UDK 343.85(497.11)
343.24(497.11)
343.91-053.6
DOI: https://doi.org/10.5937/bastina33-43828

Originalni naučni rad

*Vanda B. BOŽIĆ**
University of Zagreb
Faculty of Law, Union University, Belgrade

*Dragan Lj. TANČIĆ***
Institute for Serbian Culture, Priština-Leposavić

PROBLEMS OF IMPLEMENTATION OF EDUCATIONAL ORDERS IN THE REPUBLIC SERBIA – METHODOLOGICAL AND CRIMINAL LAW APPROACH***

Abstract. In the paper, the authors dealt with the problems of the application of educational orders in the Republic of Serbia from a methodological and criminal law approach. Educational orders, as *sui generis* measures, can be applied both before the initiation of criminal proceedings and during the duration of the criminal proceedings, with the focus of this paper being on their application before the initiation of criminal proceedings. The legislative national framework of the Republic of Serbia regarding the application of educational orders is based on the Law on Juvenile Offenders and the Criminal Protection of Juveniles (ZM) from 2005, with the authors taking into account the changes mentioned in the Draft ZM. Two hypotheses are defined in the paper. The first hypothesis is that educational orders as diversionary models of treatment of juvenile offenders and non-penal measures are relatively recent in the Republic of Serbia. Therefore, the mentioned measures cannot be nor are they sufficiently developed, which leads to incomplete satisfaction of restorative justice towards minors and injured parties, when the law allows us to do so. The second hypothesis is that organizational factors are of special importance for the success of the implementation of educational orders. In the paper, the authors point out that the new proposal of the Law on Juvenile Offenders and Criminal Protection of Minors enriches the system of educational orders and significantly expands the scope of their application. A certain significant rate of recidivism could be avoided by the combined and balanced application of repressive measures and educational orders as a sui generis measure. The paper gives de lege ferenda recommendations in the direction of simplifying the procedure that follows the beginning of the application of educational orders from the time when a criminal offense is committed, with the fact that the types of educational orders must necessarily follow the state and trend of juvenile crime.

Key words: educational orders, criminal law approach, methodological approach, criminal material and criminal procedural aspects, restorative justice.

* Associate professor, bozic.vanda@gmail.com
** Full professor, dragan_tancic@yahoo.com
*** The paper was created within the scientific research work of NIO under the Contract concluded with the Ministry of Science, Technological Development and Innovation of the RS number: 451-03-47/2023-01/200020 dated 02/03/2023.

INTRODUCTION

Our starting point in this paper is the poverty of the population as one of the important factors of organized, juvenile and other forms of crime (Božić 2016: 285-299). In this context, juvenile delinquency is a part of social reality and a specific form of social behavior, where due to social and other conditions, general and special social situations, there is deviation from permitted and accepted forms of behavior both regarding the young population and minors and other persons as well.

Juvenile crime has always been a special social problem, especially in modern conditions. To the extent that juvenile delinquency is present - absent in a society, it is at the same time an important indicator of the success or failure of a given society, to deal with these problems in a valid way, and, in general, to show us just how much care is taken regarding young people in a given society.

Considering the fact that minors are a particularly sensitive social category, they are given special attention in many societies, and as a result, the society finds different ways of solving the criminal law cases of minors, in order to inflict the least damage on them as the perpetrators of a criminal act, and at the same time to contribute to the raising of their consciousness. This is achieved through the application of educational measures as a diversionary model of behavior which, when the conditions are met, is diverted from the criminal procedure and the criminal law area towards the family and social law, which gives minors another chance, because the criminal case is treated as solved by the implementation of the educational order, and the minor does not have a criminal record.

