

Legal Frame for Criminal Proceedings Against Juveniles in the Federation of Bosnia and Herzegovina

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Abstract

The paper analyzes applicability of legal frame of international standards on the protection of juvenile rights which are expressed through the concept of protection of “the best interests of a child and juvenile”, in view of the question whether the Federation of BiH performs appropriate activities and to which extent, and are there controversy points that need to be resolved separately. It points out the unknowns which the practices of the courts in the Federation of BiH have not yet completely resolved, and are related to the applicability of the new rules adopted by the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Federation of BiH. Also, it presents a set of legal rules that regulate criminal proceedings against juveniles within the Federation of BiH, with a special emphasis on the basic characteristics of this process. Finally, possible solutions to the mentioned ambiguities and dilemmas are proposed in accordance with the principle of legal certainty as essential to addressees of the relevant legal norms.

Keywords

Criminal procedure, juveniles, law, preliminary proceedings, Federation of BH

Criminal procedural right is a field that during history represented legal field in all social systems which transformed under influence of actual social conditions seeking creation of satisfying legal framework for objective establishment of responsibility or committed criminal offences, with maximum protection of human rights in criminal proceedings (Krapac 2014: 91-121). Specificities of criminal proceedings for juveniles, conditionally speaking, are the best testimony of that (Grubač 1979: 144).

Criminal justice system for juveniles, unlike the criminal justice system for adults, recognizes children who are in conflict with the law as victims, taking into account the fact that juveniles lack adequate maturity to be treated as adult perpetrators of criminal offences (Goldson and Muncie 2011: 47-64). The juvenile

criminal justice system recognizes the susceptibility of children to experimentation, victimization, involvement in delinquent behavior, and that the problems faced by juveniles in childhood or adolescence may have long-lasting consequences (Mulvey, Arthur, and Reppucci 1997: 1-4). The vast majority of juveniles who come into conflict with the law are victims of neglect, severe exploitation, and

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economic and social conditions (Kalra 1996: 5-65). On the other hand, these juveniles should also have the right to adequate care, protection, and opportunity for social reintegration (Kaiser 1973: 105-121)—the rights on which the criminal justice system for juveniles should be based (Vasiljević and Grubač 2002: 688).

The main goal sought to be achieved with a new Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Federation of BiH¹ (hereinafter: the Law) is harmonization of the criminal procedural legislation of the Federation of BiH with the Constitution of the Federation of BiH, the Constitution of BiH and international legal norms referring to this field². However, this Law kept all that was “healthy and useful” in previous criminal procedural legislation of BiH, case-law, and legal tradition. It even conditioned a significant reconstruction of organization assumptions of judicial and prosecutorial apparatus, as well as establishment of new models of mutual coordination of actions among police organs, prosecution, and the court. In addition, all general legal standards referring to the right to defence, detention, and protection of physical and psychological integrity applying to mature perpetrators of criminal offences, refer to juveniles as well, but with significantly higher degree of care and caution. Therefore, the proceedings are not conducted against but towards a juvenile (Vasiljević and Grubač 2002: 717).

Introduction of educational measures into the register of criminal sanctions of substantive criminal law also leads to big changes in the proceedings towards juveniles which did not differ significantly from the proceedings towards mature perpetrators of criminal offences. The traditional criminal procedure in which all the attention is paid to the investigation of criminal offences, the determination of guilt and sentence, which should correspond to the gravity of the criminal offence and degree of guilt, became completely inappropriate for trials to juveniles since

introduction of educational measures (Simović 2009: 490). At the same time, the form of the procedure adjusted to the aim of educational measures should have been found. Namely, anything that could, figuratively speaking, “mark” a juvenile and harm his educational future should have been removed from the “classical” procedure.

Thus, just knowing that bringing of a juvenile offender before a regular criminal court and his submission, figuratively speaking, to a rigid criminal procedure have harmful effect on his future development, has resulted in the introduction of a special, shortened, informal, and simplified procedure for juveniles (Simović et al. 2013: 294). Such an elastic and informal process has been achieved by abandoning or limiting some of the basic procedural rights and guarantees that are otherwise complied with in criminal proceedings against accused adults (Ignjatović 1997: 138).

BASIC CHARACTERISTICS OF THE CRIMINAL PROCEEDINGS TOWARDS JUVENILES IN THE FEDERATION OF BIH

Criminal proceedings towards juveniles in the Federation of BiH is a special criminal procedure (Lazin 1995: 169). The essence is to apply some specific rules in certain procedure in relation to the rules which apply in general, that is regular criminal procedure (Škulić 2003: 121; Govedarica 2013: 97). Therefore, subsidiary application of the rules of general criminal proceedings is possible only if it is not contrary to the Law, which, in essence, means that it is not contrary to specific aim of the criminal procedure towards juveniles (Lazin 1995: 170). In doing so, application of specific provisions from the Law is linked to age of a juvenile offender at a time of initiation of the proceedings or a trial. The entire proceedings towards juveniles should constitute a functional entirety (Knežević 2010: 169).

The Law tries as much as possible to diminish consequences following from the fact that a young delinquent appears before the court³ (Jovašević 2008: 67-69). This is done by regulating three types of procedural provisions.

