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## **SPECIAL TRENDS IN THE PROTECTION OF JUVENILE PERSONS IN CRIMINAL PROCEEDINGS IN THE REPUBLIC OF SERBIA**

### **Abstract:**

Modern legal systems are based on the principles of the rule of law, the rule of law and the protection of fundamental human rights. The tendency to protect human rights is particularly expressed in criminal law, which most often takes the position of denying some guaranteed human rights. These denials of human rights must be based and grounded on legal and statutory principles. The subject of this scientific work is the position of minors in criminal proceedings, while the basic hypothesis of the work is that minors in criminal proceedings are particularly sensitive because they are under eighteen years of age and are in the process of psychological and physical development, and therefore should be treated in a special way, taking into account all their psychological and physical characteristics.

In the work, the author discusses several important issues related to the protection of minors in criminal proceedings, namely the issue of the existence of specialized judicial bodies before which criminal proceedings involving minors are conducted, the issue of the protection of a minor who has the status of an injured party during questioning, as well as the position of a minor injured party in proceedings against an adult. The aim of this work is to point out the special sensitivity of minors who participate in any way in judicial proceedings, using analytical, normative and comparative methods.

**Keywords:** *minor, criminal proceedings, injured party, hearing.*

### **INTRODUCTION**

Minors in criminal proceedings represent a particularly sensitive category. Minors may come into contact with the judicial authorities in very different ways and under different circumstances, which can cause them to have different kinds of feelings, mostly negative, and there is also fear of the consequences that may occur for them. This fear is particularly intensified in situations in which the minor is the injured party, and must face the person who caused him or her certain harm in the court proceedings. The subject of this work is criminal proceedings conducted against minors, which must have a protective model, taking into account all the psychological and physical specificities of minors. In addition to being protective, proceedings against minors must be fair and take into account all possible models of alternative treatment.

The essence of the problem is reflected in the maximum application of all procedural possibilities to provide minors with protection from all potential problems they may have

during the procedure. The penetration of the idea of human rights protection into criminal proceedings is primarily manifested through improving the position of the accused, while reducing repressive measures against him to the smallest possible extent.<sup>1</sup> Given that the defendant represents the weaker party in the proceedings, since most criminal proceedings are initiated and prosecuted by the public prosecutor, it is logical that the focus of protection of rights is on the defendant. Here, the issue of protecting the rights of the defendant is very delicate, and one must move between optimal levels of protection of human rights, while taking into account the fact that the defendant, by committing his unlawful act, committed a criminal offense and caused damage to the injured parties. Therefore, the protection of the rights of the defendant must be conditioned by the gravity of the criminal offense that he is charged with, as well as the gravity of the consequences that occurred.<sup>2</sup>

The issue of protection of minors who have the status of injured parties and who are parties to the proceedings is a separate issue. Likewise, the issue of protection of minors who have the status of defendants is the subject of consideration of the still positive Law on Juvenile Perpetrators of Criminal Offenses and Criminal Protection of Minors.<sup>3</sup>

In the work itself, the position of minors in criminal proceedings will be treated in two ways: as injured parties and as defendants, and the aim of the work is to determine the difference in treatment depending on the procedural position of the minor in the proceedings itself. The starting hypothesis of the work is that minors in criminal proceedings are particularly sensitive because they are under eighteen years of age and are in the process of psychological and physical development, and therefore they should be treated in a special way, taking into account all their psychological and physical characteristics. It is for this reason that a comparison of legal solutions is made depending on the procedural position that the minor has in criminal proceedings.

The work applies analytical, normative and comparative methods, with the aim of proving the hypothesis, i.e. achieving the goal of the work, which is to determine the difference in the treatment of minors depending on their procedural position in criminal proceedings.