Looking objectively a few centuries back, there is a long historical path of the state's reaction to juvenile crime, which dates back to the oldest legal monuments, such as the Code of Hammurabi and the Code of 12 Tables, which provided for the Talion principle of punishment without distinguishing between juvenile and adult offenders, until the introduction of educational orders as a *sui generis* measure. Therefore, the fact is that juvenile criminal law developed very gradually, slowly in step with current social events and given opportunities. Juvenile criminal law is a set of legal regulations that prescribe the position of minors in criminal law (Božić, Tančić 2022: 27). We should herewith point out that most countries in their laws, at the end of the ancient and the beginning of the Middle Ages, adopted provisions on milder punishment of juvenile delinquents and the exclusion of criminal responsibility for children under the age of seven (Randy, Randy 2004: 872). The idea of establishing criminal sanctions, which would be adapted to the personality, age, degree of biological and psychological development of the perpetrator, appeared with the appearance of the first theories that dealt with the study of the personality of minor perpetrators of criminal acts. In this way, along with the already established system of punishments, educational measures were being introduced into the criminal legislation, which leads to the modernization of the criminal justice system for the protection of minors. Observed from the procedural aspect, a distinction was made between juvenile and adult offenders through the establishment of the first courts for juveniles. The first juvenile courts were established in Chicago in 1899, and 21 years later they were established in other US states as well (1910). In Great Britain, the first juvenile courts were established in 1908, and four years later they were established in France (1912). In Russia, the separation of courts

for adults and minors appeared after World War II (1918), in Poland in 1919, in Japan in 1922, and finally in Germany in 1923 (Juvenile Justice, 1997, 10).

It is precisely the criticism of the traditional retributivist concept that is responsible for the emergence of the fundamental principles of restorative or informal justice (Handbook on Restorative justice programs, 2006, 26). In the attempts to find informal mechanisms for responding to crime aimed at compensating victims, in the 70s of the last century, states paid more and more attention to the personality of minors, through the implementation of diversionary programs. We herewith wish to point out the fact that the implementation of diversionary programs implies the avoidance of classic criminal procedures, and this practice had been developed for decades in the countries of the Anglo-Saxon legal area, where it gives very successful results in reducing the number of convicted minors. Until the adoption of the Law, which specifically regulates the provisions of criminal material, procedural and enforcement law, the legislation of the Republic of Serbia recognized only unconditional opportunity or the so-called simple diversion. From 2005 onwards, minors in the territory of the Republic of Serbia, in addition to the criminal law, enjoy a full scope of special criminal procedural treatment. Dismissal of the criminal complaint or suspension of the proceedings may be conditioned by the fulfillment of some of the non-penal measures, such as educational orders. Educational orders are instruments of diversification, i.e. redirection of the social reaction towards juvenile perpetrators of criminal acts by attempting to transform it into a primarily non-criminal reaction (Knežević 2008: 107). We herewith wish to emphasize that educational orders are not criminal sanctions, and we draw attention to the fact that educational orders can be issued by the court and the public prosecutor for minors even without conducting criminal proceedings. The purpose of educational orders is to avoid criminal proceedings against minor perpetrators of criminal acts in situations where possible, that is, if such criminal proceedings have already been initiated, to suspend them.

This paper, entitled "*Problems of the implementation of educational orders in the Republic of Serbia - methodological and criminal law approach*", is systematized through several units in which, nevertheless, the shortcomings of the current Law on juvenile offenders and criminal protection of minors (ZM) are recognized, which indicate the shortcomings and problems of the implementation of educational orders in the Republic of Serbia, as well as factors of an organizational nature as a possible cause of insufficient implementation of educational orders. The concluding considerations include proposals for recommendations aimed at changing legal solutions *de lege lata*, in order to avoid the limited application of educational orders.

INTERNATIONAL LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF THE JUVENILE DELINQUENT POPULATION

The international legislative framework for the protection of the juvenile delinquent population is contained in a series of documents adopted by the United Nations (UN). The first significant document that regulates the mentioned matter was adopted in 1985 at the seventh United Nations Congress, the topic of which was precisely the relationship and treatment of perpetrators of criminal acts. The UN Standard Minimum Rules

