

ORIGINAL SCIENTIFIC PAPER

CORRECTIVE MEASURES IN THE FEDERATION OF
BOSNIA AND HERZEGOVINAMiodrag N. Simović¹*Faculty of Law of Banja Luka,*Dragan Jovašević²*Faculty of Law, Nis*Marina M. Simović³*Faculty of Law University „Apeiron“ Banja Luka,*

Abstract: *By the adoption of the Protection and Treatment of Children and Juveniles in Criminal Procedure Act 2014(which started applying in early 2015) the criminal and legal position of juvenile perpetrators of criminal offences in the Federation of Bosnia and Herzegovina was regulated in a new way. The Republika Srpska and Brčko District of Bosnia and Herzegovina have been applying laws of similar content from before. Education measures are provided as the most important measure of social reaction towards these persons. The law recognizes several types of these measures with different content, purpose, duration and manner of implementation which are subject matter of this paper.*

Key Words: *juvenile, criminal offense, the Federation of Bosnia and Herzegovina, sanction, corrective measures.*

1 Judge of the Constitutional Court of Bosnia and Herzegovina, Full Professor of the Faculty of Law of Banja Luka, Active Member of the Academy of Sciences and Arts of Bosnia and Herzegovina, Foreign Member of the Russian Academy of Natural Sciences, Active Member of the European Academy of Sciences and Arts and Active Member of the Balkan Scientific Center of the Russian Academy of Natural Sciences, miodrag.simovic@ustavnisud.ba

2 Full Professor of the Faculty of Law, Nis, jovashana@ptt.rs.

3 Secretary of the Ombudsman for Children of Republic of Srpska and Associate professor Faculty of Law University „Apeiron“ Banja Luka, vlado_s@blic.net.

1. INTRODUCTION

The new juvenile criminal law in the Federation of Bosnia and Herzegovina, which was established by the Protection and Treatment of Children and Juveniles in Criminal Procedure Act– the Juvenile Act⁴ in 2014, prescribes three basic types of criminal sanctions that may be imposed by the court on juvenile offenders. These are: 1) corrective measures, 2) juvenile imprisonment⁵ and 3) safety measures⁶. Juvenile criminal sanctions are legally prescribed measures of social reaction against juvenile offenders imposed by organs determined by a law⁷ with the aim of protection of society from crime through education, rehabilitation and proper development of juveniles.

Corrective measures are basic type of juvenile criminal sanctions, i.e. basic measures of social reaction against juvenile crime. They are imposed regularly, as a rule, usually within legally prescribed court procedure. They may be imposed, under certain conditions, on all juvenile offenders (both younger and older minors), as well as on younger adults. The purpose of the application of these special measures is to provide a minor with a priority education or, more accurately, rehabilitation (so called, socialization), with as less elements of coercion as possible⁸. Introduction of corrective measures into criminal justice system has interrupted a long, centuries-old criminal and legal tradition of exclusive punishment of young offenders and children, indeed by a reduced penalties which are usually imposed on adults (grown-up) criminal offenders. Thereby, juveniles now cease to be „criminals in the small“ and become a special category of criminal offenders⁹.

The purpose of juvenile criminal sanctions is doubly determined¹⁰. First, their purpose is the same as the purpose of all other criminal sanctions as provided for in Article 7 of the Criminal Code of the Federation of Bosnia and Herzegovina, and those: 1) to protect society from crime by preventive influence on others to respect the legal system and do no crimes, and to prevent the offender from committing a criminal offense, as well as encouraging their rehabilitation and 2) to protect and redress victims of crime¹¹. Thus, the general purpose of ju-

4 „Official Gazette of the Federation of Bosnia and Herzegovina“, No. 7/14.

5 Božica Cvjetko, “Zakonska i sudska politika kažnjavanja maloljetnika i mladih punoljetnika kaznom maloljetničkog zatvora”, *Hrvatski ljetopis za kazneno pravo i praksu*, 11, 2 (2004): 841-865.

6 Dragan Jovašević. *Maloljetničko krivično pravo* (Niš: Pravni fakultet, 2011), 101-110.

7 Joachim Hellmer. *Jugendkriminalität* (Darmstadt, 1978), 78-94.

8 Nataša Mrvić Petrović. *Krivično pravo* (Beograd: Pravni fakultet Univerziteta UNION: Službeni glasnik, 2005), 186.

9 Željko Horvatić, *Kazneno pravo, Opšti dio* (Zagreb: Pravni fakultet, 2003), 245.

10 Miodrag Simović et al. *Maloljetničko krivično pravo* (Istočno Sarajevo: Pravni fakultet, 2013), 157-169.

11 Borislav Petrović, Dragan Jovašević, *Krivično (kazneno) pravo Bosne i Hercegovine, Opšti dio* (Sarajevo: Pravni fakultet, 2005), 275-276.

venile criminal sanctions is suppression of all kinds, shapes and types of crime through general and special prevention, as is the purpose of all criminal sanctions in general. Within this general purpose of all (including juvenile) criminal sanctions, Article 31 of Juvenile Law specially provides for that the purpose of criminal sanctions against juveniles is to: 1) to influence the development and strengthening of personal responsibility of minors, 2) to provide education (that is a process of training of minors to build their own opinions towards various social values through different findings) and 3) to ensure proper development of the minor in order to ensure his re-integration into community¹². This purpose of juvenile criminal sanctions may be achieved in two ways¹³, those are: 1) to provide protection, care, assistance and supervision, and 2) to ensure general and vocational training.

2. MEASURES OF WARNING AND GUIDANCE

The first and easiest type of corrective measures that the new juvenile criminal law in the Federation of Bosnia and Herzegovina recognizes, consists of warning and guidance measures, which have replaced the previously existing disciplinary measures. They are imposed when it is necessary and sufficient to influence the personality of the minor and his behavior by such measures (Article 32 of the Juvenile Law). Therefore, their use may be considered in the case of minors against which it is not necessary to apply long lasting measures of education, and who committed insignificant criminal offense¹⁴, usually for reasons of frivolity and thoughtlessness, as primary, random, situational offenders and not because of educational neglect. The law provides for three measures of warning and guidance. These are: 1) the court admonition, 2) the specific responsibilities and 3) referral to a correctional center.

12 Đurađ Stakić, „Konceptualno-metodološka zasnovanost prevencije maloljetničke delinkvencije“ u *„Strategija državnog i društvenog reagovanja protiv kriminaliteta“*, ured. Dobrivoje Radovanović (Beograd: Institut za kriminološka i sociološka istraživanja, 2003), 91-115.