## PROTECTION OF A MINOR INJURED PERSON

A particularly sensitive issue regarding the treatment of a minor injured party is the question of his or her questioning, which is carried out in the capacity of a witness. Given the specific nature of minors and their vulnerability, this questioning takes place in the presence of psychologists, pedagogues and other experts.<sup>4</sup> Unfortunately, in practice, one gets the impression that there is a certain relativization of the integration of experts into this hearing procedure. That is, one gets the impression that the normative basis for raising this issue to an adequate level is not explicit enough, because the legislator uses the phrase "as a rule", which contributes to the aforementioned relativization. Practice proves

1 Antonović, R. (2023) "Kazna - od represije do prevencije", *Dve decenije razvoja pravne misli*, Pravnički dani prof. dr Slavko Carić, Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe, Novi Sad, str. 445.

2 Knežević, S. (2010) *Maloletničko krivično pravo*, Pravni fakultet Univerziteta u Nišu, str. 322.

3 "Official Gazette of the Republic of Serbia" No. 85/2005

4 Banović, B; Ilić, Rajković, A. (2012) "Krivičnoprocesna zaštita maloletnih lica - domaća i uporedna rešenja", *Strani pravni život*, Institut za uporedno pravo, Beograd, str. 89.

that there are often deviations from the rule of including experts in the hearing procedure of minors. The only place where deviations are not tolerated under any circumstances is in the hearing of children, i.e. persons under the age of fourteen.<sup>5</sup>

Some authors perceive the deviation from the strict application of these legal provisions as a “softening” and relativization that has no logical basis. Those who support the “softening” of imperative norms find justification in the simplification and acceleration of the procedures that are being conducted. However, can the quality of the procedure be influenced, as well as the traumatization of minors, who are probably encountering the court and the judicial procedure for the first time, in the name of efficiency?

Police officers cannot take statements from minors without the presence of a public prosecutor and experts. If such an interrogation were to occur, it could possibly be considered an informative interview, and the information obtained in this way has the character of information received from citizens.<sup>6</sup> Therefore, when it comes to the number of times a minor can be questioned, there are legal restrictions that do not allow these persons to be questioned more than twice. Exceptionally, for the purpose of the procedure, the questions may be asked more than twice. If this exception occurs, which implies questioning more than twice, increased care must be taken to protect the rights of the minor. Any additional questioning may lead to secondary and tertiary victimization of the minor and may cause additional consequences for him.

A minor as a witness does not have to be questioned directly, but can also be questioned using technical devices for transmitting images and sound. Under these circumstances, the questioning would be conducted without the presence of other parties in a room designated for the witness, and the questions would be asked in the presence of experts, psychologists, pedagogues and social workers. With the use of technical devices, it is possible to question a minor in home conditions, at school or any other room known to the minor.<sup>7</sup> At the main hearing, the minutes of the questioning of the minor as a witness are read, and if audio-visual equipment was used during his questioning, a recording of his questioning will be played.

A special type of protection is enjoyed by a minor who has certain mental deficiencies, or who is particularly sensitive and in a difficult condition. Such a minor, given his or her personal characteristics, is not allowed to confront the accused.

An injured minor, when criminal proceedings are being conducted against an adult, must have a representative, starting from the first hearing of the accused. If the minor does not have a representative, the court is obliged to appoint a representative from among lawyers who have special knowledge in the field of children's rights and criminal law protection of minors. The costs of representation are borne by the court's budget. However, even with this provision, we often encounter the issue of its relativization with explanations from comparative law practice. Therefore, the issue of appointing a representative to a minor, who appears in the role of an injured party, appears more as a possibility than as an obligation.<sup>8</sup>

5 Škulić, M. (2014) *Zaštita dece/maloletnih lica kao oštećenih i svedoka u krivičnom postupku*, International Management Group, Beograd, str. 52.

6 Marinković, D. (2006) “Policijsko saslušanje osumnjičenog“, *Bezbednost*, Beograd, str. 682.

7 Đurđić, V. (2015) “Priroda, struktura i principi krivičnog postupka prema maloletnicima“, *Maloletnici kao učinioci i kao žrtve krivičnih dela*, Institut za kriminološka i sociološka istraživanja, Beograd, str. 94.

8 Milošević, N. (2008) “Planirane izmene u zakonu o maloletnim učiniocima krivičnih dela i

Special difficulties arise in situations where a minor injured party identifies the accused. These are particularly difficult encounters for minors with those who have caused them some harm or caused them some evil. The court must be particularly careful in this regard, and ensure that the identification takes place in stages, without the possibility for the accused to learn the minor's identity.