for the Administration of Juvenile Justice, 1985, known as „The Beijing Rules", are dedicated to the treatment of juvenile offenders. The Beijing Rules are divided into five units, with a total of thirty articles, in which the basic rights that a minor should have during criminal proceedings are indicated (Art. 7.1. - *Rights of juv*eniles). In accordance with the aforementioned rules, juvenile justice should be an integral part of the development process of every country and, in parallel with the maintenance of peaceful order in society, should contribute to the protection of young people. The procedure itself and the criminal sanction should be adapted to the personality of the minor, and deprivation of liberty should be resorted to in exceptional situations, when the crime is more serious (Božić 2019: 319). We herewith wish to emphasize that the provision that emphasizes that criminal sanctions and institutional treatments should be avoided whenever possible and resort to alternative measures (Art. 11 - *Diversion*) is of particular importance. Five years after the adoption of this document, the so-called „Riyadh Rules" followed, which focus on the prevention of juvenile delinquency, hence the name *UN Guidelines for the Prevention of Juvenile Delinquency* (The Riyadh Guidelines). 1990). Priority herewith is given to strengthening those factors that play a key role in the prevention of juvenile delinquency. Such factors are the family (Art. 11-19), the educational system (Art. 20-31), the social community (Art. 32-39), and social policy (Art. 45-51). Special emphasis is placed on strengthening the preventive role of law enforcement authorities, through special training for the implementation of those programs that would deter minors from committing criminal acts (Art. 52-59). The so-called „Tokyo Rules" date back to the same year – 1990; they are contained in the Standard Minimum Rules of the United Nations for Alternative Penal Measures (UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), 1990). Already in the introductory provisions that emphasize the goals of this document, it is envisioned that states should increasingly practice the application of measures that are substitutes for punitive, institutional measures. Alternatives to punitive measures are applied whenever possible by avoiding criminal proceedings, with full respect for the personality of the offender, in accordance with the gravity of the crime committed, with simultaneous efforts to involve the community in their implementation and help the minor in developing personal responsibility. One year after the „Tokyo Rules", the adoption of the „Havana Rules", i.e. the United Nations Rules for the Protection of Children Deprived of Liberty, followed (UN Rules for the Protection of Juveniles Deprived of Their Liberty, 1991). Although this document emphasizes the respect of the rights of minors during deprivation of liberty, already in the initial provisions it is noted that deprivation of liberty should be approached only as a last resort (Art. 1). Given that the aforementioned documents contain rules, principles and standards, they do not have legally binding force towards the member states, but they are certainly of great importance in the area of improving the juvenile criminal justice system.

The United Nations Convention on the Rights of the Child is legally binding for every country that has ratified it (Convention on the Rights of the Child, 1989). Just like the „Tokyo" and „Peking Rules", this also refers to the avoidance of criminal proceedings against a minor who is suspected of a minor crime, provided that Article 40, paragraphs 3 and 4, stipulate the forms of non-criminal measures that should be resorted to rather than

undertaking the treatments of an institutional nature: various types of counseling, educational programs, professional training programs, and others. This is actually about alternatives to court proceedings and institutional care, which should be adjusted to the age of the minor, the gravity of the crime and the circumstances under which it was committed.

EDUCATIONAL ORDERS IN THE NATIONAL CRIMINAL LEGISLATION OF THE REPUBLIC OF SERBIA

With the Code of Criminal Procedure (ZKP) from 1959, the then Yugoslav legislation for the first time in terms of the criminal legal position of minors accepted modern trends (Perić 1994: 182), which can be characterized as several decades long backlog in comparison to a large number of countries. According to the aforementioned Code, the state prosecutor is designated as the only procedural entity competent to initiate proceedings against a minor, and under the auspices of his discretionary powers, the principle of opportunity is provided for, so for reasons of expediency, he can waive criminal prosecution (Knežević 2010: 22). The principle of opportunity, in the form of an ordinary, unconditional diversionary model, was the only one that existed in the criminal procedural normative framework of Serbia until 2005, when significant changes were carried out.

The provisions of the Code of Criminal Procedure (ZKP) that regulate criminal proceedings against minors, followed by the provisions of the Criminal Code (KZ) that regulate the criminal status of minors, as well as the provisions of the Law on the Execution of Criminal Sanctions (ZIKS) that regulate the system of execution of criminal sanctions in relation to juvenile convicted persons, were repealed by the adoption and entry into force of the Law on Juvenile Offenders and Criminal Protection of Juveniles (ZM, 2005). Through these novelties in the aforementioned laws, there happened a complete separation of minor perpetrators of criminal acts in relation to adult perpetrators of criminal acts. This type of separation, i.e. the so-called normative independence, is actually an indicator that the bio-psychologically underdeveloped category of perpetrators whose criminality is labeled as a „symptom of puberty crisis" (Aleksić 1994: 8) began to receive much more attention, which this particular age deserves. A significant step was carried out for the first time with the introduction of the system of educational orders, which still exists in its unchanged form today. A certain rate of recidivism after serving a prison sentence (Božić 2019: 91) or educational measures of an institutional nature encouraged the legislator to devise such a system of responding to juvenile crime in which the personality of the juvenile is the priority.

