

Review Article

**EXECUTION OF INSTITUTIONAL CORRECTIONAL MEASURES
IMPOSED ON JUVENILE PERPETRATORS OF PROPERTY CRIME
IN THE POSITIVE LEGISLATION OF THE REPUBLIC OF SERBIA**

UDC 343.815:343.7

Rade Bogojević

Faculty of Law, University of Niš, Serbia

Abstract. *Pursuant to Article 1 of the Convention on the Rights of the Child, a child is defined as every human being below the age of eighteen unless, under the law applicable to the child, majority is attained earlier. The Serbian juvenile criminal law regulates the legal status of juvenile offenders. Thus, a juvenile is defined as a person over the age of 14 and under the age of 18 who, at the time of committing the crime, has not reached the age of maturity. Under the Act on Juvenile Offenders and Criminal Protection of Juveniles (2005), juveniles may be issued correctional measures, juvenile detention/prison sentence and security measures, except for the prohibition of engaging in a professional activity, occupation and duty. In this paper, the author focuses on the execution of institutional correctional measures imposed on juvenile offenders who have committed a property crime. Young persons under the age of fourteen are designated as children and they cannot be subjected to criminal sanctions or other measures provided under this Act, which ultimately implies that they cannot be active participants in crime.*

Key words: *juvenile offenders, property crime, correctional measures.*

INTRODUCTION

Juvenile criminal offenders are divided into two categories according to their age: younger juveniles and older juveniles. Younger juveniles are persons aged 14 to 16, while older juveniles are persons older than 16 but younger than 18. Thus, younger juveniles are on the borderline between children (who cannot be subjected to criminal sanctions) and older juveniles. Considering the level of their psychological and social maturity, it would

Received May 22, 2013/ Accepted June 27, 2013

Corresponding author: Rade Bogojević, LL.M., PhD student
Faculty of Law, Trg Kralja Aleksandra 11, 18000 Niš, Serbia
Tel. +381 18 500 277 • E-mail: radebogojevic@sbb.rs

be unjustifiable to impose some stricter measures on juveniles, other than correctional measures. The level of mental development of older juveniles is considerably higher and it approximately reaches the adults' level of mental development. For this reason, these persons can be sentenced to juvenile detention (Jovašević, 2010, p. 188).

Some comparative legal systems establish only the upper age limit for juveniles. Contemporary criminal legislations (including the Serbian legislation) generally recognize and contain the upper and the lower age limit for juveniles. Thus, in some countries, there are no legal provisions on the lower age limit while, in others, the age limit is established by using the level of bio-psychological maturity; there are countries where the lower age limit varies from the age of 7 to the age of 16, and there are countries where the upper age limit varies from the age of 15 to the age of 21, including special legal provisions pertaining to young people until the age of 25.

This paper deals with institutional correctional measures which may be imposed on juvenile offenders who have committed a property crime as envisaged in the positive legislation of the Republic of Serbia (even though these measures may also apply to juvenile offenders who commit a criminal offence other than a property crime). In the first part of the paper, the author provides an overview of criminal sanctions against juvenile offenders, focusing on the basic principles governing the execution of sanctions against juvenile offenders. In the central part of the paper, the author explores the types and modes of execution of institutional correctional measures imposed on juvenile offenders of property crime. The article is aimed at providing a comprehensive overview of all the types of institutional correctional measures and their execution mechanisms as pertaining to juvenile offenders of property crimes, particularly given that a vast majority of criminal offences committed by juveniles are property crimes.

1. TYPES OF SANCTIONS AGAINST JUVENILE PERPETRATORS OF PROPERTY CRIME

Under the provisions contained in the Act on Juvenile Offenders and Criminal Protection of Juveniles (2005), juvenile offenders who have committed property crimes may be awarded the following criminal sanctions: correctional measures, juvenile detention and security measures, except for the prohibition of engaging in a professional activity, occupation and duty. This Act provides a total number of nine correctional measures, which are subdivided into three groups: 1) warnings and direction measures: a court reprimand as the mildest correctional disciplinary measure (Art.13) and special alternative obligations; 2) measures of enhanced supervision by the parent, adoptive parent or guardian (Art 15), a foster family (Art. 16) or a guardianship authority (Art.17), as well as enhanced supervision entailing a daily stay in a relevant juvenile rehabilitation and educational institution (Art.18); 3) institutional measures: referral to a correctional institution, referral to a correctional facility, referral to a specialized rehabilitation institution for medical treatment and/or vocational training.