13 Vildana Vranj. „Odgojne mjere prema maloljetnicima i njihovo izvršenje u Bosni i Hercegovini“, *Godišnjak Pravnog fakulteta u Sarajevu*, 42 (2004): 399-400.

14 Dragan Jovašević, Zoran Stevanović, „Pojam i karakteristike maloljetničkih krivičnih sankcija u Republici Srbiji“, *Revija za kriminologiju i krivično pravo*, 1 (2008): 101-110.

3. COURT ADMONITION

Court admonition (Article 34 of the Juvenile Law) is the mildest corrective measure consisting of the admonition which the court directs to a juvenile offender in the name of society for a crime he had committed¹⁵. The court imposes this measure if it may be concluded from a relationship of a juvenile towards committed offense and his willingness never to commit criminal offenses in future that reprimand itself shall achieve the purpose of corrective measures¹⁶. It is a kind of warning to a juvenile that he will be imposed more severe corrective measures (including severe criminal sanction - a penalty) if he re-commits any criminal offense. When imposing this measure, the court points out to a juvenile to a social unacceptability and harmful effects of his behavior, the consequences that such behavior may have on him, and that in case of re-commission of criminal offense he may be imposed another (it means more severe) criminal sanction. Sole pointing out to a minor to a social unacceptability of his conducts and the harmful effect of his behavior, in fact, consists of presenting a juvenile with a fact that by committing a criminal offense he has violated or threatened core values that are protected by criminal legislation. In this way, the juvenile shall be warned that the society will not tolerate his negative and harmful unlawful conduct in the future. The court admonition is enforced the moment it is imposed¹⁷.

When selecting this measure, the court must take into account the type, nature and gravity of the committed offense, as well as the personality of the perpetrator. Therefore, it is considered that it would not be justified to impose a court admonition in case of severe crimes (for which the law prescribes heavier penalties), or in cases where the personality of the juvenile provides insufficient basis for assessing the fact whether the admonition (warning) may have enough influence on him and his behavior, especially that he will no longer commit crimes. Whether application of court admonition is sufficient and justified corrective measure or not, depends not only on the personality of the juvenile, but also on its willingness not to commit criminal offenses any more, where assessment of willingness and possibilities of the environment in which the juvenile lives to have positive influence on him and thus help him overcome and resolve everyday problems and difficulties he is found in, is important.

15 Obrad Perić, „Nacrt Krivičnog zakona SFRJ i krivične sankcije prema maloljetnicima“, u *Reforma opšteg dela Krivičnog zakona SFRJ i savremene tendencije u jugoslovenskom krivičnom pravu*, (Budva: Institut za kriminološka i sociološka istraživanja, 1991) 1-14.

16 Zoran Stojanović, Obrad Perić, *Komentar Krivičnog zakona Republike Srbije* (Beograd: Službeni list, 1996), 27-28.

17 Milan Škulić, Ivana Stevanović, *Maloljetni delinkventi u Srbiji* (Beograd: Jugoslovenski centar za prava deteta, 1999), 292.

4. SPECIAL OBLIGATIONS

Special obligations (Article 35 of the Juvenile Act) are different kind of measures of warning and guidance. This is a new, independent kind of criminal sanctions (often called an alternative measure) provided for juvenile offenders. However, these measures were recognized by previous Juvenile Criminal Code of Yugoslavia but only as special measures that had no legal independence and which the court could only have imposed on a juvenile subsidiary with some other corrective measure of intensified supervision. The court can now impose one or more special obligations on a juvenile if it assesses that it is necessary to influence juvenile and his conduct by adequate orders or prohibitions. Application of special obligations has the intention to achieve a basic goal – to appeal on the very responsibility of a juvenile and to seek (quality and duly, within a certain timelimit) fullfilment of certain obligation or set prohibition with his active cooperation, having in mind that this measure does not appear as „additional disciplinary measure“, whose aim is to additionally burden a juvenile with certain obligations and prohibitions¹⁸.

In this case, the court may impose on a juvenile one or more special obligations. Special obligations have to be strictly individualized. It is necessary that a juvenile, in their application, sees the aim and purpose of obligations imposed on him, notwithstanding the fact that they might be too difficult for his age.

Focus of application of these measures is on compensation, on learning of better way of juvenile's behavior. New Juvenile Criminal Act of the Federation of Bosnia and Herzegovina knows the following special obligations for a juvenile offender: 1) to regularly attend school, 2) not to be absent from work, 3) to qualify for a job suitable for his capabilities and preferences, 4) to join the work of humanitarian organizations or works of social, local or environmental nature, up to 120 hours in a period of six months, 5) to refrain from visiting certain places or events and to avoid the company and certain persons which may have a negative impact on him, 6) that the juvenile, with the consent of a legal representative, is subjected to a professional medical treatment or drug or other addictions treatment, 7) to be involved in individual or group work in youth counseling center, 8) take classes for professional training or to prepare and take knowledge assessment exams, 9) to get involved in certain sports and recreational activities and 10) that without special permission of the court he cannot leave the place of residence or domicile.

When selecting specific obligations, the court specifically takes into account that they are suitable for the personality of a juvenile offender and the circum-

18 Božica Cvjetko. „Zakonska i sudska politika kažnjavanja maloljetnika i mladih punoljetnika kaznom maloljetničkog zatvora“, *Hrvatski ljetopis za kazneno pravo i praksu*, 2 (2004): 841-865.

stances in which he lives, that is to assess his readiness to cooperate in achieving the imposed measures. When a specific obligation is imposed, the court warns the juvenile that in case of failure to implement one or more obligations within set deadline, they may be replaced by another obligation, but also with another (heavier) corrective measure¹⁹. Accordingly, when selecting certain specific obligations, the court takes into account the readiness of the juvenile to cooperate in their implementation, as well as that they are adjusted to him and conditions he lives in. Imposed obligations can not last longer than one year, but also their application should not interfere with schooling or employment of a juvenile or be harmful to his health.

Supervision over the execution of special obligations is conducted by the court that imposed the measure, wherein it may request the report and the opinion of the social care service. During the time in which specific obligations are in force, the court may subsequently replace it by another obligation, or suspend its execution. When it imposes an obligation, the court specifically points out to the juvenile, his parents or adoptive parents or guardian that, in case of inability to fulfill one or more special obligations, they may be replaced by other obligations or by another corrective measure, and in case the juvenile has no justifiable reasons for not fulfilling imposed obligations, he may be referred to the educational center.