In the second part of the Law on Juvenile Offenders and the Criminal Protection of Minors (ZM), the provisions of substantive criminal law are provided for, where educational orders are regulated in the first place (Articles 5-8), after which the system of criminal sanctions is regulated. The provisions of the aforementioned law regulate the general conditions, purpose, types and selection of educational orders. The purpose of educational orders is determined in such a way that criminal proceedings are not initiated, or that they get suspended, in order not to affect the proper development and strengthening of personal responsibility of minors, so that they do not commit criminal

acts in the future (ZM, Art. 6). Therefore, these measures are given the character of so-called diversionary measures, which fully corresponds to the definition of the diversionary concept (model) as: „Channeling children in conflict with the law away from court proceedings through the development and implementation of procedures and programs that enable many - preferably most of the minors - to avoid potential negative effects of official court proceedings, with full respect for human rights and legal protection" (Supporting Juvenile Justice Reform: Improving the Implementation of Education Orders, 2012). In order to be able to apply educational orders to a minor perpetrator of a criminal offense, it is necessary to cumulatively fulfill the conditions specified by law. The following is necessary: 1) that the minor has committed a criminal offense punishable by a fine or a prison sentence of up to five years, 2) that the minor has confessed to committing the same criminal offense, 3) that the minor's confession is supported by relevant evidence, 4) it is necessary to establish a certain relationship of the minor regarding the committed criminal act as well as the injured person (victim). It should be emphasized herewith that the area of application of these measures should be limited to situational crimes, i.e. to those crimes that belong to petty criminality (Božić 2017: 300-320). Let us clarify the condition that refers to a certain relationship of minors to the committed criminal act and the injured person (victim). As the matter of fact, the minor perpetrator of the criminal act should, first of all, show real remorse to the injured person for the criminal act committed against him. By the mentioned remorse, in some cases, and by preventing the occurrence of harmful consequences towards the injured person, then by trying to compensate for the damage, and by other actions of the minor perpetrator of the criminal offense after its execution, the minor perpetrator of the criminal offense would deserve not only not to be sanctioned, but primarily not to be prosecuted. Nevertheless, in practice, there are many cases where we encounter a situation in which it is difficult for a minor to admit that he committed a criminal offense, and therefore, he cannot even understand the injustice that he has inflicted on the victim of a criminal offense. Thus, the aforementioned situation can be an obstacle to the possibility of applying these diversionary measures at all, that is, for the minor to agree to their application.

We herewith wish to draw the attention to the fact that, in the still existing Law on Juvenile Offenders and the Criminal Protection of Minors (ZM), a rather meager systematizion of educational orders was made. In Article 7 of the aforementioned law, the following educational orders are listed in detail:

1) settlement with the injured party in order to eliminate, in whole or in part, the harmful consequences of the act through compensation, apology, work or in some other way;

2) regular school attendance or regular going to work;

3) involvement, free of charge, in the work of humanitarian organizations or affairs of social, local or environmental content;

4) subjecting to appropriate examination and withdrawal from addiction caused by the use of alcoholic beverages or narcotic drugs;

5) inclusion in individual or group treatment in an appropriate health institution or counseling center.

It should be emphasized that it is of particular importance that the types of educational orders are harmonized with the state of juvenile crime and with the frequency of the undertaking of certain criminal acts by juvenile perpetrators of criminal acts. Furthermore, we wish to warn that it is of crucial importance that the law provides the juvenile offender, the public prosecutor, and all other participants in this process with the opportunity to choose the most adequate educational order, which would be proportionate to the criminal offense committed, that is, which would fit in with the type of criminal offense committed by minors, as well as the consequences that the crime caused to the injured person, and that the diversion program would produce successful results.