The first group includes unquestionable, generally accepted provisions that are by their very nature extremely generalized, so no further assessment of juvenile delinquent is required for their application. Such procedural provision is the rule that a special procedure for juvenile offender should be applied even in the cases where the perpetrator, at the time of the initiation of the proceedings or the trial, has not reached the age of 23.

The second group includes rules whose purpose may be achieved only if their application is concretized in relation to each juvenile delinquent individually. So, for example, a prosecutor shall not be able to make a decision on expediency to initiate proceedings towards a juvenile without taking into account previous life of a juvenile and his personal capacities or without assessing his readiness to fulfill set requirements, so the prosecutor would not initiate a proceeding.

The third group of procedural provisions contains rules whose primary purpose is to guarantee a juvenile his right to a fair trial, and only indirectly to diminish his traumatization and stigmatization. Consequently, it also includes the right of a juvenile to defense attorney who is mandatory included at his first interrogation.

Criminal proceedings against juveniles in the Federation of BiH have three stages: preparatory proceedings, proceedings before a juvenile judge, and proceedings upon legal remedy. However, this is not a rough division of these stages because they are much more in correlation than in the general procedure, with the aim of achieving continuity in actions, i.e. to turn away a juvenile from committing criminal offences in the future, through educational influence (Simović et al. 2013: 297; Škulić 2003: 122). The basic conceptual settings of a patronizing, i.e. protective model are

based on giving advantage to social-pedagogical and psychological aspects of juvenile delinquency.

A juvenile offender who has not reached the age of 14 (child) at the time of the commission of the offence—is not guilty. Having learnt about this fact, the actions of the organ for the treatment of juveniles are different. Namely, if an authorized official finds that a person for whom there are grounds for suspicion of having committed a criminal offence has not reached the age of 14, it shall not question him but will immediately notify the prosecutor and the custodian about it. However, in the case of a criminal offence that has resulted in a serious violation of the integrity of another person or substantial material damage, an authorized official shall examine the child and submit an official report to the prosecutor.

The proceedings against a juvenile when he participated in the perpetration of a criminal offence together with an adult (objective connexity) are separated and conducted under the provisions of the Law (Article 79, paragraph 1 of the Law). This rule applies regardless of the criminal offence, i.e. whether the issue is about a juvenile or an older juvenile. Exceptionally, criminal proceedings against a juvenile offender may be conducted in conjunction with proceedings against adult persons only if the merger of the proceedings is necessary for a complete clarification of the matter (Article 79, paragraph 2 of the Law).

Article 74 of the Law excludes the possibility of applying the provisions of the Criminal Procedure Code of the Federation of BiH⁴ on a criminal order (Articles 350-355), pleading (Article 244), consideration of guilty plea (Article 245), and plea bargaining (Article 246) in the criminal proceedings against juveniles. Namely, in order to realize the protective purpose of juvenile criminal proceedings, the legislator had to depart from a number of principles and rules that apply to ordinary criminal proceedings, which is why this procedure shows some specificities that are not found in the proceedings

against adult perpetrators of criminal offences (Jekić and Škulić 1987: 397).

Duty to Act With Precaution

When undertaking actions in presence of a juvenile, especially during his questioning, the organs participating in the proceedings are obliged to act with precaution, taking into account mental development, sensitivity, and personal characteristics of the juvenile, so that the conduct of criminal proceedings would not have harmful effect to his physical, mental, and cognitive development (Article 76, paragraph 1 of the Law). Conducted by the principle of precaution, the court must not disclose the course of the criminal proceedings against the juvenile nor the decision rendered in such proceedings, as well as it is not permissible to make audio or video recording of the course of the proceedings for the purpose of publication. If a legal decision is published, the identity of the juvenile must not be disclosed (Article 84, paragraphs 1 and 2 of the Law). Actions contrary to these provisions of general character (Soković and Bejatović 2009: 134) would harmfully reflect on the development of a juvenile's personality (Ramljak and Simović 2011: 226). At the same time, the organs involved in the proceedings must not allow any undisciplined behavior of the juvenile and must prevent it by suitable measures (Grubač 2008: 515).

Initiation of the Proceedings Against a Juvenile

Criminal proceedings against a juvenile is initiated by an order to initiate preliminary proceedings issued by a prosecutor (Article 75 of the Law). The prosecutor is the only authorized one to initiate criminal proceedings against a juvenile (Knežević 2010: 169).

Obligatory Defence

Paragraph 1 of Article 77 of the Law prescribes that a juvenile shall be obliged to defense attorney the first time he is questioned by a prosecutor or authorized

official, i.e. during the entire criminal proceedings regardless of the type and the amount of criminal sanction prescribed. Legal term "entire proceedings" understands the preparatory proceedings, first instance proceedings, and the proceedings upon legal remedies (Jovašević 2008: 69). This understands further obligations of the juvenile's defense attorney, thus the juvenile has a defense attorney even when authorized official pronounces a police warning, i.e. when the prosecutor requires a juvenile to fulfill educational recommendations under Article 26 of the Law in order not to initiate the proceedings against him.

