

Between Rehabilitation and Responsibility: Approach of Serbian Misdemeanour Law towards Juvenile Offenders

ABSTRACT: *This study analyses the Serbian law provisions that regulate the liability of juveniles, that is, persons under 18 years of age. The work is divided into three sections that address the most important aspects of the juvenile justice system. The first section examines substantive legal provisions. The Law on Misdemeanours differentiates between two major categories of offenders under 18 years: children – individuals below 14 years of age, who are completely exempt from misdemeanour responsibility, and juveniles between 14 and 18 years, who are legally liable for their actions. One unique characteristic of the Serbian misdemeanour law system is the principle of parental responsibility regarding offenses committed by juveniles below 18 years of age. When a child commits a misdemeanour, the parent is held liable on the principle of vicarious liability; this means they are treated as having committed the offense themselves. If the misdemeanour is committed by a juvenile aged 14–18 years, parents can be held liable alongside the juvenile, if the law stipulates so. The second section addresses sanctions against juvenile offenders. The main sanctions designated and tailored especially for juveniles are educational measures, which aim to positively influence the behaviour and development of a juvenile. Their focus is to achieve the effect of special prevention. For juveniles in the older age group (16–18 years), the law provides for the possibility of applying penalties if circumstances require so. The final section presents a detailed analysis of procedural provisions related to juvenile offenders, highlighting specific features that distinguish juvenile proceedings from adult cases. By providing a comprehensive overview of Serbia's legislative approach to juvenile misdemeanour responsibility, this study aims to contribute to the ongoing discourse on optimal juvenile justice practices.*

KEYWORDS: juveniles, misdemeanour, crime, responsibility, vicarious liability, sanctions

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1.

Introduction

This study focuses on a particular field of penal law – misdemeanour law – specifically examining provisions governing the status of persons under 18 years of age when they appear as perpetrators of misdemeanours. However, before delving into this analysis, it is useful to provide a brief overview of the Serbian penal law system in general and the position of misdemeanours within that system, to facilitate a more comprehensive understanding of the topic.

Serbian penal law recognises three categories of punishable offenses: criminal offenses, misdemeanours, and economic infractions. The distinction between criminal offenses and misdemeanours is primarily based on the severity of the act, with criminal offenses being considered significantly more serious violations, as evidenced by both their formal descriptions and prescribed penalties (e.g. in Serbian law, the most severe punishment that can be imposed is life imprisonment). Misdemeanours are generally regarded as minor offenses that sanction so-called petty delinquency or minor infractions (e.g. traffic violations), and consequently carry lighter penalties (e.g. the maximum imprisonment term in Serbian misdemeanour law is 60 days).¹ Economic infractions are a unique feature of the penal law systems of former Yugoslav states, designed as a response to corporate misconduct. They emerged during a period when corporate criminal liability was not widely accepted across most of continental Europe. Thus, juvenile misdemeanours are generally considered a lighter category of punishable offenses compared with juvenile criminal offenses.

Juvenile criminal law, both substantive and procedural, is systematised in a unified act called the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (hereon: Law on Juvenile Criminal Offenders).² Juvenile misdemeanour law is not separated into a distinct act but rather forms part of the unified general misdemeanour legislation, the Law on Misdemeanours,³ which encompasses both substantive and procedural law.

While the term juvenile criminal law is now well-established in legal scholarship,⁴ the same cannot be said for the subject of our work – juvenile misdemeanour law. Just as misdemeanour law in general (particularly in the last decade following the adoption of the current Law on Misdemeanours and the conceptual alignment between criminal and misdemeanour law) remains in the shadow of criminal law doctrine,

1 For a more detailed discussion see Vuković, 2024a, pp. 33–36.

2 Official Gazette, No. 85/2005.

3 Official Gazette, Nos. 65/2013, 13/2016, 98/2016, 91/2019, 91/2019 and 112/2022.

4 Škulić, 2015, pp. 39–40.

juvenile misdemeanour law can be said to operate somewhat behind the scenes. This observation primarily relates to the theoretical treatment of this issue – the number of scientific papers dedicated to misdemeanour law in general, and consequently to juvenile misdemeanour law, is significantly lower than those devoted to criminal law, or juvenile criminal law. Nevertheless, similar observations are made by those who deal with this issue in practice.⁵ A noticeable, though still insufficient, shift occurred during the revision of the organisational and procedural framework for misdemeanour law, resulting in the establishment of misdemeanour courts and the alignment of juvenile misdemeanour provisions with those in the Law on Juvenile Criminal Offenders.⁶ Therefore, scholars rightly argue that this issue merits much greater attention, especially considering that, unfortunately, juvenile misdemeanour offenses often serve as an introduction to more serious offenses, leading to the commission of criminal acts.⁷

The term ‘juvenile misdemeanour law’, akin to its counterpart, juvenile criminal law, can, in its broadest sense, be understood as a branch of misdemeanour (or more broadly, penal) law that includes provisions applicable when the offender is a juvenile, meaning an individual under 18 years of age.⁸

As previously mentioned, juvenile misdemeanour law is contained within the Law on Misdemeanours, which regulates both substantive and procedural aspects of juvenile offenders’ liability for misdemeanours.