Furthermore, we herewith wish to emphasize that the personality profile of the minor himself and his age are of particular importance, which tells us about his psychophysical readiness to adhere to the diversion program. The Draft Law on Amendments to the Law on Juvenile Offenders and the Criminal Protection of Minors (Draft 2022) extends the scope of the application of educational orders to criminal offenses that are punishable by a fine or imprisonment for up to eight years (Božić 2021: 35). However, the Draft is still waiting for adoption, even though it was created several years ago. We can say that the mentioned proposal certainly offers a better perspective, but what we should warn about is that, with such an application, there is a danger that the mentioned provisions of *de lege ferenda* might cross the borders of petty criminality. The changes and additions mentioned in the Draft include the introduction of educational orders related to participation in certain sports activities as well as to the passing of professional and some other supplementary exams. We herewith draw your attention to the fact that it would be expedient to include in the mentioned proposal an educational order that refers to refraining from visiting certain places of minors, as well as an educational order that refers to refraining of minors from contact with certain persons.

As evident from the above, the Draft Law on Amendments to the Law on Juvenile Offenders and the Criminal Protection of Juveniles has its good sides and bad sides, therefore, it should be revised once again.

A CRITICAL REVIEW OF THE APPLICATION OF EDUCATIONAL ORDERS IN THE REPUBLIC OF SERBIA

In the Republic of Serbia, the decision of diverting minors from the formal criminal procedure to the extrajudicial - diversion model belongs to the public prosecutor for minors, or, if the procedure has been initiated and is suspended, to the juvenile judge of the competent court. Although the public prosecutor for minors has knowledge and experience in the field of juvenile delinquency and youth delinquency, the selection of an educational order is made in cooperation with the parents, adoptive parents or guardian of minors and the competent guardianship authority (Art. 8 ZM).

However, the Law on Juvenile Offenders and the Criminal Protection of Minors does not regulate the procedure for the application of educational orders, which would define the role and responsibility of participants in the application of educational orders, as well as the rules of cooperation between participants, nor the rules for keeping records (Vlaović-Vasiljević, Džamonja - Ignjatović, Marković, Sofrenović 2012: 147).

At the same time, at the level of Serbia, there is no Rulebook that would be legally binding for all actors, but cooperation between them is established by internal agreements and projects. With such a by-law we could avoid the arbitrariness of individual subjects and resolve some disputed issues related to the financing of the costs of implementing the educational order, the costs of available capacities, and the like.

Urgency is one of the principles upon which not only criminal proceedings against minors are based, but the diversion program as well. Therefore, it is the duty of the public prosecutor and the authorized subjects of the social community to exchange proposals and information in the shortest possible time so that, from the moment when a minor commits a criminal offense, the application of an educational order can begin as soon as possible. One of the suggestions aimed at simplifying the procedure refers to the initial moments when the police establish contact with a minor. The recommendation is to shorten the duration of the procedure at the Higher Public Prosecutor's Office in the way that the police, before filing a criminal complaint, would start redirecting, or simply warn the minor verbally or in writing (Satarić, Obradović 2011: 34). If the police warning does not give results, then the prosecutor is involved.

Most countries have a positive experience with police diversion. However, it should not be overlooked that they have been practicing non-punitive treatment of juvenile offenders for decades, and are modernizing and adapting the practice to new circumstances and social circumstances (Steinberg 2009: 460). The revival of this idea/recommendation in Serbia remains in doubt, bearing in mind that it has favored accusatory criminal proceedings in which broad discretionary powers of the public prosecutor have existed for less than a decade through various modalities.

When organizing the implementation of diversionary measures, care should be taken to ensure that they are applied to minors who reside in the area of the municipality where the organization is located. In the territory of the Republic of Serbia, however, there are smaller towns where the implementation of certain educational orders is unfeasible, due to the fact that the appropriate organizations do not exist in them. Since the issue of financing travel expenses in such cases has not been resolved, a deficit of educational orders can easily be encountered, although unfortunately the need for their application towards juvenile offender has been established. This happens when, due to poverty, a person is unable to finance the trip to the headquarters of the institution and the Higher Public Prosecutor's Office. Solving problems of this kind at the local level should be set as a priority in the near future.

The passivity of centers for social work in terms of lack of communication with certain institutions of social, humanitarian and environmental content and failure to identify capacities at the level of the local community proved to be a problem in the implementation of certain educational orders (Vučković-Janković 2012: 157). On the other hand, prosecutors for minors due to the lack of auxiliary professional services at the courts (psychological, social, pedagogical) can easily get into the position of not recognizing cases in which the application of educational orders is required (Vučković-Janković 2012: 158).