In the general provisions, this Act specifies that the legal provisions contained therein are applicable to juvenile offenders as well as to younger adults and adults who are tried for criminal offences they committed as juveniles (Art. 1, para.2). A younger adult is a person over the age of 18 and under the age of 21.

2. THE BASIC PRINCIPLES GOVERNING THE EXECUTION OF CRIMINAL SANCTIONS IMPOSED ON JUVENILE PERPETRATORS OF PROPERTY CRIME

The basic provisions on the execution of criminal sanctions against juvenile offenders include the basic principles governing the execution of criminal sanctions against the perpetrators of property crime, which are as follows:

1. *The principle of non-discrimination*, which guarantees an equal treatment to all juvenile perpetrators of property crimes, regardless of differences in race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or status, etc (Art. 88).

2. *The principle of individuality*, which implies that during the enforcement of criminal sanctions the juvenile perpetrators of property crime shall be treated in a manner proportionate to their age, degree of maturity and other personality characteristics, fully respecting the dignity of the juvenile's personality, encouraging his/her development and participation in his/her re-socialization, etc (Art.89). This principle is exercised by applying individualized programs made by teams of experts in compliance with the latest developments in the field.

3. *The protection of juveniles' rights*, which implies that a juvenile court judge is obliged to inform the competent guardianship authority about the need to protect a juveniles' rights whenever the court determines (in the course of the execution of a criminal sanction) that there is a need to take relevant measures to protect the juvenile's rights (Art. 96). Moreover, a juvenile who is considered to have been deprived of his/her rights during the execution proceedings is entitled to file a complaint with the warden of the institution/facility where the criminal sanction is executed (Art.97). Thereupon, the warden is obliged to issue (within a period of three days) a written decision, by means of which he may either dismiss the complaint as ill-founded or find it partially or fully justified; in the latter case, any violation of the juvenile's rights shall be eradicated as soon as possible.

4. *Ensuring further education or vocational training*, which implies creating conditions for the juvenile offender's inclusion into the primary and secondary education, or vocational training (Art. 138).

5. *Health protection*, which implies that the juvenile offenders shall be subjected, at least once a year, to a full medical examination by relevant health institution. Moreover, at least twice a year, the correctional institution/facility is obliged to compile a report on the mental state of each juvenile offender and submit the report to the juvenile court judge who supervises or monitors the execution of the awarded criminal sanction (Art. 90).

6. *Freedom of religion*, which implies that juvenile offenders have the right to freely express their religious beliefs and practice religious ceremonies.

7. *Prohibition of solitary confinement*: unlike adult convicted offenders who may be held in solitary confinement, juvenile offenders cannot be ordered a disciplinary measure of solitary confinement (Art 91).

8. *Prohibition of carrying firearms* within the correctional institution or facility where the institutional measures are being executed or where juvenile detention is being served.

9. *The execution costs* are, as a rule, paid from the budget. However, where possible, part of the execution costs may be paid by the juvenile's parent, adoptive parent, guardian or any other person in charge of child maintenance, including the juvenile offender in case he has some income or property (Art. 94). The condition for determining the amount of

compensation is the financial status and ability of the specified persons to pay, the proposal of the juvenile public prosecutor or the guardianship authority, and the judicial decision of a first instance court. This decision may be altered, subject to a change of circumstances (Konstantinović-Vilić, Kostić, 2011, p. 149-151).