If a juvenile does not know the language on which the criminal proceeding is conducted, the court shall appoint him an interpreter (Matovski 2003: 354). A defense attorney is elected by a juvenile, as well as persons close to him (legal representative or relatives). If those persons fail to use this possibility, the juvenile judge shall appoint an *ex officio* defense attorney (Article 77, paragraph 3 of the Law). This defense attorney must have special knowledge.

Bringing of a Juvenile

A measure of bringing of a juvenile is carried out by members of a court police (Article 83 of the Law). These persons should not wear uniforms and, thus, they fulfill this task in a civil clothes—taking care they do it in an unobtrusive manner (Knežević 2010: 229).

Possibility of Exemption From the Duty of Testimony in Relation to a Particular Case of Testimony

Procedural modification reflects in alteration of rules of general criminal proceedings referring to possibility of exemption of some witnesses, i.e. specific categories of witnesses of their duty of testimony (Jovašević 2008: 67). Only parents, guardian, an adoptive parent, a social worker, a religious confessor, i.e. a religious official, and a defense attorney are exempted in the proceedings against juveniles from

their duty of testimony on the circumstances necessary for assessment of a mental development of a minor, introduction with his personality and living conditions. The institute of exemption from the duty of testimony in the proceedings against juveniles is, thus, reduced to objective facts about the juvenile's personality so, conditionally speaking, it justifies the legislator's position that aforementioned persons should not testify, because the practice has shown that their statements and testimonies are not of much use (Grubač 2008: 516).

The Role of Guardianship Authority

Term "guardianship authority" is of a procedural nature and the function of that body in practice performs Center for Social Work, competent municipal service of social protection having the same rights and obligations towards children who are in conflict with the law and prevention of socially unacceptable behavior [Article 12, point i) of the Law]. Thus, centers for social work function independently from judicial system and their role is providing of some kind of protection to a juvenile, which means establishment of relationship of trust with a juvenile (Simović et al. 2013: 279).

In the proceedings against juveniles, in addition to the powers explicitly provided for in the provisions of the Law, the guardianship authority has the right to be informed with the course of the proceedings, to give proposals during the proceedings, and to point out to the facts and evidence relevant for the adoption of a proper decision (Article 81, paragraph 1). The prosecutor informs the competent guardianship authority (Hirjan and Singer 1987: 389) of any initiation of proceedings against juvenile.

In the criminal proceedings against the juvenile offender, the representative of the competent guardianship authority has the following basic procedural obligations: to give the prosecutor before the initiation of the preparatory proceedings for the offence the juvenile is charged with, so-called social

background, i.e. information on the age, maturity, and other characteristics of a juvenile [Article 12, point k) of the Law]; to get acquainted with the course of the criminal proceedings; during the proceedings, and in particular during the preparatory proceedings, to give suggestions and put questions to persons who are questioned or heard; and to point out to the facts and evidence relevant for adoption of a proper decision that will best suit the given conditions.

Guardianship authority also has an important role in collecting and establishing information on the juvenile's personality. In doing so, it has to be summoned to the main hearing and cannot be removed from the main hearing.

Summoning of the Juvenile and Delivery of Correspondence to a Juvenile

Summoning of juveniles is always done through parents, i.e. legal representative, except if it is not possible due to urgent actions or other circumstances, in which case the judge appoints a special guardian upon a proposal of the prosecutor until the conclusion of the proceedings (Article 82, paragraph 1 of the Law). However, it is forbidden to put juvenile summons on the bulletin board. Likewise, neither the provision of the verbal decree nor oral statement of the juvenile that he would not appeal to the court would be relevant in relation to juveniles, which provisions may be taken into account in relation to adult offenders.

Announcing of the Course of Criminal Proceedings

Neither course of criminal proceedings against a juvenile nor a decision reached in the proceedings can be announced, and the proceedings cannot be audio or video taped (Article 84, paragraph 1 of the Law). Such exclusion from prohibition of principle of publicity in criminal proceedings against juveniles is a compromise from the request to protect the juvenile's personality and the right of public to truth and

complete information as much as possible (Soković and Bejatović 2009: 115). A legally valid decision of the court can be published without stating personal data of a juvenile which may disclose his identity (Article 84, paragraph 2 of the Law). Adequate criminal offence of violation of secrecy of the proceedings is contained in the Criminal Code of the Federation of BiH⁵ (Article 350—violation of secrecy of the proceedings).

Obligation of Prompt Actions

Authorities participating in the proceedings against a juvenile, as well as other authorities and institutions which are required some informations, reports, or opinions, are obliged to act as promptly as possible—in order to complete the proceedings as soon as possible. For the same purpose, the legislator orders a juvenile judge to inform the president of the court every 15 days about the cases of juveniles which are still pending and about the reasons for that. In doing so, the president of the court is obliged to take necessary measures to speed up the proceedings (Article 114 of the Law). In addition, suspension or termination of the main hearing in the proceedings against juveniles is of a special character, and the juvenile judge is obliged to inform the president of the court on the reasons of any suspension or termination of the main hearing (Simović et al. 2013: 410-412).

Territorial Jurisdiction

Article 86 of the Law stipulates an exception from a general rule on territorial jurisdiction of the court (Article 26, paragraph 1 of the Criminal Procedure Code of the Federation of BiH), and competencies of the juvenile court according to the permanent place of residence (*forum domicilii*), i.e. temporary place of residence (*forum residentiae*) rule, and competency according to the place of committed criminal offence, i.e. before the court within which territory is located, an institute or institution for execution of criminal sanctions in which a juvenile is located—exception.

