of this legal ground for repeating criminal proceedings implies that the criminal proceeding is not repeated to change the sanction but to adapt the educational measure to the established facts about the personality of the minor.[12]

Criminal proceedings concluded by a final decision of the juvenile court panel in the first instance may be repeated without prior recourse to an appeal; a request for repeating the proceedings may be filed by the parties and the defense attorney, without any time limits. A request for the repetition of criminal proceedings shall be submitted to the first-instance court that adjudicated the case in the previous proceedings (Art. 474 § 1 of the CPC). If possible, the judge who participated in the decision-making in the earlier proceedings should not participate in the panel which decides on the request for the proceeding tuition is requested (Art. 474 § 2 of the CPC).

In the procedure for repeating criminal proceedings against juveniles, the privilege of connection with the request applies. When the court has allowed the repetition of proceedings and finds that the reasons for the repetition also exist for a co-defendant who did not submit a request, it shall act *ex officio* as if such a request is submitted (Art. 477 § 3 of the CPC).

[12] Lazarević, LJ., Grubač, M. (2005), Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, "Justinijan", Belgrade, pp. 151.

The general rules on the so-called petition of a criminal proceeding based on the non-devolutive legal remedy (i.e. repeating only the sentencing stage) cannot be applied accordingly in criminal proceedings against minors. This is a consequence of the fact that in this procedure specific rules apply to determine the penalty for acts committed concurrently. In proceedings against minors, a sanction is not determined for each criminal act individually; instead, the court imposes a single sentence for all offences (Article 31 of the JJ Act), considering the overall situation of the minor. Therefore, in cases involving minors, the legal provisions on the modification of the judgment cannot be applied without repeating the procedure.[13]

In regular criminal proceedings, there are special circumstances for repearing criminal proceedings against a person convicted *in absenti*a (Art. 479 of the CPC). However, considering the prohibition on trying minors *in absentia* (Art. 48 of the JJ Act), it is meaningless to repeat a criminal proceeding that ended in the minor's absence. Unlike the suspension of the execution of an educational measure or modification of a decision on an educational measure, which are made on the basis of the results achieved by the application of an educational measure, criminal proceedings related to minors may be repeated exclusively on the basis of the emergence of new facts and evidence, regardless of the success of the treatment determined by the educational measure.

3. Concluding remarks

Unlike the spectrum of diversion measures as a reaction to the minor delinquency, criminal sanctions which can be imposed on juveniles cannot be completely void of retributive elements. Thus, the normative framework on juvenile delinquency should be supplemented by instruments for legal invalidation of the decisions which do not contribute to the objectives of social response to this kind of unlawful conduct of minors.

The role of the court in the process of the minor offender rehabilitation does not end with imposing corrective measures. In exercising supervision over the implementation of the imposed measures, the court may suspend enforcement of the educational measures or replace the imposed educational measures. Under the statutory law, retrial of the ordered educational measures is possible as well.

In criminal proceedings against juvenile offenders, judicial decisions on imposed criminal sanctions, which are not assessed by the juvenile court authority during the supervision over the execution of educational measures, may be invalidated by filing ordinary legal remedies (appeals on different grounds) and extraordinary legal remedies (requests for protection of legality, reopening criminal proceedings, and retrial). When compared to ordinary criminal proceedings envisaged in the Criminal Procedure Code, there are some specificities in criminal proceedings involving minors which are initiated by claiming legal remedies against the first-instance juvenile court decision. This primarily refers to the proceedings related to the request for protection of legality which (to some extent) has changed the physiognomy of this extraordinary legal remedy. Namely, in cases involving minors, this legal remedy may be applied to annul the juvenile court decision and the irregularities of the criminal sanctions imposed on juveniles, which is not possible in the ordinary criminal procedure.

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