5. REFERRAL TO THE CORRECTIONAL CENTER

The most severe measure of warning and guidance provided for in Article 36 of the Juvenile Act is referral of a person to the correctional center. It is imposed when it is necessary to influence behavior of a juvenile with appropriate short-term measures. By application of this measure the juvenile is referred to the correctional center: a) to a certain number of hours during the day for at least 14 days, but no longer than 30 days, and b) to the continuous stay of at least 15 days, and not longer than three months. When imposing this measure, the court takes into account that a juvenile is not absent from regular studies or work as a consequence of its implementation. Stay of juvenile in the correctional center must be fulfilled with activities that are appropriate for his character, or his learning, useful work appropriate to his abilities and interests, as well as other educational contents aimed at developing the feeling of his responsibility.

¹⁹ Obrad Perić, „Sanctions pénales envers les droits des mineurs“, u *Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja-Prvi dio*, ur. Đorđe Ignjatović (Beograd: Pravni fakultet Univerziteta u Beogradu, 2007), 56-64.

In the course of this measure, the court may replace previously made decision in term of ordering a juvenile to stay in the correctional center for a certain number of days or ordering his stay for a certain number of hours during the day and, also, it can shorten or extend duaration of his continuous stay in the center or duration of his stay in the center for a certain number of hours. Along with a decision referring a juvenile to the correctional center, the court may also order one of the measures of intensified supervision. If a juvenile unreasonably refuses or otherwise interferes with the execution of imposed special obligations or corrective measure of intensified supervision - the court may decide to refer him to the correctional center for these reasons for a continuous stay for a maximum period of one month.

The correctional center in the place of residence or domicile of a juvenile, when a corrective measure decision becomes final and binding, is in charge of enforcing this court decision (Article 138 of the Juvenile Act). Execution of this measure is conducted in cooperation with guardianship authority that is empowered to monitor the enforcement of imposed corrective measure of intensified supervision, i.e. special obligations. Referral of a juvenile to the correctional center is based on an enforceable court order and other necessary documentation. All the centers, organizations, institutions and other legal entities are required to cooperate with correctional center with the aim of as efficient enforcement of this measure as possible, and in the best interest of the juvenile. In time of execution of measure of stay in the correctional center (Article 139 of the Juvenile Act) for a certain number of hours during the day, the juvenile remains with his parents, adoptive parents or guardians, continues to attend the school or to go to work. Therefore, this corrective measure is executed eight to 20 hours during free time a juvenile, and has to be sinchronized with his school or work obligations.

If a measure of referral to a correctional center for continuous stay is imposed on a juvenile, he will be provided with accommodation and meals in the center, provided that the juvenile has appropriate number of servings of food if he stays in the center for a period longer than four hours a day. A report on the progress and results of the execution of this measure shall be submitted upon the request of the judge, the prosecutor and the guardianship authority during execution of the corrective measure imposed, and in any case after its expiry, every 15 days if the measure has been imposed for a maximum period of time. If imposed measure cannot be executed due to lack of discipline, disturbing or hindering enforcement of imposed measure by a juvenile, correctional center is obliged to notify the competent court within 76 hours to take appropriate measures. The documentation of a juvenile, containing information about his iden-

tity and the process of imposition and execution of this corrective measure, is confidential and is only available to the competent authorities in accordance with the law.

6. MEASURES OF INTENSIFIED SUPERVISION

Another type of corrective measures are measures of intensified supervision²⁰. These are the „most popular“ corrective measures of non-institutional treatment in the Federation of Bosnia and Herzegovina. They are imposed to a juvenile when it is necessary for his education and development to take more lasting measures of education and rehabilitation, with appropriate professional supervision and assistance²¹, while it is not necessary to completely remove the juvenile from his old environment. These measures are enforced on the loose²², without further institutionalization of a juvenile and without his separation from his old social, living and working environment²³. The law provides for three measures of intensified supervision²⁴. These are: 1) intensified supervision of parents, adoptive parents or guardians, 2) intensified supervision in another family, and 3) intensified supervision of competent Social Welfare (guardianship authority).

When pronouncing some of these measures, the court does not specify the time of their duration (it indicates to relative specificity of these measures), but, depending on results achieved by applying intensified supervision, decides on its suspension or replacement with long-term corrective measure. Numerous advantages for application of non-institutional corrective measures of this kind to juvenile offenders are emphasized in legal theory²⁵. No matter how well-organized treatment of re-socialization and rehabilitation of a juvenile in institutional conditions, it is always followed by more or less harmful effects related to the separation of such a persons from the current social environment and his placement into a new closed institution, which may cause him additional psycho-

20 Dragan Jovašević, „Osnovne karakteristike novog krivičnog zakonodavstva Republike Srbije“, *Zbornik Pravnog fakulteta u Istočnom Sarajevu* (Istočno Sarajevo: Pravni fakultet, 2006): 189-209.

21 Slobodan Uzelac, „Katamnestička evaluacija odgojne mjere pojačane brige i nadzora na temelju iskustva nekadašnjih maloljetnika“, *Kriminologija i socijalna integracija*, 1 (1996): 11-19.

22 Ana Batričević, „Vaspitne mjere pojačanog nadzora u krivičnom pravu Finske i Italije“, *Strani pravni život*, 1 (2010): 321-332.

23 Miloš Babić, Ivanka Marković, *Krivično pravo, Opšti dio* (Banja Luka: Pravni fakultet Univerziteta u Banjoj Luci, 2007), 487.

24 Slobodan Uzelac and Vesna Đurek, „Katamnestička evaluacija efikasnosti postupka voditelja odgojne mjere pojačana briga i nadzor prema maloljetniku“, in *Kriminologija i socijalna integracija*, 2 (1993): 155-167.

25 Slobodan Uzelac, „Kriterijumi specijaliziranosti mladih nakon izvršenja odgojne mjere pojačne brige i nadzora“, *Kriminologija i socijalna integracija*, 1-2 (1997): 11-20.

logical traumas of greater or lesser intensity, and what, ultimately, further complicates the efficiency of implementation of the procedure applied in his case.