In addition to the human factor, the implementation of educational orders was also affected by the pandemic caused by the *Covid-19* virus. In the year of the beginning

of the pandemic, states faced the problem of finding an adequate teaching model (Reimagining a new social contract for joint education 2021: 37), which is further compounded by the difficult realization or impossibility of applying the educational order that the minor fulfills by attending classes. Regular school attendance under normal circumstances means that a minor spends 1125 minutes at school on a weekly basis, if we start from 5 school hours as the average duration of classes. For a period of six months, a minor spends 189,000 minutes at school, which is a period of time quite sufficient for accepting the school environment and the educational process as a regular obligation. However, the pandemic caused by the *Covid-19* virus has negatively affected all segments of society, including the education system (Božić 2021: 155; Božić, Bataveljić 2021: 186-198). In accordance with the current epidemiological situation, the models of attending classes changed in one part of the school year, while the regular educational process continued in the period of stagnation. Such oscillations have had a negative impact on the entire juvenile population included in the education system (Stepanović 2020: 184), especially on juvenile offenders who have yet to be subjected to the effects of an educational order. By engaging in distance learning, the minor moves away from the school environment. To this we could add the lack of communication and support from parents who are employed with full working hours (Suranto, Pratiwi, Setiawan, Normah 2020: 178-179). Both of these factors create the basis for re-engagement in criminal activities, by changing the way of thinking and destructive behavior. A problem of this kind has been detected, because the postponement of the execution of educational orders is not practiced, especially if one takes into account the importance of regular education for assuming a constructive and productive role in society (Radulović 2010: 146). This means that waiting for the stabilization of the epidemiological situation and the return of the educational process to normal flows would negatively affect the juvenile offender in every sense.

An even greater danger exists regarding the interruption of minors' medical treatment, which was started to be carried out in order to wean them from addictive diseases such as drug addiction and alcoholism. Certain health facilities were practically unusable for primary treatment purposes, or even closed, due to the inability of infected health personnel to provide medical assistance to patients (Lockwood, Viglione, Peck 2021: 2). For the aforementioned reasons, the very beginning of treatment of minors who are addicted to the use of narcotic drugs or alcohol, in conflict with the law, was impossible. In families that experienced a loss of income due to increased stress, depression and anxiety, the abuse of psychoactive substances by minors was significantly higher (Deborah 2007: 271). The aforementioned series of aggravating circumstances have been faced not only by Serbia, but by the whole global population.

CONCLUSION

There is no question that countries in which educational orders exist for a long period of time as a complex diversionary model have had very successful results in the prevention and suppression of juvenile crime. The reason for this lies in the fact that the normative acts of the courts, which for many years have incorporated educational

orders into their national penal legislation, are monitored and harmonized with the state and trend of juvenile crime, which is not the case in our country. We wish to herewith point out that most countries bypass the contact of minors with judicial authorities. Instead of their involvement, other subjects of the social community appear as important factors, as well as police authorities trained exclusively to work with juvenile perpetrators of criminal acts. For this reason, the rate of recidivism has been significantly reduced, and public prosecutors have been spared the costs of engaging in the very process of applying educational orders.

On the other hand, in the Republic of Serbia, in the seventeen-year period of application of educational orders, the practice of their application failed to develop or modernize. Amendments to the Law on Juvenile Offenders and Criminal Protection of Juveniles have been awaited for years, because the normative framework is by no means suitable for the atmosphere that prevails among juvenile offenders. The existing educational orders provided for by the said law are very scarce in relation to the needs that the personality of a juvenile offender requires, therefore their reintegration and resocialization cannot be achieved either.