3. EXECUTION OF INSTITUTIONAL CORRECTIONAL MEASURES IMPOSED ON JUVENILE PERPETRATORS OF PROPERTY CRIME

Institutional correctional measures entail a referral of juvenile perpetrators of property crime to relevant correctional institutions for a specific period of time. These measures are awarded in case when it is necessary to subject a juvenile offender to correctional measures, medical treatment and vocational training for a longer period of time, and to separate the offender from the former living environment. The institutional correctional measures are often imposed as a last resort; they are subject to the time limits specified in the Juvenile Offenders' Act, and they may last as long as it is necessary to achieve the purpose of imposed correctional measures. The institutional measures are: referral to a correctional institution, referral to a correctional facility, referral to a specialized institution for medical treatment or vocational training.

The execution of institutional correctional measures imposed on juvenile perpetrators of property crime is exercised in full observance of the juveniles' age, level of mental development, personal abilities and individual interests (Radoman, 2003, p.337).

3.1. Referral to a correctional institution

Referral to a correctional institution is awarded to juvenile offenders whose correctional treatment or training can only be achieved by their complete isolation from their former living environment and subjecting them to continuous expert supervision and assistance. These are general-type correctional institutions or facilities for youth correctional training. Juveniles who have not committed a criminal offence are referred to these institutions as well, providing they suffer from a behavioral disorder (as a result of neglect, etc). A juvenile who has been awarded a correctional measure has the same rights as all other juveniles in the institution. Only the correctional institution managers and staff have the information that they are perpetrators of property crime and that they have been awarded correctional measures. The correctional treatment may last from six months to two years. Their progress is assessed in regular six-month intervals in order to determine the need to proceed with the imposed measure or to substitute it with an alternative one. A person can stay in such an institution until the age of 21. The guardianship authority determines a person who is obliged to bring the juvenile to the institution and the correctional institution informs the competent court about the juvenile's admission into the institution (Konstantinović-Vilić, et al., p. 164).

In the process of deciding on the institutional correctional measure which shall be awarded to a specific juvenile, the competent court is obliged to take into consideration the following circumstances: the juvenile's former life, the degree of behavioral disorder, the nature and the gravity of the committed criminal offence, as well as the previous sanctions imposed on the juvenile offender.

3.2. Referral to a correctional facility

Referral to a correctional facility is considered to be the strictest of all correctional measures which can be imposed on juvenile offenders of property crime. This measure can last from six months to 4 years, and it can be imposed on a person until the age of 23. The court is obliged to reassess this measure in regular six-month intervals in order to determine the need to proceed with the imposed measure or to substitute it with an alternative one. This measure is executed at the correctional facility in Kruševac, which has separate wards for male and female detainees. This correctional facility has a number of services: correctional service, vocational rehabilitation counseling service, security service, health service, and the facility management. The most important service in this institution is the correction and rehabilitation service, which comprises units for correctional work, personality assessment and professional orientation, educational work, and reception unit.

A juvenile perpetrator of property crime is given a period of 8 to 15 days to prepare for the stay in this institution. If the juvenile is in custody, he/she is remanded to the correctional institution by a competent first instance court; if he/she is not in custody, the first instance court issues a final decision instructing the juvenile to report for the execution of the imposed measure or, alternatively, instructs the parent, adoptive parent or guardian to bring the juvenile to the correctional facility on a particular date (Articles 125 and 126). Along with the notice on the final judicial decision ordering the correctional measure, the court also delivers all the necessary records and data collected on the juvenile during the prior proceedings.

On juvenile's admission to the correctional facility, the personnel establishes the juvenile's identity, conducts a body search and temporarily seizes all personal items that the juvenile is not supposed to bring into the institution; then, the juvenile is entered into the institutional register and his/her personal file is opened in the reception unit, where he/she is photographed and fingerprinted. Immediately upon his/her admission, the correctional facility is also obliged to inform the juvenile's parents about it in the most appropriate way.

Upon admission, the juvenile is first subjected to a medical examination and then sent to a special reception ward, where a qualified team of experts draw up an individualized program of treatment for each juvenile. A juvenile may be subjected to further examination aimed at evaluating his/her personality, creating an adequate treatment program and classifying him/her in an adequate correctional group. The procedure may last up to 30 days.