Therefore, there is deviation from a general rule to primarily establish territorial competence between criminal matter, on one side, and the territory of the court, on the other side, in the case of commission of a criminal offence. It is taken into account only if it is obvious that the proceedings will be easily conducted before the court at the territory where criminal offence was committed, i.e. before the court at whose territory the institute or institution for execution of criminal sanctions of a juvenile is located (Simović et al. 2013: 309).

Composition of the Court

A judge as an individual shall conduct the first instance trial for criminal offences committed at juvenile age, regardless of prescribed sentence (Article 17, paragraph 1 of the Law). At the second instance trial, Panel for juveniles in the second instance shall be composed of three judges determined by that court's schedule of duties, who have special knowledge from the scope of rights of a child and juvenile delinquency. The Panel composed of three judges having special knowledge shall in the third instance decide upon the appeal filed against a second-instance decision in accordance with provisions of Article 118 of the Law. If it is not possible to compose a Panel of three judges with special knowledge—at least one judge with special knowledge shall be provided and, at the same time, he will be the president of the Panel for juveniles. The Panel for juveniles, as a rule, consists of judges of different gender.

Collection of Information About a Juvenile's Personality

While examining of the personal and family circumstances of an adult person is optional, the legislator in Article 87 of the Law in the case of juveniles was quite explicit in terms of requiring that the juvenile's age, the circumstances necessary to evaluate his mental development, are specifically

determined, and to examine the environment and circumstances in and under which the minor lives as well as other circumstances related to his personality. This information is required by the prosecutor in order to decide whether to act in a particular case under the principle of opportunity, to suspend or approve the process of applying the educational recommendation or to issue an order to initiate the preparatory procedure (Zigler, Taussig, and Black 1992: 997-1006). The juvenile judge shall collect information on the personality of the juvenile. However, this anamnesis is also provided by an authorized official when the requirements of Article 23 of the Law are met.

Principle of Opportunity of Criminal Prosecution in the Proceedings Against Juveniles

The Law leaves the prosecutor to assess whether he will request initiation of a criminal proceeding against a juvenile. Under Article 89, paragraph 1 of this Law, for criminal offences with prescribed fine or sentence of imprisonment for a term of up to three years, the prosecutor may decide not to initiate a criminal proceeding even though there is evidence that a juvenile has committed a criminal offence, if he considers it would not be efficient to conduct proceedings against a juvenile given the nature of criminal offence and circumstances under which it had been committed, previous life of a juvenile, and his personal characteristics. For the purpose of establishing of mentioned circumstances, the prosecutor may seek information from parents, i.e. juvenile's guardian, other persons and institutions, and when necessary, he may invite these persons and a juvenile for direct interview (Simović et al. 2013: 294-312).

If, for the purpose of making such decisions, it is necessary to examine the personal characteristics of a juvenile, the court may refer the juvenile to a institution for children and juveniles or correctional

institution upon substantiated request of an attorney, for a period of not more than 30 days. Referral to an appropriate institution may be preceded by a prosecutor's consultation with a psychologist, a pedagogue, a defectologist, or some other expert person. Due to the nature of the institution where the juvenile is referring to and the restrictions of the right to freedom, the time spent in that institution is included in the sentence of imprisonment of a juvenile—if that penalty is imposed.

Also, when the execution of punishment or educational measure is ongoing, the prosecutor may decide not to initiate criminal proceedings for another criminal offence of a juvenile if, given the gravity of the criminal offence, as well as the punishment or the educational measure that is being executed, there would be no purpose to conduct the proceedings and impose criminal sanctions for that offence. This basis for application of the opportunity principle is not limited by the abstract severity of the offence.

Exclusion of Public

In the juvenile proceedings, the public is always excluded (Article 111, para. 1 of the Law), regardless of whether it is a preparatory procedure, a session, or a main trial. The same applies to proceedings before the second instance court. A juvenile judge may allow persons at the main trial to be involved in the protection and upbringing of juveniles or the suppression of juvenile delinquency as well as scientific workers.

A juvenile judge will alert persons who attend a hearing or a main trial on the duty to guard the secrecy of what is at the hearing or the main trial and that unauthorized disclosure of the secret is a criminal offence. During the main trial, the juvenile judge may order all or one of the persons to remove from the session. However, this rule does not apply to the prosecutor, the defense attorney, and the representative of the guardianship authority (Article 111, paragraph 3 of the Law).

Measures for Providing the Presence of a Juvenile and Successful Conduct of Criminal Proceedings

When the requirements under Article 146, paragraph 1, items a)-c) of the Criminal Procedure Code of the Federation of BiH are met, the court may, upon the motion of the parties or defense counsel or *ex officio*, impose prohibition measures to the juvenile instead of determining and extending custody (Marinović-Pejović 1969: 449) (Article 95 of the Law). When prohibition measures are imposed, the provisions of Articles 140, 140a, 140b, 140c, and 140e of the Criminal Procedure Code of the Federation of BiH (Matovski 2003: 354) are applicable.