7. INTENSIFIED SUPERVISION BY PARENTS, ADOPTIVE PARENTS OR GUARDIANS

The court shall order increased supervision by parents, adoptive parents or guardians (Article 37 of the Juvenile Act) if the parents, adoptive parents or guardians failed in providing necessary care and supervision over the juvenile and were capable of providing this kind of care and supervision²⁶. For the application of this measure it is necessary that the court finds that a parent, adoptive parent or guardian is „healthy“ and that a criminal offence of the juvenile is a consequence of lack of their care and attention. These are persons who are able and who are reasonably expected to conduct intensified supervision of life, work and behavior of a juvenile. Thus, before imposing of this measure it is necessary to examine attitude of these persons in order to determine whether they are willing to accept a complex task in the application of corrective measures. Most often that can be done through „social survey“.

These were often imposed measures against juveniles in the previous case-law. The juvenile, mostly, remains in his family which is a great advantage, even when family relationships are not harmonious and he continues his education and work, etc. without difficulties. These measures cost society a little because they are very economical, which also constitutes an advantage for which these measures are often imposed. This measure may last minimum six months and not longer than two years, provided that the court may subsequently decide on its termination. After imposing this measure, the court gives the parent, adoptive parent or guardian necessary instructions and orders him or her certain duties to be taken with the aim of upbringing of the juvenile, his treatment and elimination of harmful impacts on him. Most often, those are duties related to the education of juvenile, his treatment and prohibition to visit certain places or events, i.e. prohibition to associate with certain individuals that have bad influence on him.

Parent, adoptive parent or guardian can still be given specific instructions and advice, especially in relation to how a juvenile uses his free time. Also, the court may order that the competent guardianship authority checks the enforcement of measure imposed, as well as to provide (moral, material, psychologi-

26 Milko Mejovšek, Irena Cajner Mraović, Aleksandar Buđanovac, „Obilježja ponašanja i obitelji maloljetnih počinitelja nasilnih i nenasilnih delikata“, *Hrvatska revija za rehabilitacijska istraživanja*, 1 (1997): 23-35.

cal, counseling) help to the parent, adoptive parent or guardian in the execution of this measure. When authorized person of the guardianship authority establishes that a parent, adoptive parent or guardian does not act on the instructions and does not cooperate with experts, it has to notify the prosecutor about it. In this case, the prosecutor submits to the court a motion for the replacement of one corrective measure with another. The execution of this corrective measure begins on the date when the parent, adoptive parent or guardian of the juvenile is delivered enforceable court decision imposing a measure (Article 140 of the Juvenile Act). These persons are obliged to comply with orders and instructions of the judge and to enable supervision (manner, quality and timeliness) over execution to the competent guardianship authority, as well as to accept help referring to its execution (Article 141 of the Juvenile Act). Parents, adoptive parent or guardian, that is guardianship authority shall be obliged, within six months, and if necessary within a shorter period of time, to inform the court on the progress and results of execution of corrective measure. The guardianship authority shall notify, without delay, the court and the prosecutor of the reasons that hinder the execution of corrective measure (Article 142 of the Juvenile Law).

8. INTENSIFIED SUPERVISION IN ANOTHER FAMILY

Intensified supervision in another family (Article 38 of the Juvenile Act) is a corrective measure introduced to the national criminal legislation when The Criminal Code of FNR Yugoslavia was amended in 1959. It is ordered if the parents, adoptive parent or guardian of a juvenile are unable to supervise him, or if it cannot be reasonably expected from them, so the juvenile is placed in another family that is willing to accommodate him and that has a real possibility to carry out intensified supervision over him²⁷. The inability of parents, adoptive parent or guardian to supervise the juvenile means that these persons do not have a possibility or are not able to conduct supervision or that they can not be reasonably expected to do. This means that these persons do not have necessary assumptions to guarantee the success of corrective measure (for example, if there is alcoholism, drug addiction, prostitution, serious illnesses, etc. present in the family). However, it also exists when these persons are not ready, do not agree to supervise a juvenile, even though, objectively speaking, they would be able to do so.

For the realization of this measure it is necessary to have another family that is willing to accept a juvenile and to take care of his education and that is

²⁷ Rajka Kupčević. „Deficijentna porodica u etiologiji maloljetničke delinkvencije“, u *Godišnjak Pravnog fakulteta u Sarajevu* (1968): 191-207.

able, that is objectively capable of influencing his behavior. When imposing this measure, the court determines that the guardianship authority shall monitor its enforcement and provides necessary assistance to the family in which the juvenile is accommodated. This measure may last not less than six months and up to two years, provided that the court shall subsequently decide on its termination. The execution of this measure shall be suspended when parents, adoptive parent or guardian become capable of exercising an intensified supervision over him or when, as a result of execution of the measure, there is no more need for intensified supervision²⁸. When authorized person of guardianship authority responsible for the implementation of measure of intensive supervision in another family establishes that the family in which the juvenile is accommodated does not act on the instructions and does not cooperate with experts, it has to notify the prosecutor about it. In that case, the prosecutor shall submit the court a proposal for the replacement of imposed corrective measure with another one. The corrective measure of intensified supervision in another family shall be executed in a family designated by the court that made a decision upon the proposal of the competent guardianship authority (Article 143 of the Juvenile Act).

Upon receipt of an enforceable court decision, which was previously delivered to the juvenile, the competent guardianship authority refers the juvenile to a family that is determined by a court decision. Before that, the competent guardianship authority and another family which the juvenile is accommodated in conclude a written agreement regulating their mutual rights and obligations (Article 144 of the Juvenile Act). The family in which the juvenile is accommodated shall be obliged to allow the guardianship authority to check execution of corrective measure imposed, as well as to accept offered help with the aim of achieving the purpose of corrective measure. During the execution of this measure, the juvenile continues to maintain links with his family if the court which monitors and controls its execution, at the proposal of the guardianship authority, does not determined otherwise. The court that imposed the corrective measure may, *ex officio* or upon the proposal of the prosecutor, that is the guardianship authority, order accommodation of a juvenile in another family if the circumstances in the family in which the juvenile was originally accommodated change so much that they hinder the execution of corrective measure imposed (Article 145 of the Juvenile Act).

28 Zdravka Podrugac. „Percepcija i autopercepcija uspješnosti rada na izvršenju odgojne mjere pojačane brige i nadzora“, *Kriminologija i socijalne integracija*, 2 (1993): 149-153.