Upon admission to the correctional facility, a juvenile is informed about the house rules contained in the Book of Rules regulating the rights, duties, activities, rules of conduct, etc. A juvenile is given a copy of these rules in his/her mother tongue. Moreover, he/she has access to other legal acts and regulations (the Act on Juvenile Criminal Offenders and the Criminal Law Protection of Juveniles; the Criminal Code; the Criminal Procedure Act; the Act on the Execution of Criminal Sanctions; etc). Juvenile offenders are subjected to the following programs:

- General and intensive correctional treatment program,
- Family cooperation program and guardianship authority cooperation program,
- Educational, medical, cultural and other programs.

Juveniles are classified into correctional groups on the basis of their gender, age, personal characteristics, programs, etc. The expert team in charge of the classification of in-

mates and monitoring the program implementation includes one member from each service (the reception unit, the correctional service, the professional orientation and training service, the security service, a school teacher and a correctional group instructor. The correctional groups are mixed-ability groups, and each group member has personal responsibility for the operation of the group as a whole.

The juveniles' rights and duties are regulated in the Book of Rules (Articles 15-64) which envisages all the rights guaranteed by the Serbian Constitution, the applicable law and the ratified international documents. Special protection and assistance are guaranteed to juveniles who are temporarily or permanently deprived of parental custody, persons with a refugee status and persons with learning disabilities.

The juvenile's disciplinary offences are regulated in the Book of Rules, which envisages and clearly defines major and minor disciplinary offences. A juvenile may be subject to the following disciplinary measures: a warning, a withdrawal of granted privileges, and a removal to separate premises (usually for a period of up to 7 days, or for a period of 15 days at the most in case of multiple disciplinary offences). A juvenile is removed to special premises at the Department for Intensive Treatment by the order and under the monitoring of the authorized personnel. This size of this room has to meet the specified standards (at least 6m² and 15m³ per juvenile dwelling in the room). A juvenile has to spend at least two hours a day outside in the fresh air. This measure can be imposed cumulatively along with a withdrawal of certain privileges. A juvenile cannot use these privileges for 15 days after the execution of the disciplinary measure of placing the juvenile in an isolation cell. This measure can be postponed for up to 3 months and it shall not be put into effect if a juvenile does not commit another offence in the period covering the execution of the other two disciplinary offences (except for warnings). Decisions on minor offences are made by the facility warden, upon the proposal of the chief of the correctional service; decisions on major disciplinary offences are made by the disciplinary committee. For security reasons, the warden may order a juvenile to be placed in an isolation cell for up to 24 hours; this period is later included in his/her disciplinary measure. The body of authority that has proposed a disciplinary measure may also abandon the proposal, in which case the disciplinary measure is not put into effect.

During the disciplinary proceeding, the disciplinary hearing must be attended by the chief of the correctional service, correctional instructor, the juvenile and the juvenile's legal advisor (appointed by the correctional facility). Other persons may attend the hearing only upon the approval of the chair of the disciplinary committee. The time limit for filing a complaint against the decision is 3 days. The authority in charge of the second instance proceeding is the director of the Department for the Execution of Criminal Sanction who is obliged to make a decision on the complaint within a period of 3 days.

In case a juvenile offender has committed a disciplinary offence by causing some financial damage to another either deliberately or in gross negligence, he/she is obliged to compensate the damage.

The use of mechanisms for restraining and temporarily disabling a person is allowed only in special circumstances: in case where it is absolutely necessary to prevent a physical attack on the personnel or another juvenile, or in the case of self-injury (see: Konstantinović-Vilić, et al., p. 165-176).

3.3. Referral to a specialized institution for medical treatment and vocational training

Referral to a specialized institution for medical treatment and vocational training is a special sanction aimed at particular categories of juvenile offenders of property crimes. This institutional correctional measure can also be imposed on certain categories of juvenile offenders of property crime, such as:

1. mentally and physically impaired juveniles (who are deaf, blind, deaf, mute, mentally impaired, etc), and
2. juveniles with mental disorders (suffering from a mental disease, neurosis, etc).