Measures to protect minors, who appear in the role of the injured party, must be at a higher level when proceedings are conducted against adults. The protection of minors requires the implementation of the basic postulates of extra-judicial protection, which means that certain powers towards minors may be exercised only by authorized officials, specially trained and expert in working with minors. Exceptionally, if circumstances so indicate, the specialization of authorized police officers may be waived.

The issue of protection of minors is addressed, among others, by the Law on Police,<sup>9</sup> in the part relating to summons, delivery of written summonses, parental care, prohibition of filming the scene of a criminal offense for the purpose of protecting the victim, and physical protection of victims from the danger that exists and is threatened by the perpetrator of a criminal offense.

## PROTECTION OF A JUVENILE DEFENDANT

Although they are perpetrators of criminal acts, minors who find themselves in this position still enjoy a more privileged position than adults who have also committed a criminal act. The reason lies in their specific psychophysical status.<sup>10</sup> Namely, the socially conditioned socio-pedagogical and psychological aspects of juvenile delinquency are given priority, and the criminal-legal aspect is placed on the secondary plan. Sciences such as biology, psychology and sociology have made a great contribution to this protective treatment of juvenile offenders. Therefore, one gets the impression that in such situations the crime committed is secondary, and that the personal, social and psychological aspects of the juvenile perpetrators of criminal acts are placed in the foreground.

The protective model, which was introduced in relation to juvenile offenders, began to develop at the beginning of the twentieth century. It gave broader powers to the judge in conducting criminal proceedings against juveniles. To this should be added the absence of formalism, the abandonment of proportional sentencing and the vagueness of criminal sanctions against juveniles. The presence of this model is limited in time to the period after World War II. The social and legal circumstances that preceded the appearance of this model on the judicial scene of most countries were conditioned by the economic crisis and general distrust of the treatment that includes the stay of juveniles in a special type of institution. Instead, it is proposed to introduce a type of parapenal or diversionary measures as an alternative to the institutional treatment used until then.<sup>11</sup>

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krivičnopravnoj zaštiti maloletnih lica", *Krivičnopravna pitanja maloletničke delinkvencije*, Beograd, str. 278.

9 "Official Gazette of the Republic of Serbia" No. 6/2016, 24/2018 and 87/2018

10 Antonović, R. (2023) "Deca kao žrtve i kao izvršioci krivičnih dela", *Baština* broj 61, Institut za srpsku kulturu, Priština - Leposavić, str. 182.

11 Joksić, I; Matijašević, J. (2024) "Položaj maloletnika u krivičnom pravu Srbije", *Pravni život*, br. 4, Beograd, str. 66.

In the legal system of the Republic of Serbia, there are special juvenile justice bodies, namely: special departments for juvenile delinquency in the internal affairs bodies, a special public prosecutor for juveniles and a special judge for juveniles, or the juvenile panel before the district court. All persons who appear before juveniles must have special knowledge in the field of child rights and juvenile delinquency. The juvenile panel in the first instance proceedings is composed of a juvenile judge and two jurors of different genders, who are selected from among educational workers and other professional professions that are in contact with children and young people.<sup>12</sup>

The basic characteristics of criminal proceedings conducted against juvenile perpetrators of criminal offenses are: the application and use of specific procedural treatments, specialization of judicial bodies (courts and prosecutors' offices), informality of proceedings and their liberalization, special procedural rules, adapted to the personal characteristics of juvenile perpetrators of criminal offenses, and a deep penetration of inquisitorial elements.<sup>13</sup>

Every judicial proceeding, including proceedings conducted against minors, must be fair. Fairness in proceedings conducted against minors is reflected in the protection of the minor's personal rights, as well as the protection of the minor's interests, which are expressed through his or her free will. This type of will of the minor must actually be justified by the interest of protecting his or her personal rights, as well as by preventing possible repression that would be carried out against him or her.<sup>14</sup>

Through fair treatment of juvenile perpetrators of criminal acts, a new system of treatment of juveniles in court proceedings is approached. The indeterministic approach to juveniles is based on the principle that each individual acts according to the principles of personal choice of behavior, in relation to legal norms, which establish certain rules and principles of behavior. It is assumed that the influence of the social environment is not decisive, that is, it has much less importance compared to these internal and volitional aspects that exist in juvenile perpetrators of criminal acts.

