Children in conflict with the law in Bosnia and Herzegovina

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BOSNIA AND HERZEGOVINA
ANALYTICAL REPORT ON CHILDREN IN CONFLICT WITH THE LAW

Agency for Statistics of Bosnia and Herzegovina

Sarajevo, November 2006
The notion of «juvenile delinquency» has developed out of the reason that it was necessary to separate minor from adult perpetrators of criminal offences, as well as their different legal and criminal status. In criminal offence literature there can be found wider determination of juvenile delinquency, implying all deviations in behaviour of minors as well as their social maladjustment. This means that the prevailing understanding is that juvenile delinquents (perpetrators) enlarge, besides those who commit incriminated, socially unacceptable and deviant actions, also those who need support and protection, considering the unfavourable conditions under which they live.

UN Standard Minimal Rules for administration of judiciary system for juvenile offenders («Beij Jing Rules»), in Article 2.2. the notions of «minor», «offence» and «juvenile offender» are defined as follows:

a) the minor is a child or a young person who, according to the respective legal system, can be treated in regards to the offence in a different way than the others;

b) the offence is any behaviour or action that is submitted to sanctions according to the respective legal system;

c) the juvenile offender is a child or a young person for whom it is claimed that s/he committed, or for whom is established that s/he committed the offence.

A/Legislative framework

There is no unified law in Bosnia and Herzegovina that entirely regulates the field of juvenile offences either in entities or on the state level. Special regulations of general legal provisions existing in the entity laws on criminal proceedings, criminal laws, laws on execution of criminal sanctions, laws on social protection, laws on internal affairs are applied. The laws on criminal proceedings and criminal laws in Federation BiH and Republika Srpska have been harmonized between themselves, but also with the corresponding laws at the level of the state BiH. Criminal legislation sets the lowest limit of criminal responsibility at 14 years of age, and therefore distinguishes as criminally responsible the junior juveniles (from 14 years of age to 16 years of age) and senior juveniles (from 16 years of age to 18 years of age) as criminally responsible juveniles.

In the Criminal Law of Republika Srpska, as well as the Law on Criminal Proceedings of the Federation BiH, a separate chapter of the Law stipulates provisions on Proceedings towards a juvenile, that apply against persons who committed criminal offence being older than 14 years of age (what presents the lowest level of criminal responsibility), or, who committed criminal offence as juveniles (under 18 years of age), but in time of the court proceedings have not yet fulfilled 21 years of age.
Pursuant to the provisions of criminal laws, persons under 14 years of age are considered children, and criminal sanctions can not be imposed on them. When it is established during the proceedings that at the time of perpetrating a criminal offence the juvenile had not yet reached fourteen years of age, the criminal proceedings ceases and the guardianship authority is informed on this.

To a juvenile who at the time of perpetration of criminal offence had attained fourteen years of age but had not reached sixteen years of age (a junior juvenile) only educational measures may be imposed. To a juvenile who at the time of perpetration of a criminal offence had attained sixteen years of age but had not yet reached eighteen years of age (a senior juvenile) educational measures may be imposed under conditions laid down by the criminal law, and exceptionally a punishment of juvenile imprisonment to three years may be imposed.

The Criminal Code of the Federation of BiH and the Criminal Law of Republika Srpska contain a separate chapter with provisions on educational recommendations, measures and sanctions for juveniles.

Educational measures against juvenile person may be applied by the competent prosecutor or judge for juvenile offenders.

The conditions for applying educational recommendations are:
-admittance by a juvenile that s/he committed a criminal offence, and
-her/his expressed readiness for reconciliation with the damaged party.

The purpose of educational recommendations is:
-not to initiate criminal proceedings against the juvenile perpetrator of criminal offence,
-for application of educational recommendations to influence the juvenile perpetrator not to repeat criminal offences in the future.

Types of educational recommendations are:

1. personal apology to the damaged party,
2. compensation of damages to the damaged party,
3. regular school attendance,
4. work in favour of humanitarian organization or local community,
5. acceptance of adequate employment,
6. placement to other family, home or institution,
7. medical treatment in adequate health care institution,
8. attendance of upbringing, educational, psychological and other advisory services.

Educational recommendations can last to maximal one year.

In the judicial system of Bosnia and Herzegovina and the existing organization of courts there are neither juvenile courts nor family courts. The cases in which the victims are juveniles are decided upon by the regular courts (courts of general jurisdiction), adding that the family laws of RS and FBiH regulate that in such cases, in the official duty the
guardianship body gets involved as the guardian. It has been prescribed that the guardianship body sets up the so called collision guardian in all those cases when the interests of the child conflict the interests of parents, and then the guardian has to have the consent of the guardianship body if it is about the disposal or alienation of the juvenile's property.