Referral to a specialized institution for medical treatment and vocational training is a substitute for other institutional measures, and it is awarded only to juveniles whose mental state or physical condition prevents the use of regular institutional correctional measures. This correctional measure may also be awarded instead of the security measure of compulsory psychiatric treatment and care in a medical institution (if a juvenile can be treated in a specialized medical institution), which provides for achieving the objective of the imposed security measure. Juvenile offenders who are placed in this specialized institution undergo a specific medical treatment. A juvenile offender may stay in this special institution for a period of 3 years at the most, providing that he/she undergoes medical examination every 6 months in order to determine whether to proceed with this measure or substitute it with an alternative one. If this measure is imposed instead of a security measure, a juvenile can stay in the institution until the age of 21, after which period the execution of this measure is continued in the institution which was initially in charge of the execution of the security measure of compulsory psychiatric treatment and care. The law obliges the guardianship authority to refer a juvenile to a relevant institution by taking into account the juvenile's place of residence or temporary residence.

The management of the specialized medical institution is obliged to issue a report on the results of the executed measure and deliver it to the competent juvenile court judge and the public prosecutor every six months, or in shorter intervals (if necessary). The institution management is also obliged to inform these authorities about the juvenile's medical condition (see: Konstantinović-Vilić, et al., p. 177-179).

CONCLUSION

In conclusion, in order to provide a comprehensive overview of the discussed issues, it is necessary to list all the specific features of institutional correctional measures against juvenile perpetrators of property crime. First of all, juvenile perpetrators of property crime are generally divided into two categories: younger juveniles and older juveniles. Younger juveniles are persons aged 14 to 16, while older juveniles are persons older than 16 but younger than 18. Regardless of this classification, the correctional measures (such as warnings and referrals, measures of enhanced supervision, and institutional measures) may be imposed on both categories of juvenile offenders.

Institutional correctional measures are awarded to juvenile offenders of property crime as a last resort instrument. These measures imply the juvenile's referral to an appropriate institution for a determined period of time. These measures are imposed when it is necessary to subject a juvenile perpetrator of a property crime to a long-term correctional

measures, medical treatment and vocational training, and provide for his/her complete isolation from his/her former living environment.

The institutional correctional measures imposed on juvenile perpetrators of property crime are exercised in compliance with their age, level of mental development, personal abilities and individual interests. Referral to a correctional institution is imposed on juvenile offenders whose correctional treatment can be achieved only by providing for their complete isolation from their former environment and subjecting them to constant expert supervision and assistance. Referral to a correctional facility is the strictest of all correctional measures which can be imposed on juvenile offenders of property crime; it is executed at the correctional facility in Krusevac. Referral to a specialised institution for medical treatment and vocational training is a special sanction awarded to particular categories of juvenile offenders. This institutional correctional measure may be imposed on certain categories of juvenile perpetrators of property crime, such as: mentally impaired juveniles and juveniles with mental disorders.

In the end, it is important to emphasize the significance of juvenile offenders' acceptance and adaptation after their return from the correctional institution/facility. The Serbian law envisages certain obligations of the guardianship authority, which is required to maintain contact with the juvenile offenders' families throughout the juvenile's correctional treatment in order to facilitate the juvenile's adjustment and inclusion into the society. The correctional institution/facility is also obliged to inform the juvenile's parents and the guardianship authority about the date of the juvenile's release from the correctional institution/facility at least 3 months prior to actual release. Moreover, the juveniles' families are obliged to provide support and assistance to juveniles after their return from the correctional institution/facility, and parents are required to keep the guardianship authority informed about their progress as well.