Recently, there has been an approach to the application of alternative measures towards minors, which are the result of a protection model and approach. Alternative treatment towards minors is reflected in administrative decision-making, instead of judicial, prevention of the conduct of court proceedings, wider application of alternative means for combating juvenile delinquency, coordination in the work of state bodies and social welfare bodies, as well as systemic prevention and timely intervention.<sup>15</sup>

Specialization is required from administrative and judicial authorities, as well as the exercise of broader powers. Specialization is especially required in the work of the police, because they are the first to react to the emergence of juvenile delinquency in society. In addition to the above, a characteristic of today's proceedings against minors is the application of alternative measures, which should be adapted to the personal characteristics

12 Jovašević, D. (2006) "Osnovne karakteristike novog maloletničkog krivičnog prava Republike Srbije", *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Pravni fakultet, Rijeka, str. 1060.

13 Škulić, M. (1999) "Osnovni tipovi krivičnog postupka prema maloletnicima u uporednom pravu", *Strani pravni život*, Beograd, str. 42.

14 Freeman, M. D. A. (1983) *The Rights and Wrong of Children*, The Amazon Book Review, London, p. 87.

15 Blagić, D. (2018) „Alternative kazni maloletničkog zatvora u uporednom zakonodavstvu“, *Načela dobre vladavine - načelo pravne sigurnosti i načelo pravičnosti*, Pravni fakultet Univerziteta u Prištini, Kosovska Mitrovica, str. 229.

of the juvenile offender, with the aim of providing the best possible results with the aim of individual prevention. The influence on the personality of the minor and the correction of his behavior is the primary goal of the application of alternative measures.

Alternative measures are applied instead of classic measures and sanctions that are mainly intended for adult perpetrators of criminal acts. The goal is also to avoid criminal proceedings, because the procedure itself only further traumatizes the minor, and the effects of his resocialization are weak. Avoiding criminal sanctions against minors enables the application of educational orders and recommendations, which can have a greater effect and success in the minor's resocialization. Educational orders are an alternative to classic sanctions in Serbian criminal law, which can be imposed on minors.

The following educational orders may be imposed on juvenile perpetrators: reconciliation with the injured party, in terms of compensation for damages, apology, through work, all with the aim of eliminating the consequences of the committed criminal offense; regular school attendance or regular performance of work obligations; involvement in humanitarian work on a voluntary basis; undergoing examinations for the purpose of detoxification from addiction and inclusion in individual or group treatments in specialized health or other institutions.<sup>16</sup>

As can be seen, the benefits of implementing educational orders are multiple and can have a positive effect on both minors and those who have been harmed in any way by the actions of minors. Also, from the perspective of the entire society, there is a benefit because it can be reasonably expected that educational orders will have a positive effect on the future behavior of the minor, and that repeated commission of criminal offenses will most likely not occur. The minor, instead of wandering the streets and engaging in idleness, will have to regularly attend classes or begin performing their work duties. Also, there is a tendency to humanize the minor through his/her involvement in the work of humanitarian organizations, which would replace his/her tendency towards crime with a tendency towards humanitarian and socially useful work. In addition to acquiring desirable traits, such as altruism, minors are further educated in this way and gain new knowledge, as well as experiences that can positively influence their future life and work.