An authorized official may deprive a juvenile of his freedom if there are grounds for suspicion that he has committed a criminal offence and if there are reasons provided for in Article 146, paragraph 1, items a), b), and c) of the Criminal Procedure Code of the Federation of BiH. During deprivation of liberty and during the juvenile's stay at the Ministry of Interior's Police Station, all the contacts of an authorized official with a juvenile are performed in a way to fully respect the juvenile's personality and support his well-being (Ljubanović 1999: 40-64).

Questioning of a juvenile shall be conducted by the prosecutor or, with the approval of the prosecutor, by an authorized official who ensures the presence of a parent or a guardian or adoptive parent. An authorized official shall be obliged to bring the juvenile before the prosecutor without delay and at least within 24 hours, and notify him of the reasons and the time of deprivation of liberty. If the juvenile who is deprived of his liberty is not brought before the prosecutor within this period, he shall be released.

A juvenile who is deprived of liberty (while in Police Station and during detention in the prosecutor's office) shall be placed in the room in which he shall not have a contact with adults (Article 97, paragraph 1

of the Law). After the juvenile has been brought, the prosecutor is obliged to question a juvenile without delay, and no later than 24 hours after the date of the referral (in Republika Srpska, this period is 12 hours), if he has not been examined yet, and to decide whether to give the judge a proposal to impose a prohibiting measure under Article 95 or temporary accommodation in accordance with Article 94 of the Law or a proposal for ordering detention or releasing him. When proposing, the prosecutor always gives priority to prohibition measures.

An appeal to a Panel referred to in Article 17, paragraph 3 (out of court Panel) is allowed within 24 hours of the receipt of this decision against a decision ordering custody. The appeal does not stay the execution of the decision (Article 99, paragraph 4 of the Law) (Josipović 1993: 659-699).

According to the decision of the judge, custody may last no longer than 30 days from the day of the deprivation of liberty⁶, with the obligation of the Panel to exercise control over the necessity of detention every 10 days, with prior statement of the prosecutor on the actions taken for the period preceding the control. If the prosecutor does not act in this manner, the prosecutor of the Cantonal Prosecution shall be informed about it in order to take necessary measures to comply with the requirements set out in this paragraph. By a decision of the Panel, upon the reasoned proposal of the prosecutor, custody may be extended for another 30 days. Against the decision of the Panel, an appeal may be filed, and it will be considered by the Panel of the second-instance court within 24 hours from the receipt of the appeal (Soković and Bejatović 2009: 134).

After the completion of the preparatory proceedings, i.e. after the submission of the proposal for the determination of the criminal sanction, upon a substantiated proposal of the prosecutor, the detention may be extended by the decision of the Panel for another two months, with control of custody each month and with the prior statement of the prosecutor

on the actions taken for the period preceding the control. An appeal against this decision is allowed to the Panel of the second-instance court referred to in Article 17, paragraph 2 of the Law, which shall decide on the appeal within 24 hours from the receipt of the appeal. The appeal does not stay the execution of the decision.

After the imposition of the institution educational measure or a juvenile imprisonment, the detention may last for up to two more months. If there is no second-instance decision confirming or amending the first-instance decision, the detention shall be terminated and the juvenile shall immediately be released. If within two months a second-instance decision is reached terminating the first-instance decision, the detention may last for another 30 days from the date of the pronouncement of the second-instance decision. If the juvenile is in custody and the decision imposing an institution educational measure or a juvenile imprisonment becomes legally valid, the juvenile may be released until referral to the institution for the execution of the educational measure or a sentence (Josipović 1998: 399).

ACTIONS BEFORE INITIATION OF PREPARATORY PROCEEDINGS

The goal of part of the procedure in which the juvenile offender does not enter the area of initiation of criminal proceedings is not to initiate criminal proceedings in the cases where the law permits or ensures proper development of the juvenile and strengthens his personal responsibility so he would not commit criminal offences in the future.

As a rule, the questioning of a juvenile is conducted by a prosecutor, and authorized official upon the approval of the prosecutor. For criminal offences punishable by a fine or sentence of imprisonment for a term not exceeding three years, an authorized official with special knowledge shall question a juvenile, upon obtained approval of a prosecutor.

An authorized official shall question a juvenile in the presence of his defense attorney, parents, guardian, or adoptive parent. When the parents, the guardian, or adoptive parents of the juvenile are prevented from attending the questioning of a juvenile, or if their presence would not be in the interest of the juvenile, the authorized official shall question the juvenile in the presence of representatives of the guardianship authority or the institution for the accommodation of a juvenile (Radulović 2009: 542).

An authorized official shall be obliged to bring the juvenile, without delay and at least within 24 hours, before the prosecutor and notify him of the reasons and the time of deprivation of liberty. After questioning of the juvenile and collecting evidence within 24 hours, an authorized official with official report may submit to the prosecutor a reasoned proposal only to warn the juvenile in the particular case. If, after consideration of the proposal, the prosecutor finds that there is evidence that the juvenile has committed a criminal offence and that due to the nature of the criminal offence and the circumstances under which it was committed, the previous life of the juvenile and his personal characteristics, and that the initiation of the criminal proceedings would be ineffective—he may give requested approval and submit the case to an authorized official of the police body to issue a police warning to a juvenile. If the prosecutor does not approve the issuance of a police warning, he shall inform the authorized official and, prior to the initiation of the preparatory procedure, consider the possibility and justification for the issuance of educational recommendation within the meaning of Article 90 or order the initiation of a preparatory procedure pursuant to Article 91, paragraph 1 of the Law.