9. INTENSIFIED SUPERVISION OF COMPETENT SOCIAL WELFARE AUTHORITY

Intensified supervision of competent Social Welfare (guardianship authority) provided for in Article 39 of the Juvenile Act is a corrective measure introduced into domestic criminal legislation in 1959. It is imposed when parents, adoptive parent or guardian of the juvenile are not able to conduct intensified supervision and there are no conditions for imposing the measure of intensified supervision in another family. Accordingly, this is the case when none of the previous corrective measures can be applied, so the juvenile is placed under the supervision of the guardianship authority. This measure may last at least six months and up to two years, provided that the court may subsequently decide on its termination. While the measure is in force, the juvenile remains with his parents, adoptive parents or other persons who support him, that is who take care of him. By using this corrective measure the juvenile remains in his previous social environment. This solution, in practice, raises a question whether the difficulties faced by the family of the juvenile are of such a nature to bring into question all the efforts of the guardianship authority. In doing so, in particular, personal data about juvenile's personality are important.

In this case, the intensified supervision over the juvenile (his behavior, life, education and work) is directly performed by a particular guardianship authority (who is competent according to the place of residence or domicile of the juvenile). However, this intensified supervision over the juvenile may also be conducted by another qualified person appointed by the guardianship authority (head of supervision), and it can be an expert at the level of the local community who voluntarily applies to perform this duty²⁹. The guardianship authority takes care of the juvenile's education, his employment, his detachment from the environment that has harmful influence on him, necessary medical treatment and the improvement of his living conditions³⁰. In doing so, other state bodies, correctional, educational or other institutions are obliged to help the qualified person of the guardianship authority in implementation of corrective measure imposed. When authorized person of the guardianship authority, being responsible for the implementation of measure of intensified supervision, finds out that the parent, adoptive parent or guardian or other person who takes care of him does not act following the instructions and does not cooperate with an expert, it has

29 Ljiljana Miškaj Todorović. „Rad voditelja odgojne mjere pojačana briga i nadzor u socijalnom prostoru kao element uspjehnosti mjere i mišljenje maloljetnika o njenom toku“, *Kriminologija i socijalna integracija*, 2 (1993): 133-148.

30 Andreja Brajša Žganec. „Uloga socijalne podrške u skrbi za djecu i mlade, svjedoke ratnih zbivanja“, *Dijete i društvo*, 1-2 (2002): 35-48.

to notify the prosecutor about it. In this case, the prosecution submits a proposal to the court for the replacement of imposed corrective measure by another one.

Competent authority for the execution of this corrective measure is a social welfare body in the place of residence or temporary residence of a juvenile at the time the decision imposing the measure becomes enforceable (Article 147 of the Juvenile Act). The guardianship authority, upon receipt of an enforceable court decision imposing this measure, shall appoint an official of that authority or other qualified person to immediately implement this measure. It shall immediately inform the court as well. The qualified person who is entrusted with the execution of corrective measure of intensified supervision by a competent social welfare organ, shall prepare a program of work with a juvenile, in accordance with the instructions of the court and the competent guardianship authority (Article 148 of the Juvenile Act). State agencies, correctional, educational, health and other institutions are obliged to provide to this expert all necessary assistance. Parents, adoptive parent or guardian are required to inform the expert about the opportunities that, eventually, hinder the enforcement of the measure imposed, since the juvenile is under their supervision.

10. CORRECTIONAL MEASURES

The most severe type of corrective measures are institutional measures (measures of institutional treatment). The application of these measures involves accommodation of juvenile in an adequate institution for some time (not being pre-specified by the court decision), where his education, rehabilitation and proper development is ensured³¹. They may be applied in case when a juvenile is in condition of heavy educational neglect, when the conditions of his social environment do not provide sufficient basis for concluding that it will not have harmful effects on a juvenile and his future behavior and development. Accordingly, the court shall impose this type of criminal sanctions against a juvenile who is so educationally neglected that his situation cannot be eliminated or reduced by a measure of intensified supervision, but, on the contrary, it is necessary to detach him completely from his old environment with simultaneous application of appropriate treatments of upbringing, rehabilitation, education or medical treatment³².

The need for the imposition of institutional measures exists when it comes to juvenile offenders who have such level of neglect that measures of their in-

31 Borislav Petrović, Dragan Jovašević i Amila Ferhatović. „Izvršenje vaspitnih mjera“, *Pravna riječ*, 7 (2006): 371-394.

32 Mladen Singer, *Kaznenopravna odgovornost i zaštita mladeži* (Zagreb: Nakladni zavod Globus, 1998), 87-89.

tensified supervision are not sufficiently effective mean of achieving their social resocialization. These measures appear as a necessary mean of society if the juvenile is exposed to harmful effects and impact of the environment in which he lives or gets around and such effects can not be eliminated or neutralized by intensified supervision. The previous practice of application of the most difficult types of juvenile criminal sanctions (starting from 1959) indicates that the court reached for their application based on two circumstances. These are: 1) difficulty, nature and character of committed criminal offence (the importance of the object of attack, manner and means of its execution, the scope and intensity of the consequence, number of persons in the commission of the offense, return and 2) previous application of corrective measures which, obviously, did not give a result in the direction of education of juveniles.

Institutional corrective measures are imposed when more lasting and more intense measures of education or medical treatment have to be taken against the juvenile while completely detaching him from his old environment in order to perform increased influence on a juvenile. Institutional measures are imposed as a last resort of society in the fight against juvenile criminality and may last within legally prescribed framework, only as long as it is necessary to achieve the purpose of corrective measures. These measures are imposed to those juveniles whose educational neglect has reached such a degree that their education and rehabilitation may only be achieved by application of longer-lasting measures, with the full separation of a juvenile from the old environment in which he had previously lived. Today, there are three institutional measures in the Federation of Bosnia and Herzegovina today³³. These are: 1) a referral to an educational institution, 2) referral to a correctional institution and 3) referral to a special institution for medical treatment and rehabilitation. When imposing some of institutional correctional measures, the court does not determine the time of their duration, but subsequently decides about it within the legally prescribed framework for these measures.

Admission of minors to an educational institution, in terms of Article 151 of the Juvenile Act is based on the order on enforcement of sanction issued by the Court. After being admitted to an institution, a juvenile, in a language and in a way that he understands, shall be explained the rules of the institution, his rights and obligations, and shall be medically examined within 24 hours. Also, he shall be provided with a copy of the regulations of the institution where he is located. For juveniles who are illiterate or do not understand the language, these pieces of information are transmitted in a way that allows them their full understanding. The files of juveniles containing details of their identity, facts

33 Miroslav Đorđević i Đorđe Đorđević, *Krivično pravo* (Beograd: Projuris, 2004), 94-98.

and the reasons for their referral to the correctional institution, authority that ordered the measure, the date and hour of admission to the institution, as well as information about transfer and discharge, details of physical and mental health of a juvenile, as well as informations to the parent, adoptive parent or guardian, are of confidential nature and are available to authorized personnel in the institution only.