Also, juvenile offenders develop work habits and qualities through their work engagement for the benefit of local communities, institutions dedicated to children and youth, social work centers, social assistance institutions, and the like. In juveniles, through the application of the measure of work in the public interest, a sense of personal responsibility for their actions is developed, the work of the juvenile is carried out through his personal consent, as well as the consent of his parents, or guardians, the work of the juvenile is carried out under the constant supervision of the social work center, and efforts are made to keep the time that elapses between the commission of the criminal act and the application of this measure as short as possible, so that the effects of resocialization are better.<sup>17</sup>

It is unnecessary to talk about the importance of medical educational orders, considering the fact that a large number of juvenile offenders have committed a criminal offense under the influence of alcohol or psychoactive substances. The application of these orders and their implementation is carried out at the initiative of the public prosecutor, and the decision is made by the juvenile judge. The purpose of educational orders is to

16 Radovanov, A; Joksić, I. (2018) "Položaj maloletnika u porodičnom i krivičnom pravu Republike Srbije", *Vojno delo*, br. 6, Beograd, str. 160

17 Stevanović, I. (2014) "Diverzion model i zaštita prava maloletnika u krivičnom postupku", *Pravni život*, Beograd, str. 9.

provide assistance, protection, and supervision to a juvenile offender, which is considered a necessary element in the juvenile justice system.<sup>18</sup> When issuing any educational order, the court must take the interests of the minor as the primary consideration, assuming which of these orders can provide the best effects in the juvenile's resocialization process.

## EFFECTS OF REINTEGRATION OF JUVENILE OFFENDERS

The modern approach and treatment of juvenile offenders, which is applied in the Republic of Serbia, in its specific application, also contains certain shortcomings and shortcomings. They are reflected in the prolonged stay in specialized institutions, which contributes to the uneconomical nature of the procedure itself, and at the same time encourages recidivism among juvenile offenders. After leaving specialized institutions, juveniles do not have adequate treatment, assistance, support and monitoring, which nullifies any effects that were achieved during the application of the measure.<sup>19</sup>

Without clear and strong motivation, we cannot talk about a successful process of resocialization of juvenile offenders. In addition to the motivation of the juvenile to radically change his or her lifestyle, there must also be the motivation of professionals and staff to help and contribute to this. This is precisely why we insist on the involvement of social services, which, through dedicated and timely work, can contribute to adequate protection, education, psychological support and professional inclusion in educational and psychosocial programs and treatments for juveniles. Resocialization treatment is conditioned by the readiness, motivation and quality of work of the institution to which the juvenile is sent. The readiness to help a juvenile is best reflected through individual conversations and treatments that are adapted to the personal characteristics of the juvenile and his or her personal needs.

All adequate parameters indicate that the Republic of Serbia has made great strides in improving relations with juvenile perpetrators of criminal offenses. However, the best indicator of the success or failure of relations with juvenile offenders is the recidivism rate. According to the available data from the Republic Statistical Office, for the period from 2021 to 2023, criminal charges were filed against a total of 2,598 juveniles for committing some criminal offenses on the territory of the Republic of Serbia. Of these, 2,313 were male juveniles, and 285 were female juveniles. The age of fourteen is 664 male and 91 female juvenile perpetrators. The age of fifteen is 479 male and 63 female juvenile perpetrators. The age of sixteen is 577 male and 70 female juvenile perpetrators. The age of seventeen years includes 593 male and 61 female juvenile perpetrators.<sup>20</sup>

Juvenile perpetrators of criminal offenses in the Republic of Serbia most often commit the criminal offense of causing slight bodily harm under Article 122 of the Criminal Code of Serbia,<sup>21</sup> followed by the criminal offenses of endangering safety under Article 138 and causing serious bodily harm under Article 121 of the Criminal Code.

18 Bojić, B; Ahmed, A. A. (2015) "Krivičnopravni status maloletnika u Srbiji", *Pravo - teorija i praksa*, br. 7-9, Pravni fakultet za privredu i pravosuđe, Novi Sad, str. 58.

19 Stevanović, I. (2020) *Izazovi u postpenalnom prihvatanju maloletnih učinilaca krivičnih dela u Srbiji (norme, praksa i mere unapređenja)*, Institut za sociološka i kriminološka istraživanja, Beograd, str. 88.

20 More details at: <https://www.stat.gov.rs/sr-latn/oblasti/pravosudje/maloletni-ucinioci-krivicnih-dela/>, visited on 26.06.2025.