If the prosecutor “approves” a police warning, authorized official shall, within three days from the date of submission of the case to the juvenile, issue a police warning and, on that occasion, point to the social inadmissibility and the harmfulness of his

behavior, the consequences that such behavior may have upon him, as well as to the possibility to conduct criminal proceedings and to impose criminal sanctions in the case of recommission of the criminal offence. The authorized official shall notify the prosecutor, the juvenile and his defense attorney, a parent, a guardian, or an adoptive parent, the guardianship authority, as well as the damaged party, within three days from the date on which the case was submitted, indicating the reasons for the decision (Škulić 2011: 402).

Before deciding to initiate a preparatory proceeding against a juvenile for criminal offences under Article 89, paragraph 1 of the Law, the prosecutor shall consider the possibility and justification of the application of the educational recommendation in accordance with the provisions of this Law. When the prosecutor for criminal offences referred to in Article 89, Paragraph 1 of the Law does not apply the educational recommendation—he must explain the reasons for such a decision (Škulić 2012: 106). Likewise, if, on the basis of a report of the guardianship authority, it is established that the juvenile, for no good reason, refuses to fulfill his obligation from the educational recommendation or does not comply with it in appropriate manner, the prosecutor shall issue an order to initiate the preparatory procedure.

PREPARATORY PROCEDURE

Prior to making a decision on whether to file a request to initiate a criminal proceeding against a juvenile offender—the prosecutor is obliged to consider the possibility and justification of the termination of the educational recommendation. If the prosecutor decides to pronounce an educational recommendation, the prosecutor shall in his decision, among other things, and in addition to one or more recommendations, state that he would not demand the initiation of proceedings against the juvenile perpetrator of the criminal offence. No appeal against

this decision of the prosecutor is allowed.

If there are grounds for suspicion that a juvenile has committed a criminal offence, and after being concluded in accordance with Article 90, paragraph 1 of the Law that there is no possibility or justification for the application of educational recommendations or if the juvenile unjustifiably refuses or does not comply with it in appropriate manner, the prosecutor shall issue an order to initiate the preparatory procedure, and shall notify the guardianship authority about it. The prosecutor shall complete the preparatory procedure within 90 days from the issuance of this order, and if the preparatory procedure is not completed within this period, the subsidiary application of the provisions of Articles 239 and 240 of the Criminal Procedure Code of the Federation of BiH shall apply.

As a rule, a juvenile is present during preparatory procedure unless there are reasons under Article 111, paragraph 4 of the Law and the defense attorney. Questioning of the juvenile, when necessary, is carried out with the help of a pedagogue or other expert person. The prosecutor may allow the representative of the guardianship authority and the parent, or guardian or adoptive parent to attend the proceedings in the preparatory procedure. When these persons participate in these actions, they may make suggestions and refer questions to the person who is being questioned or heard.

The judge may, at the proposal of the prosecutor, order the juvenile during the preparatory proceedings to be temporarily placed in a shelter or similar facility for the accommodation of a juvenile if it is necessary for the separation of the juvenile from the environment where he has lived or for the purpose of providing him assistance, protection, or accommodation, and especially if it is necessary to remove the danger of repetition of the criminal offence. An appeal against the temporary accommodation of a juvenile may be filed by a minor, a parent, an adoptive parent, or a defense attorney

within 24 hours. The Juvenile Panel of the same court shall decide on the appeal within 24 hours, but the appeal does not stay the execution of the decision.

ACTIONS AFTER THE COMPLETION OF PREPARATORY PROCEEDINGS

After examining all the circumstances referring to the commission of the criminal offence, maturity and other circumstances concerning the juvenile's personality and the circumstances in which he lives, the prosecutor shall submit to the judge, within eight days from the completion of the preparatory proceedings, a reasoned proposal for the imposition of the educational measure or punishment. In the event that the prosecutor finds that there is no evidence that the juvenile has committed the criminal offence after the completion of the preparatory proceedings, the prosecutor shall issue an order to terminate the preparatory proceedings (Article 104, Paragraph 1 of the Law).

If the prosecutor did not give a substantiated reason for not acting in accordance with Article 89, paragraph 3 or Article 90, paragraphs 1 and 2 of the Law, the judge may express disagreement with the prosecutor's proposal to impose sanctions and request the Panel to reach a decision about it within three days. The Panel shall make a decision upon hearing the prosecutor. Likewise, the Panel may decide to return the case to the prosecutor for taking the actions in accordance with Articles 89 and 90 or decide that a judge should act in accordance with Article 106⁷ and, if the requirements for application of Article 106 of the Law have not been met—act on the prosecutor's request to impose a criminal sanction. Before making a decision on the prosecutor's proposal for the imposition of a corrective measure or a juvenile imprisonment sentence for the criminal offences referred to in Article 89, paragraph 1, or after the Panel has rendered a decision under Article 105, paragraph 2 of the Law, the judge shall consider the

possibility and justification of the application of the educational recommendation.