**Juvenile perpetrators of criminal offences** are persons (who at the time of perpetration of a criminal offence had attained fourteen years of age, but had not yet reached eighteen years of age) against which a procedure according to criminal charges has not been initiated, the preparatory proceeding has ceased, or a proposal for the pronouncement of sanctions has been filed, the criminal proceeding before the panel is validly executed with a decision that ceases the proceeding before the panel, or pronounces the sanctions.

**Indicted juveniles** are persons against which a criminal proceeding before a panel is validly concluded with a decision that ceases the proceeding before the panel, or that pronounces the sanction.

The following can be imposed on a juvenile perpetrator of a criminal offence:

- **Disciplinary measures** (court reprimand or committal to a juvenile disciplinary centre for juveniles);
- **Measures** of intensified supervision (on the part of the parents, adoptive parents, or guardians, in a foster home, or on the part of a competent social care body);
- **Institutional measures** (committal to an educational institution, to an educational-reformatory home, or some other training establishment); and
- **Measures of protective supervision with a suspended sentence** (treatment in an appropriate health institution, restrain from using liquor and intoxicating drugs, visits to an appropriate health institution or counselling office, etc.).

Exceptionally, a punishment of imprisonment may also be applied to juvenile perpetrators of criminal offences. Only a senior juvenile criminally liable may be punished if he has perpetrated a criminal offence for which a punishment of imprisonment for a term exceeding five years has been prescribed, if it would not be justifiable to apply an educational measure because of the grave consequences of the offence perpetrated and the high degree of criminal responsibility.

A special juvenile court does not exist, but in all courts on the territory of the Federation of Bosnia and Herzegovina there exist panels for juveniles, and in first instance courts judges for juveniles (these are permanent judges entrusted with this duty).
The Panel for juveniles in a first instance proceeding is composed of three judges: a judge for juveniles and two jurymen judges who need to come from the line of professors, teachers, psychologists, educators, and other persons with experience in the upbringing of juveniles, and in a second instance proceeding, of two judges and three jurymen judges.

A minor may not be tried in absentia, and when actions are undertaken that are attended by the minor, the bodies participating in the proceeding must be circumspect, mindful of the mental development, sensitivity and personal characteristics of the minor. When it is necessary for the minor to be examined by experts in order to establish his state of health, mental development, mental characteristic or predisposition, physicians, psychologists or pedagogues shall be appointed for that examination, and these examinations of the minor may be done in a medical or other institution.

The public shall always be excluded when a minor is being tried.

The proceedings against a minor are initiated for all criminal offences only on the petition of the Prosecutor. The Prosecutor shall notify the competent juvenile welfare authority of each proceeding instituted against a minor. The defender of a juvenile may only be a lawyer and none may be relieved of the duty to testify on the circumstances necessary for the assessment of mental development, personal integrity, and the circumstances in which the minor lives. A minor shall be summoned through his parents or legal representatives. Without court permission, neither the course of a criminal proceeding against a minor, nor the decision rendered in that proceeding may be made public.

The Law on Execution of Criminal Sanctions BiH (“Official Gazette BiH”, no. 13/05) regulates, among other things, the execution of punishment of juvenile imprisonment, explicitly prescribing that the sentence to juvenile imprisonment shall be executed in a special ward for juveniles in the Institute(facility) or separate institute in the entity in which the imprisoned person resides, or has permanent address. In case that the sentence to juvenile imprisonment has not been completed till the person is 23 years of age, the sentenced person shall be sent to the Institute in which the adult prisoners serve their sentence. (The Law on execution of criminal sanctions, Articles 167-174.). The Laws on execution of criminal sanctions in both entities have not been issued as new laws together with criminal law and Law on execution of criminal sanctions at the state level. Neither of these two laws fully follow the changes that occurred by passing the new laws on criminal proceedings and criminal laws. The process of changing these laws is in process, and it is expected they shall be fully harmonized.

In the Laws on courts and court service in both entities the issue of competence of judge for juveniles has been defined, with the provision that the competent court is the one on whose territorial jurisdiction the offence took place.
Apart from the provisions within entity laws on interior affairs where the preventive role of the police has been defined, there are also some by-laws, instructions and procedures in both entities that specify in more detail the work of police bodies with juveniles, particularly during the arrest.