21 "Official Gazette of the Republic of Serbia" No. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 and 94/2024.

In juvenile crime in Serbia, the largest share is occupied by property crimes, such as theft under Article 203 and aggravated theft under Article 204, and destruction and damage to another's property under Article 212 of the Criminal Code. Property crimes have the highest level of recidivism among juvenile perpetrators. The reason for this should be sought both in economic motives and in the fact that committing these crimes has become an integral part of their lives and they see in these acts the purpose and meaning of their life and work.

## CONCLUSION

The initial hypothesis of the work that minors in criminal proceedings are particularly sensitive because they are under eighteen years of age and are in the process of psychological and physical development, and therefore should be treated in a special way, taking into account all their psychological and physical characteristics, has been confirmed through a normative analysis of the given contents of various positive codes and laws in the Republic of Serbia, which provide special conditions and treatment for minors, both through the material and through the procedural prism.

The work analyzes the legal solutions of the Criminal Code, the Criminal Procedure Code, the Law on Juvenile Perpetrators of Criminal Offenses and Criminal Protection of Minors, as well as the Law on Police, and concludes that all of the aforementioned legal acts contain provisions on special treatment in relation to minors. Of course, special treatment is justified by the undeveloped psychophysical capabilities of minors, who are therefore unable to understand their actions in the best way and manage them.

The contribution of the work can be seen through a dual approach to the relationship with minors, because they can appear both in the role of injured parties and defendants in criminal proceedings. Therefore, minors can be injured both by another minor and by an adult. The goal is to protect the injured minor in such situations in the best possible way and to provide him with adequate treatment. On the other hand, minors also appear in the capacity of perpetrators of criminal acts. In these cases, the goal is to maximally protect these persons and their personal and legal interests, and to give space to prevention instead of repression, which would make minor offenders socially useful and acceptable members of society and the social community.

The work itself presents a description of all positive legal solutions and principles, and describes the existence of specialized treatment in relation to minors, in the sense of the existence of police officers, prosecutors and judges who possess special skills in the field of children's rights, who should treat minors with special care and responsibility.

At the very end of the work, a statistical overview of the factual situation in the Republic of Serbia regarding the rate of juvenile crime for the period 2021 to 2023 is provided, with special attention to the number of crimes committed, the type of crimes committed, as well as the age of juvenile perpetrators of crimes.



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## POSEBNE TENDENCIJE ZAŠTITE MALOLETNIH LICA U KRIVIČNOM POSTUPKU U REPUBLICI SRBIJI

### Apstrakt:

Savremeni pravni sistemi su zasnovani na principima vladavine prava, pravne države i zaštite osnovnih ljudskih prava. Težnja zaštite ljudskih prava je posebno izražena u krivičnom pravu, koje najčešće stoji na poziciji negiranja nekih zajamčenih ljudskih prava. Te negacije ljudskih prava moraju biti zasnovane i utemeljene na zakonskim i legalnim principima. Predmet ovog naučnog rada je položaj maloletnih lica u krivičnom postupku, dok je osnovna hipoteza rada da su maloletna lica u krivičnom postupku posebno osetljiva jer imaju manje od osamanešt godina i nalaze u procesu psihološkog i fizičkog razvoja, te ih stoga treba tretirati na poseban način, uz uvažavanje svih njihovih psihičkih i fizičkih karakteristika.

U radu, autor razmatra nekoliko značajnih pitanja koja su u vezi sa zaštitom maloletnih lica u krivičnom postupku i to pitanje postojanja specijalizovanih pravosudnih organa pred kojima se vode krivični postupci u kojima impliciraju maloletna lica, pitanje zaštite maloletnog lica koje ima svojstvo oštećenog lica prilikom saslušanja, kao i položaj maloletnog oštećenog lica u postupku koji se vodi protiv punoletnog lica. Cilj ovog rada je da ukaže na posebnu osetljivost maloletnih lica koja na bilo koji način učestvuju u sudskim postupcima, uz primenu analitičke, normativne i komparativne metode.

**Ključne reči:** maloletno lice, krivični postupak, oštećeni, saslušanje.

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