When the judge receives the proposal of the prosecutor for the imposition of the educational measure or juvenile imprisonment, or the decision of the Panel referred to in Article 105, paragraph 2 of the Law, the prosecutor's proposal shall be submitted to the juvenile and his defense attorney. The juvenile and the defense attorney may, within three days from the date of the submission of the request, state the previous objections referred to in Article 248, paragraph 1 of the Criminal Procedure Code of the Federation of BiH, which the Panel shall decide within eight days. The time limit for submitting previous objections may be extended upon the proposal of the defense attorney, but it may not last more than 15 days from the date of delivery of the proposal.

Once a decision has been made on the previous objections, the judge shall submit the evidence referred to in Article 104, paragraph 4 of the Law to the prosecutor, and the case shall be submitted to the judge for the purpose of scheduling the session or the main trial, within eight days from the date of receipt of the prosecutor's proposal. In doing so, a judge who, as a member of the Panel, decided on the objections—can not participate in the trial. Appeal against a judge's decision is not allowed.

Session

The decision of the juvenile judge to schedule a session shall be taken into account whenever it is evident that non-custodial educational measure is to be imposed to the juvenile. The prosecutor, the juvenile, the defense attorney, the parents, the adoptive parent, or a guardian of the juvenile shall be invited to attend the session, and the representative of the guardianship authority (Article 109, paragraph 1 of the Law) shall be informed about the session and can attend it. The prosecutor, the juvenile, and his defense attorney are obliged to attend the session. On the other

hand, absence of a parent, adoptive parent or a guardian of the juvenile, and a representative of the guardianship authority at the session does not prevent the court from holding a session.

At the session, the prosecutor reads the proposal and briefly presents the evidence pertaining to the criminal offence and personality data of the juvenile which are collected during the preparatory procedure, as well as the reasons justifying the proposal for the imposition of the criminal sanction. At this stage of the proceedings, the application of the provisions of the Criminal Procedure Code of the Federation of BiH on the modification of the charges at the main trial is to be applied, and without the proposal of the prosecutor, the judge is authorized to make the decision based on presented evidence and the factual background established at the session.

The Main Trial

When decisions are made on the basis of the main trial, the provisions of the Criminal Procedure Code of the Federation of BiH on the conduct of the main trial, the delay and the suspension of the main trial, the record and the course of the main trial are applied accordingly, but the judge may, after having heard the parties, depart from these rules if he considers that their application for the case in question would not be expedient.

The prosecutor, the defense attorney, and the representative of the competent guardianship authority (Article 110, paragraph 2 of the Law) are obliged to attend the main trial besides the juvenile. In addition to the persons whose presence is obligatory at the main trial, the parents of the juvenile and the adoptive parent, i.e. the juvenile's defense attorney, are invited to the main trial. When a parent, a guardian, or adoptive parent are unable or capable to attend the main trial, or they are unknown, a judge may, if he finds it to be in the best interest of a juvenile, designate a special guardian.

Decisions of the Juvenile Judge

All decisions in the proceedings against a juvenile that deal with the merits of the criminal offence in the first instance may be divided into two groups, as follows: a verdict or a decision. The verdict may only follow the main trial, and it can only pronounce the juvenile imprisonment sentence. On the other hand, the decision is taken into consideration not only when the educational measure is pronounced, but also when the proceedings are terminated (Simović 2011: 422). Likewise, the judge is not bound by the proposal of the prosecutor in deciding whether to impose a sentence on the juvenile or to apply the educational measure.

The juvenile judge shall, by its decision, terminate the proceedings in the cases the court pursuant to Article 298, paragraphs c, e, and f of the Criminal Procedure Code of the Federation of BiH renders a verdict dismissing the charges or by which the accused is released from the charges under Article 299 of the same law, as well as when he finds it purposeful to impose a juvenile neither educational measure nor punishment. The reasoning of the decision in ordering an educational measure to the juvenile only states which measure is being imposed but the juvenile is not declared guilty for the criminal offence that he is charged with. This is a consequence of the fact that establishment of guilty in the criminal proceedings against the juvenile is, conditionally speaking, in the "second plan" in relation to the acquaintance with the personality and the circumstances of the juvenile.

A judgment ordering a juvenile a sentence of juvenile imprisonment is issued in a form prescribed by the Criminal Procedure Code of the Federation of BiH for a verdict declaring the accused guilty.

Costs of the Proceedings and Property and Legal Requests

The court may oblige the juvenile to pay for the costs of the criminal proceedings and to fulfill the property

and legal claim only if he has imposed an imprisonment sentence to the juvenile. If a juvenile has been imposed an educational measure or the proceedings have been terminated, the costs of the proceedings shall fall under the burden of the court's budget and the damaged person is instructed to file a property claim through civil proceedings. Also, if the juvenile has incomes or a property, the judge may order him to pay for the costs of the criminal proceedings and to fulfill the property claim when he has been pronounced an educational measure, or when the judge finds that it would be of no purpose if the juvenile is pronounced a juvenile imprisonment sentence or an educational measure. Costs of mediation carried out by an organization under Article 26, paragraph 4 of the Law shall fall under the budget of the prosecution or the court.