Article 160 of the Act provides for the possibility of postponing the enforcement of that institutional corrective measure. Namely, at the request of the juvenile, his parent, adoptive parent or guardian or at the proposal of the competent guardianship authority, the judge who imposed the corrective measure may, within three days from the day of receipt of the request, issue a decision postponing the execution of institutional corrective measure lasting up to a year, and in the case of a juvenile's illness, as long as the illness lasts. Parent, adoptive parent or guardian may, within three days from the date of receipt of the decision, file an appeal against the ruling of the judge to the juvenile panel of the same court which shall make its decision on the appeal filed within a further period of three days from the date of receipt of the appeal. In any case, filed request or proposal will stay the execution of institutional measure imposed (i.e., have suspensive effect). However, if the court, on the occasion of new rejection of the appeal for postponing of execution of corrective measure, finds that the right to file and appeal prescribed under the law, has been abused, it shall decide that filed appeal does not stay the execution of institutional measure imposed.

Article 161 of the Juvenile Act provides for a possibility to stop the enforcement of institutional measure. At the request of the juvenile, his parent, adoptive parent or guardian or at the proposal of the guardianship authority or head of the institution in which the institutional corrective measure is enforced, the judge may stop the enforcement of the corrective measure pending, for up to one year, and in the case of a juvenile's illness, as long as the disease lasts. The judge who imposed that measure shall issue a decision stopping the enforcement of corrective measure, within three days from the date of receipt of the appeal. Within three days from the date of receipt of the decision, unsatisfied party may file an appeal against the decision issued by the judge to the juvenile panel of the same court, which has further period of three days to make a decision on the appeal. The time during which the execution was stayed is not included in the duration of the institutional corrective measure imposed. When the circumstances, for which the stay of enforcement of institutional measure was allowed, cease to exist or when it is determined that the interruption was granted on the basis of false documents or evidence, or if the termination is used

for the purpose for which it was not approved, the judge who imposed the institutional corrective measure shall revoke the decision suspending the execution of this measures and order the juvenile to immediately, but not later than three days after the date of receipt of this decision, report to the institution in order to continue the execution of institutional measure. This decision shall be delivered to a juvenile, his parents, adoptive parent or guardian, as well as the institution, and the appeal shall not have a suspensive effect on the decision. Unsatisfied party may file an appeal against this decision to the juvenile panel of the same court, within three days from the date of its receipt, and the council shall make its decision within further period of three days.

And finally, when legally prescribed maximal duration of that institutional corrective measure expires or when the court makes a decision suspending its further execution or a decision replacing it with another corrective measure or decision on parole, in terms of Article 163 of the Juvenile Act, the juvenile is released from serving the measure. When a juvenile is in the final year of school or at the end of a professional training, his release from the institution would be prevented until his completion of schooling or professional training, the institution may, at the request of the juvenile, enable him to finish his schooling or professional training.

11. REFERRAL TO EDUCATIONAL INSTITUTION

The court shall impose corrective measure of referral to an educational institution (Article 41 of the Juvenile Act) when a juvenile must be separated from the old environment in which he has lived and provide him assistance and permanent supervision by qualified educators. This measure is executed by a guardianship authority by referring a juvenile to a basic type facility for education of juveniles. It is an institution which provides accommodation and fulfillment of correctional, health, educational, sports and other development needs of a juvenile. These are, in fact, social welfare institutions for educating children and young people who are not specialized institutions for execution of criminal correction sanctions of institutional character. They do not belong to the system of institutions under the Federal Ministry of Justice. Therefore, they are, generally speaking, mixed educational institutions in which are accommodated children and juveniles under social protection due to manifested behavioral disorders (educational neglect and social cases), in addition to juveniles - perpetrators of criminal offenses (and offenses). A juvenile shall remain in the educational institution at least six months and up to two years, provided that, every six months, the court shall consider whether there are grounds for sus-

pension of enforcement of this measure or its substitution with another corrective measure exist. A juvenile in this institution may remain up to the age of 21.

This institutional corrective measure is executed in an institution that provides accommodation and meets the correctional, health, educational, sports and other development needs of juveniles (Article 164 of the Juvenile Act). If the measure is imposed to a male juvenile, it shall be executed in an educational institution for such persons, and if it is imposed to a female juvenile, then it shall be executed in an educational institution for female juveniles or in a separate women's department of educational institution for juveniles. A juvenile to whom this corrective measure was pronounced as a criminal sanction has the same rights and obligations (legal position) as other juveniles who are with him in the educational institution, but receives a special attention in relation to his treatment but only that he does not stand out from other juveniles in his life and work. No other persons or juveniles but the governor and other professional staff included in execution of imposed measure are familiar with it. A juvenile who was imposed a corrective measure of referral to an educational institution may stay in it until he is 23.

The competent guardianship authority in accordance with the place of residence or domicile of a juvenile at the time the court decision ordering a corrective measure became enforceable, shall determine a person who is required to bring a juvenile to an educational institution (Article 165 of the Juvenile Act). But, in terms of Article 167 of the Juvenile Act, if enforcement of the corrective measure of referral to an educational institution cannot start or cannot continue because of the refusal or escape of a juvenile, the guardianship authority or head of the institution shall notify the competent authority of the Interior, who brings the juvenile to an educational institution, about it. In doing so, it is strictly determined that the way of bringing a juvenile should not violate his dignity, nor may be physically or mentally harmful. At the same time, educational institution notifies the court on admission of a juvenile and of the beginning of the enforcement of the corrective measure imposed on him. The first thing to establish when a juvenile is admitted to an educational institution is his identity, then follows medical examination, and then testing of his personality in a special department of educational institution with the aim of determining his treatment program. The testing may last no longer than 30 days (Article 166 of the Juvenile Act). On the basis of this testing an individual program of treatment of a juvenile is made. This program prepares a professional team of the institution. After the testing, the juvenile is allocated to the group which is formed by age, level of maturity and other personal characteristics of the juveniles, as well as a specific treatment program in order to apply the same edu-

cational procedures and influence. The educational group can have up to ten juveniles and a special educator.

At the request of the juvenile, his parents, adoptive parent or a guardian or upon the proposal of the institution in which the measure is executed, that is upon the proposal of the competent guardianship authority, the court may decide on the transfer of a juvenile into another educational institution, when the original criteria for referral of a juvenile or further need for his reintegration into society can be achieved more efficiently in another institution or when provided security reasons make this transfer of a juvenile a necessary measure (Article 168 of the Juvenile Act).