REFERENCES

1. Jovanović LJ., Jovašević D., (2003). *Krivično pravo II* (Criminal Law 2), Visoka škola unutrašnjih poslova, Beograd.
2. Jovašević D., (2008). *Maloletničko krivično pravo* (Juvenile Criminal law), BeoSing, Beograd.
3. Jovašević D., (2010). *Krivično pravo, Opšti deo* (Criminal Law - General Part), Nomos Beograd.
4. Knežević S., (2010). *Maloletničko krivično pravo – materijalno* (Substantive Juvenile Criminal Law), Centar za publikacije Pravnog fakulteta u Nišu.
5. Konstatinović Vilić S., Kostić M., (2011). *Sistem izvršenja krivičnih Sankcija i penalni tretman u Srbiji* (*The system of execution of criminal sanctions and penalty treatment in Serbia*), Centar za publikacije Pravnog fakulteta u Nišu.
6. Konstatinović Vilić S., Kostić M., (2006). *Penologija* (Penology), SVEN, Niš.
7. Konstatinović Vilić S., Kostić M., (2011). *Penologija* (Penology), Niš, Centar za publikacije Pravnog fakulteta u Nišu.
8. Radoman M., (2003). *Penologija i sistem izvršenja krivičnih sankcija* (Penology and System of Execution of Criminal Sanctions), Novi Sad - Beograd, Centar za izdavačku delatnost Pravnog fakulteta u Novom Sadu.
9. Ćirić Z., Dimitrijević B., (2009). *Osnovi sudske psihijatrije i sudske psihologije* (Basic Forensic Psychiatry and Forensic Psychology), SVEN Niš.

Legal acts and regulations

1. Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, „*Sl. glasnik RS*”, br. 85/05. (*Act on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles*, „Official Gazette of the Republic of Serbia”, no. 85/05)
2. Zakonik o krivičnom postupku (*Criminal Procedure Code*), „*Sl. list SRJ*”, br. 70/2001 i 68/2002 i „*Sl. glasnik RS*”, br. 58/2004, 85/2005, 115/2005 – dr. zakon, 49/2007, 20/2009 – dr. zakon i 72/2009.
3. Zakonik o krivičnom postupku (*Criminal Procedure Code*), „*Sl. glasnik RS*”, br. 72/2011.
4. Krivični zakonik Republike Srbije (*Criminal Code of the Republic of Serbia*), „*Sl. glasnik RS*”, br. 85/2005 – ispr., 107/2005 – ispr., 72/2009, 111/2009 i 121/2012.
5. Zakon o izvršenju krivičnih sankcija (*Act on the Execution of Criminal Sanctions*), „*Sl. glasnik RS*”, br. 85/05 i 72/09
6. Pravilnik o kućnom redu kazneno-popravnog zavoda za maloletnike (*Book of Rules of the Juvenile Penal Facility*), „*Sl. glasnik RS*”, br. 71/06.
7. Pravilnik o kućnom redu vaspitno-popravnog doma (*Book of Rules of the Juvenile Correctional Facility*) „*Sl. Glasnik RS*”, br. 7/06.

IZVRŠENJE ZAVODSKIH VASPITNIH MERA PREMA MALOLETNIM UČINIOCIMA IMOVINSKOG KRIMINALITETA U POZITIVNOM ZAKONODAVSTVU REPUBLIKE SRBIJE

Rade Bogojević

Prema članu 1. Konvencije o pravima deteta, dete je svako ljudsko biće koje nije navršilo osamnaest godina, ukoliko se po zakonu koji se primenjuje na dete, punoletstvo ne stiče ranije. Naše maloletničko krivično pravo, utvrđuje krivično pravni položaj maloletnih lica. Tako se, kao maloletnik smatra lice koje je u vreme izvršenja krivičnog dela navršilo četrnaest, a nije navršilo osamnaest godina života. Na osnovu Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, maloletnicima se za učinjena krivična dela mogu izreći vaspitne mere, kazna maloletničkog zatvora i mere bezbednosti, osim zabrane vršenja poziva, delatnosti i dužnosti. U ovom radu, akcenat je stavljen na izvršenje vaspitnih mera zavodskog tipa prema maloletnim učiniocima imovinskih krivičnih dela. Lica u uzrastu do četrnaest godina života se nazivaju deca i prema njima se ne mogu primeniti krivične sankcije, niti druge krivično pravne mere. To znači, da ova lica ne mogu da budu aktivni subjekt krivičnog dela.

Ključne reči: *maloletni učinioci, imovinski kriminalitet, vaspitne mere.*