**B/Juvenile delinquency**

The most frequent forms of offences committed by juvenile persons registered in Bosnia and Herzegovina are: against property and people; against life and body; against safety of traffic; against general safety of people and property; against public order and peace; against dignity of personality and morale, and other criminal offences. The main characteristic of the above offences is that the perpetrators are juvenile male persons (98%), of age group 14-18 years. The age of juvenile delinquents has lately becoming younger, and the number of repeated perpetration of criminal offences is increasing. In the group of criminally responsible children belonging to the age 14-18 years, the age from 16 and 17 years is the age when they most frequently break the law. It is noticeable that younger and younger children come to conflict with law. It particularly worries that there is the increase in number of criminally irresponsible persons, under fourteen years of age, both among the perpetrators of offences and perpetrators of criminal offences (data from the research of Council for Children and Save the Children Norway). The data that particularly worry are related to the violence committed by children that also show the increasing trend, and enlarge two categories, from 7-14 years of age and from 15-18 years of age.

The data on violence committed by children are also indicative, because the increase of violence has been recorded mostly in age group from 15-18 years, and what particularly worries is the fact on the criminal offences of children from 6-10 years of age (cases recorded in 2001, 2002, and 2003 - 16 cases in total).

This behaviour is often preceded by, or is followed by the increasing number of children neglecting, interrupting and dropping out of education, particularly secondary education, but primary as well. The boys are the more prominent group of juvenile offenders, and the urban environment more often the ambience where the juvenile delinquency is present, or more frequently present. The most frequent committed criminal offences are against property (estimated 90% in the structure of committed criminal offences), and in considerably smaller degree are the offences against body and life, or criminal offences against public order and peace.

The statistical data in the Federation BiH are regularly collected, and year after year there are more and more data on judiciary in general, therefore the juvenile breakers of the law as well. The data on several previous years for the Federation BiH clearly indicate to the increase of the number of juvenile perpetrators of criminal offences. In Republika Srpska there are no such follows up. According to the data from first instance courts in Banja Luka, Bijeljina and East Sarajevo, as the three major cities in Republika Srpska, it can be stated that there is an increase in the number
of convicted juvenile persons, and this parameter, although insufficient, can be taken as an indicator of trend, or to say, its increase. According to the available data, the participation of juvenile perpetrators in criminal offences in relation to the total number of perpetrators has been first recorded in Republika Srpska by the Ministry of internal affairs in 1998 and it is increasing since then.

Therefore, the existing statistical data in the last six years indicate to the tendency of growth of juvenile delinquency in both BiH entities, and the assumption is that this trend will continue to grow in the following period too.

The persons sentenced to juvenile imprisonment serve their sentence in correctional facilities (Institutes) in Zenica and Foča. In December 2003, in both correctional facilities, the sentence to juvenile imprisonment was served by sixteen persons. The basic and essential problem to this presents the fact that the juveniles serve their sentence (including junior adults till 24 years of age) together with adult convicts. The research conducted on the position of juveniles while serving their sentence in correctional facility (Research, Draft final report - The Position of youth serving sentence of juvenile imprisonment in BiH, Save the Children UK, January 2005) underlines that separation of juvenile serving imprisonment sentence from the other convicts would essentially influence to and improve the regime implemented with the young persons in prison.

**CONCLUDING REMARKS**

The available data on juvenile delinquency in general, as well as on the share of the above-mentioned in overall delinquency, without a doubt indicates that there is an increase in not only violent juvenile delinquency and delinquent recidivism, but also in the total delinquent activity of juveniles. Unfortunately, in BiH there still does not exist complete statistical processing of data on the movement of delinquency, and for a number of reasons: the political division of BiH (in an administrative sense), the fragmentation of departments responsible for the monitoring and recording of movements of juvenile delinquency.

However, in addition to this, it is possible to draw certain conclusions on the scope, dynamics, and the structure of juvenile delinquency on these territories. Namely, regardless of the above-mentioned difficulties, it is possible to observe the preoccupying information on the increase of juvenile delinquency, particularly in comparison to the period prior to the year 1992. The reason for these facts should be primarily sought for in the fact that the society of Bosnia and Herzegovina is: impoverished, one of post-conflict, and in transition. All in itself, these three characteristics of a society present risk factors that can lead the youth to various forms of socially unacceptable behaviour, and, therefore, to a situation of conflict with the law.

The problem of minors in conflict with the law should be approached in a way that would lead to creating positive environment for their development. Prevention of juvenile offences should become a priority, while it is also needed to influence young people through education in
schools, media campaigns, but also education of persons who are, by the nature of their work in a daily contact with children, particularly the police, social workers, judges and prosecutors.