Furthermore, we wish to point out the problem of the injured party in the application of educational orders to the minor, considering that his rights are largely neglected due to the fact that the settlement of the minor offender with the injured party is applied in practice in very few cases. One of the ways to solve this problem is to involve the injured party and the minor perpetrator in the mediation process. Namely, direct involvement in the resolution of the conflict between the victim and the juvenile offender would create more favorable conditions for both parties, which would contribute to the achievement of the purpose of applying educational orders. The aforementioned proposed measures would have a favorable effect on the minor's awareness of the committed act, as well as on the understanding and existence of personal responsibility for the committed act and the resulting damage to the injured party. Therefore, the mentioned proposal greatly contributes to the complete socialization of minors, while the injured party does not remain neglected, but in this way has more opportunities to realize his rights. It should be emphasized that this proposal also reduces the possibility of secondary victimization for the injured party.

The lack of resourcefulness, disorganization and passivity of the subjects in charge of the implementation of educational orders contributed to a large extent and led to the underdevelopment of their application in practice. Certain issues that are of crucial importance, such as the very costs of implementing educational orders, then creating the conditions to ensure the implementation of educational orders in small communities, as well as issues related to the financing of travel expenses, have unfortunately not yet been resolved. All of the above actually speaks in favor of the existence of a large disproportion between the applied educational orders and the pronounced criminal sanctions, in relation to minor perpetrators of criminal acts, because even in situations where there are opportunities for the application of educational orders, that is for the avoidance of criminal proceedings, the actual criminal proceedings were actually conducted which resulted in the imposition of criminal sanctions on a juvenile delinquent. The aforementioned action of judicial

institutions only leads to damage for all institutions that are involved in the criminal prosecution of minors and, most of all, to the damage regarding the minor perpetrator of the crime.

Finally, we wish to emphasize the neglected fact that the principles of economy and efficiency are very important in this system of non-criminal response to juvenile crime. It is necessary for the Republic of Serbia that *de lege ferenda* strengthens its existing legal framework with the amendments proposed in this paper, as well as to bring the established legislative framework into line with the state of juvenile crime, the personality profile of juvenile delinquents, and the rights of the injured party, which we warned about. At the same time, it is very important to keep in mind that the balanced application of educational orders and imposed criminal sanctions does not exceed the limits of situational criminality.

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Ванда Б. БОЖИЋ
Драган Љ. ТАНЧИЋ

ПРОБЛЕМИ ПРИМЕНЕ ВАСПИТНИХ НАЛОГА У РЕПУБЛИЦИ СРБИЈИ – МЕТОДОЛОШКИ И КРИВИЧНОПРАВНИ ПРИСТУП

Резиме

Аутори су се у раду, са методолошког и кривичноправног приступа, бавили проблемима примене васпитних налога у Републици Србији. Васпитни налози, као мере *sui generis,* могу се применити како пре покретања кривичног поступка, тако и за време трајања кривичног поступка, с тим да је тежиште овог рада на њиховој примени пре покретања кривичног поступка. Легислативни национални оквир Републике Србије у погледу примене васпитних налога базиран је на Закону о малолетним учиниоцима кривичних дела и кривичноправној заштити малолетних лица (ЗМ) од 2005. године, с тим да су аутори имали у виду и измене које се наводе у Нацрту ЗМ. У раду су дефинисане две хипотезе. Прва хипотеза је да су васпитни налози као диверзиони модели поступања према малолетним учиниоцима кривичних дела и непеналне мере релативно новијег датума у Републици Србији. Самим тиме, наведене мере не могу бити нити су у довољној мери развијение што доводи до непотпуног задовољења ресторативне правде према малолетницима и оштећенима, када нам закон то дозвољава. Друга хипотеза је да су за успешност реализације васпитних налога од посебног значаја фактори организационог карактера. Аутори у раду истичу да нови предлог ЗМ обогаћује систематику васпитних налога те знатно проширује опсег њиихове примене. Одређена значајна стопа рецидивизма могла би да се избегне комбинованом и уравнотеженом применом репресивних мера и васпитних налога као мера *sui generis*. У раду су дате препоруке *de lege ferenda* у правцу поједностављења процедуре која прати почетак примене васпитних налога од часа кад је учињено кривично дело, с тим да врсте васпитних налога нужно морају следити стање и кретање малолетничког криминалитета.

Кључне речи: васпитни налози, кривичноправни приступ, методолошки приступ, кривичноматеријални и кривичнопроцесни аспект, ресторативна правда.

Рад је предат 1. марта 2023. године, а након мишљења рецензената, одлуком одговорног уредника *Баштине*, одобрен за штампу.