LEGAL REMEDIES

The system of legal remedies in proceedings against juveniles is arranged to distinguish regular and extraordinary legal remedies. There are three regular legal remedies: appeal against the first instance judgment, appeal against the second instance judgment, and appeal against the decision.

Against the judgment imposing a juvenile a sentence of imprisonment, against the decision imposing an educational measure to the juvenile, and against the decision on termination of the proceedings under Article 113, paragraph 2, all the persons being entitled to file an appeal against the judgment under Article 308 of the Law on Criminal Procedure of the Federation of BiH, may file an appeal within eight days from the date of receipt of the judgment or ruling (Article 116, paragraph 1 of the Law). A defense attorney, a prosecutor, a spouse, an extramarital partner or other person with he lives in a permanent community, a blood relative in the first line, an adoptive parent, a guardian, a brother, a sister, and a fosterer may file an appeal in favor of a juvenile

without his will. An appeal against a decision imposing an educational measure in the institution or a judgment imposing a juvenile imprisonment shall stay the execution of a decision, unless the judge decides otherwise, with the consent of the parents of the juvenile and upon the hearing of the juvenile.

An appeal against the decision of the second instance court is permitted in the cases referred to in Article 118, paragraph 1 of the Law. The appeals against the second instance decision shall be decided by a court of third instance in a Panel composed of three judges, having special knowledge in the field of child rights and juvenile delinquency, assigned according to the schedule of duties of that court. The decision is made at a session of the Panel, which, by analogy, applies all the provisions of the Panel session before the second instance court.

The Provisions of the Criminal Procedure Code of the Federation of BiH on renewal of the criminal proceedings concluded by a valid judgment shall accordingly apply to the renewal of the proceedings concluded by a judgment imposing a juvenile a sentence of imprisonment or issued decision on the application of an educational measure or a decision to terminate the proceedings⁸.

CONCLUSIONS

Fight against juvenile delinquency in the Federation of Bosnia and Herzegovina requires a coordinated action of all social subject starting from the Federal Ministry of Justice, Cantonal and Municipal Courts, prosecutors, guardianship bodies, and all the subjects having "active" role both in the criminal proceedings and in execution of criminal sanctions against juveniles. In addition to that, criminal proceedings against juveniles have to be regulated in a clear and precise manner, based on international principles and standards. In that context, it is to expect the Law shall, conditionally speaking, "begin to live" in practice and eliminate legal gaps which had existed before it was adopted.

Notes

1. There are four (juvenile) criminal laws in Bosnia and Herzegovina, and these are: (1) at the level of Bosnia and Herzegovina; (2) Federation of BiH; (3) Republika Srpska; and (4) Brčko District of BiH. At the level of Bosnia and Herzegovina, there is still a traditional model according to which the legal status of a juvenile perpetrator of criminal offences is regulated by a special part within the general criminal legislation. On the other hand, special laws on the protection and treatment of children and juveniles in criminal proceedings are applied in the Republika Srpska, the Federation of Bosnia and Herzegovina, and Brčko District, as special legislative texts autonomously regulating the overall criminal status of juveniles (substantive, procedural, enforceable, and the commission of crimes at the expense of a juvenile). These laws are published in the "Official Gazette of the Republika Srpska" Nos. 13/10 and 61/13 (ZPDMRS), "Official Gazette of Brčko District of BiH" No. 44/11 (ZPDMBD), and "Official Gazette of the Federation of Bosnia and Herzegovina" No. 7/14 (the Law). They entered into force on the eighth day they are published, but with a postponed application of one year; the ZPDMRS began to apply on January 1, 2012, ZPDMBD on November 18, 2012, and the Law on January 1, 2015.
2. According to the FBIH Security Report for 2015, out of the total number of 13,012 reported persons—429 accused persons of having committed criminal offences are juveniles, which is less than 111 or 0.49% compared to the year 2015. The number of criminal offences for which juveniles are reported as perpetrators was reduced by 20.56% in 2016 compared to 2015 (Internet source: <http://www.fup.gov.ba/?cat=19>—Information on status of security within the territory of the Federation of Bosnia and Herzegovina for 2016, Federal Police Administration, January 2017).
3. Based on the table of the Federal Bureau of Statistics, it follows that the total number of criminal offences is very high. The most common crimes committed by juveniles are crimes against property. There is noticeable decrease—stagnation of criminal offences in the period from 2008 to 2011, and new increase of growth of total number of criminal offences (as well as property offences) in 2012 and 2013 (Bulletin No. 203/2014 of the Federal Bureau of Statistics, Sarajevo, January 2014 and Statistics Yearbook of the Federation of Bosnia and Herzegovina, January 2016).
4. "Official Gazette of the Federation of BiH" Nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 09/09, 12/10, 8/13 and 59/14.
5. "Official Gazette of the Federation of BiH" Nos. 36/03,

37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16, and 75/17.

6. A judge may order detention for a shorter period of time, for example 10 or 15 days. However, it is "an unwritten rule" that a judge always orders 30 days detention, and if the need for detentions ceases to exist before the expiry of this period, it shall be terminated.
7. This Article does not refer to consideration of the possibility and justification to apply educational recommendation.
8. Criminal procedural legislation of the Federation of BiH knows no extraordinary remedy—request for the protection of legality which exists in the Republic of Srpska.

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