12. REFERRAL TO A CORRECTIONAL INSTITUTION

Referral to a correctional institution (Article 42 of the Juvenile Act) is the most serious type of corrective measures of institutional character which borders with the juvenile imprisonment sentence. The court shall impose this measure to a juvenile when it is necessary to separate him from the old environment and when he should be subjected to intensified supervision and vocational rehabilitation programs. Accordingly, the goal of application of this institutional measure, in addition to separation of the juvenile from the environment in which he lives, is to subject him to a permanent process of rehabilitation in the institutions that are specially designed, equipped and trained for that. Correctional institution is a special type of institution with established regime for repair and rehabilitation of heavily neglected juvenile offenders in term of their upbringing.

In deciding whether to impose this most severe (most rigorous) corrective measure, the court shall especially take into account the following factors: 1) the juvenile's previous life, 2) the degree of behavioral disorder of the juvenile, 3) the severity and nature of the committed criminal offense and 4) circumstance whether a juvenile had previously been imposed any corrective measure or juvenile imprisonment sentence. Therefore, these are criteria which the court takes into account when deciding on the application of this most severe corrective measure. The juvenile shall remain in the Correctional Institution at least six months and up to four years, provided that the court shall consider every six months whether there are grounds for suspension of enforcement of this measure or its substitution with another corrective measure³⁴.

34 Jadranka Kos. „Izvršavanje maloljetničkih sankcija“, *Hrvatski ljetopis za kazнено право i praksu*, 2 (2006): 807-865.

The most difficult institutional corrective measures for juvenile offender is the referral to a correctional institution³⁵. It is executed in a Male Juvenile Correctional Institution, if it is imposed to a male, and in the Female Juvenile Correctional Institution or in a separate women's department of Juvenile Correctional Institution (Article 169 of the Juvenile Act). An adult, on whom this corrective measure is imposed, shall be accommodated in a special department of the Correctional Institution. In any case, a person who has been imposed this corrective measure of institutional character can stay in it up to the age of 23.

A court which imposed this measure is competent for referral of a juvenile to a Correctional Institution. A juvenile must be left at least eight and up to 15 days to prepare for his departure to the institution. However, if the juvenile is in custody, then to the court in whose territory the seat of the institution in which the juvenile's detention is located refers him to the Correctional Institution (Article 170 of the Juvenile Act). The court who sends a juvenile to execution of the institutional corrective measure, duly submits this institution enforceable court decision with all necessary documentation. On that occasion, the institution is informed about the date on which the juvenile must report to it. The court that issued the decision imposing a criminal sanction shall order a juvenile, under Article 171 of the Juvenile Act, to report on a specific date for execution of imposed corrective measure. However, the court may also order a parent, adoptive parent or guardian of the juvenile to bring the juvenile to the correctional institution on a specific date.

If a juvenile fails to comply with the court's order and does not report to the appropriate correctional institution, the court shall order his apprehension. If, however, a juvenile is hiding or is on the run, then the court shall order issuance of a warrant. In a similar way it acts in case a juvenile escapes from a correctional institution. Then the head of the institution shall immediately notify the parents of the juvenile, i.e. his adoptive parent or guardian and shall order the issuance of a warrant.

13. REFERRAL TO A SPECIAL INSTITUTION FOR TREATMENT AND TRAINING

The court may order referral of a juvenile, who is mentally and physically disordered (deaf, blind, deaf and dumb, a person with physical impairments or disabilities), to a special institution for treatment and training (Article 44 of the Juvenile Act) as an alternative, instead of corrective measure of referral to the

³⁵ Cvija Kondić, „O efikasnosti vaspitne mjere u vaspitno-popravnim domovima“, *Advokatura Bosne i Hercegovine*, 31-32 (1983): 23-31.

educational institution or corrective measure of referral to the Correctional Institution. This measure can also be imposed instead of the security measure of mandatory psychiatric treatment provided that the special institution for treatment and training can provide care and treatment of the juvenile and, thus, achieve the legally prescribed purpose of this security measure³⁶. In this case, imposed corrective measure may last as long as it is necessary for medical treatment or training of a juvenile.

A juvenile in a special institution for treatment and training can stay as long as it is necessary for his medical treatment or training or up to three years provided that the court shall consider, every three months, if there are grounds for suspension of enforcement of this measure or its replacement by another measure (Nikolić, 2006). If a juvenile comes of age during the execution of corrective measure of medical character, the need for his further stay in the institution shall be reconsidered. However, when such a person reaches the age of 23, the execution of this measure will continue in the institution in which a measure of mandatory psychiatric treatment is usually executed. A juvenile who was imposed a corrective measure of referral to a special institution for treatment and training, instead of other institutional measures –has the same rights and obligations (legal status) in that institution as any other juvenile there (Article 173 of the Juvenile Act). If, however, this institution cannot meet the needs of a juvenile with special disabilities, he shall then be moved to a specialized institution or institution where these needs can be met.

Referring a juvenile to a special institution for medical treatment and training, in terms of Article 174 of the Juvenile Act, performs guardianship authority in accordance with the place of residence or domicile of a juvenile at the time the court's decision imposing a measure becomes enforceable. The juvenile shall be brought into and guided to an institution accompanied by a health care worker. The way of bringing and guidance shall not violate the dignity of a juvenile, nor cause any physical or mental harm to him. The guardianship authority shall immediately notify the court or competent authority of the Interior when the execution of corrective measure cannot begin or cannot continue due to refusal or escape of the juvenile. A special institution for treatment and training of juveniles shall inform the court and the prosecutor on the progress and results of the execution of imposed measure (Article 120 of the Juvenile Act). When a juvenile comes of age, and the execution of this measure is still ongoing, the court and the prosecutor shall be informed about the health condition

36 Dragan Jovašević. „Primjena vaspitnih mjera u novom krivičnom pravu Republike Srbije“, u *Maloljetnička delinkvencija kao oblik društveno neprihvatljivog ponašanja*, ured. Ljubinko Mitrović (Banja Luka: Ministarstvo unutrašnjih poslova, 2008), 189-216.

of a person in order to examine the need for issuing of appropriate decisions regarding his further accommodation.

14. SUSPENSION OF ENFORCEMENT AND REPLACEMENT OF CORRECTIVE MEASURE

In juvenile criminal law, application of the principle of mutation is particularly important. This means that: 1) The Criminal Code of the Federation of Bosnia and Herzegovina in a separate chapter does not prescribe for any criminal offence the type and extent of corrective measures, but the court has authorization and discretion right, depending on the needs of the juvenile in a particular case, to impose one of the correctional measures, 2) corrective measure imposed may not, in a particular case, be executed, but can be replaced with another measure, and 3) when determining a correctional measure, the court does not determine its duration. This time ranges within legally prescribed general minimum and maximum and the court shall, in each individual case, depending on the results achieved in its implementation, decide on its effective duration.

Namely, in the event the following corrective measures are imposed: 1) specific obligations, 2) measures of warning and guidance, 3) measures of intensified supervision and 4) institutional measures, the court shall only determine the type of measure, but not its duration, because it cannot know in advance how long would it take to achieve its purpose. In order to efficiently achieve the purpose of these corrective measures, the court is given the possibility to have active role in monitoring the results achieved and the success in the implementation of these measures and, depending on it, to be able to suspend their further application. For the same reasons, the court may amend its previous decision on the corrective measure. In legal theory, this principle is usually called „revisibility“ of corrective measures.

This means that, under the law, the court is authorized to suspend the execution of corrective measure imposed or to replace imposed corrective measure with another one (Article 45 of the Juvenile Law), in the following cases: 1) if circumstances, that had not existed when a decision was made or had been unknown at that time, arise after the decision on the imposition of specific obligations, measures of warning and guidance, measure of intensified supervision or institutional measure, which would significantly influence on the choice of corrective measures, 2) if the decision on corrective measure imposed cannot be executed due to refusal of the juvenile or his parents, adoptive parent or guardian to act in accordance with the imposed measure or on the order of a person who executes the measure or 3) in case of other circumstances provided for by

the law, which would be of importance for making of the decision on the corrective measure imposed.

Also, these corrective measures can be replaced by another one which can better achieve purpose of corrective measures or, also, the imposed measure may be suspended from further execution due to the achieved educational success, with the following restrictions: 1) enforcement of measures of intensified supervision cannot be suspended before the expiry of six months period, and by the end of this period it can only be replaced with the measure of special obligations, 2) measure of referral to an educational institution may not be suspended before the expiry of six months period, and by the end of this period it can only be replaced with the measure of referral to a correctional center or to a special institution for treatment or training, and 3) the measure of referral to a correctional institution may not be suspended before the expiry of six months period, and by the end of this period it can be replaced for a measure of referral to a special institution for treatment and training³⁷.

And finally, Article 46 of the Juvenile Law provides for the possibility of re-deciding on imposed corrective measures. If more than six months have elapsed from validity of a court decision imposing a measure of special obligation, without starting execution, the court shall again assess the need of execution of imposed corrective measure. In doing so, the court may issue one of the following decisions: 1) to enforce previously imposed measure, 2) not to enforce previously imposed measure or 3) to replace previously imposed measure with another corrective measure. If more than six months had elapsed since the date of validity of a decision imposing a corrective measure of referral to a correctional center and that the execution of the measure had not been started, the court shall again assess the need of execution of the measure imposed. Therefore, the court may decide to enforce previously imposed measure, not to enforce it or to replace it with one of the measures of intensified supervision.

15. CONCLUSION

By entering into force, the BiH Federation Juvenile Act 2015, as *lex specialis*, introduced a special criminal status – position – of juvenile offenders, and under certain circumstances, of younger adults. By preventing criminality of these persons, the Juvenile Act recommends, upon a theory of non-intervening, application of adersion, informal, diversive measures and procedure of police warning and corrective recommendations. It is possible to apply criminal sanc-

³⁷ Irma Kovčo Vukadin. „Izvršavanje maloljetničkih sankcija“, *Hrvatski ljetopis za kazneno pravo i praksu*, 2 (1999): 685-711.

tions only, and if a court finds that the application of diversive measures from the system of restoration justice cannot achieve a main goal – prevention and suppression of criminality of juveniles and influence their education, rehabilitation and correct development,.

Three kinds of criminal sanctions may be applied on juvenile offenders. Basic kind of sanctions are corrective measures, actually three kinds of measures, which are applied stepwise, and gradually, from mildest measures – measure of warning and referral to more severe measures – measures of intensified supervision and, finally, corrective measures. All these measures have the same goal – purpose, and the law prescribes conditions for their imposing, their duration and manner of their termination, that is possible replacing with another milder or more severe measure, as well as their implementing. In addition to that, security measures may be applied on juveniles, under legally prescribed conditions, and on older juveniles (aged 16 to 18) who commit severe criminal offences for which severe prison sentences in excess of five years are prescribed, application of a special kind of sentence – juvenile prison, is allowed.

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КОРЕКТИВНЕ МЈЕРЕ У ФЕДЕРАЦИЈИ БОСНЕ И ХЕРЦЕГОВИНЕ

Миодраг Симовић³⁸

Правни факултет Универзитета у Бањој Луци

Драган Јовашевић³⁹

Правни факултет Универзитета у Нишу

Марина М. Симовић⁴⁰

Правни факултет Универзитета Апеирон Бања Лука

Апстракт: Усвајањем Закона о заштити и поступању са дјецом и малољетницима у кривичном поступку из 2014. године (који се почео примјењивати почетком 2015. године) кривичноправни положај малољетних починилаца кривичних дјела у Федерацији Босне и Херцеговине је регулисан на нови начин. Република Српска и Брчко Дистрикт Босне и Херцеговине примјењују законе сличне садржине још од раније. Васпитне мјере су прописане као најважније мјере социјалне реакције према овим особама. Закон признаје неколико врста мјера различитог садржаја, сврхе, трајања и начина примјене који су предмет овог рада.

Кључне ријечи: малољетник, кривично дјело, Федерација Босне и Херцеговине, санкција, корективне мјере.

38 LL.D Редовни професор Правног факултета у Бањој Луци, судија Уставног суда Босне и Херцеговине, редовни члан Академије наука и умјетности Босне и Херцеговине, редовни члан Европске академије наука и умјетности, инострани члан Руске академије природних наука и редовни члан Балканског научног центра Руске академије природних наука, miodrag.simovic@ustavisud.ba

39 LL.D Редовни професор Правног факултета Универзитета у Нишу. jovashana@ptt.rs

40 LL.D редовни професор Факултета правних наука Паневропског универзитета „Апеирон“ Бања Лука, секретар Омбудсмана за дјецу Републике Српске vlad@blic.net