2.

Substantive Legal Provisions on Juvenile Liability

The substantive legal conditions for juvenile liability are regulated in a separate chapter of the Law on Misdemeanours – Chapter VI entitled ‘Provisions on Juveniles’.

The law initially establishes a distinction similar to that found in Serbian criminal law regulations, differentiating between those who are absolutely non-labile for

5 Obradović, 2010, p. 54.

6 Jovanović and Pašalić, 2016, pp. 217–218.

7 Mrvić Petrović, 2015, p. 170. In this sense, misdemeanour court judges, based on their direct observations during judicial work, report that not only is recidivism among juvenile offenders common, but the most frequent offenses they commit are those involving elements of violence, where the line distinguishing these from criminal acts is very thin. Consequently, these offenders could easily find themselves before a criminal court. The reason this does not happen lies primarily in the prosecutor’s decision to conclude the incident with a misdemeanour outcome. Besides the judges’ experiences, some studies also confirm such occurrences; see Jovanović and Pašalić, 2016, pp. 218–219.

8 Škulić, 2013a, p. 45.

misdemeanours – children, and those under the age of 18 who are liable for misdemeanours, collectively referred to as juveniles.

Children, as in criminal law, are defined as individuals who, at the time of the offense, were under 14 years of age. According to art. 71, para. 1 of the Law on Misdemeanours, they are exempt from misdemeanour liability, with an irrefutable presumption of misdemeanour incapacity. Scholars rightly note a technical inconsistency in this provision: although art. 71 is titled ‘Juvenile Liability for Misdemeanours’, the provision, *expressis verbis*, addresses the impossibility of initiating misdemeanour proceedings against children, rather than juvenile liability per se, as implied by its heading.⁹ In this regard, legal theory suggests that the legislator effectively defines the minimum age for misdemeanour liability as a procedural prerequisite.¹⁰

For the application of this provision, the crucial moment is the time of the offense, rather than any later stage, such as the trial. Accordingly, if a request is made to initiate misdemeanour proceedings against a child, the court will dismiss it; and if, during proceedings, it is determined that the juvenile was under 14 years at the time of the offense, the court will terminate the misdemeanour proceedings. The court will notify the child’s parents, adoptive parents, or guardians, as well as the guardianship authority, and, if necessary, the child’s school or institution where they are placed (art. 299 of the Law on Misdemeanours).

Although children cannot be held liable for misdemeanours, the Law on Misdemeanours introduces a solution specific to misdemeanour law that significantly deviates from the general model of liability accepted in penal law. This relates to vicarious liability. Specifically, art. 72, para. 1 stipulates that when a child commits a misdemeanour due to the failure of proper supervision by parents, adoptive parents, guardians, or foster parents, and these persons were in a position to exercise such supervision, they shall be punished for the misdemeanour as if they had committed it themselves.

For the parents or other specified persons to be held liable in this case, the following conditions must be cumulatively met:

1. The misdemeanour must be committed by a child, that is, a person who has not reached the age of 14 years at the time of commission. This raises the question of whether it is terminologically correct to speak of a child committing a misdemeanour. According to theoretical teachings, immaturity in *criminal law* is understood as a basis for excluding the perpetrator’s culpability.¹¹ In this context, it is not terminologically precise to say that a *child has committed a criminal offense*, as a criminal offense exists only when all its constituent elements, including culpability, are present. When

9 Ristivojević and Milić, 2023, p. 180.

10 Škulić, 2013a, p. 46.

11 Vuković, 2024b, pp. 232–233.

culpability is excluded, the Criminal Code¹² refers to an unlawful act prescribed as a criminal offense. However, the situation in misdemeanour law is different. Unlike criminal law, *misdemeanour law* distinguishes between the concept of a misdemeanour and that of misdemeanour liability. The concept of misdemeanour includes the act, its statutory definition, and unlawfulness, which principally corresponds to what is known as *actus reus* in Anglo-Saxon legal concepts. Misdemeanour liability for natural persons is essentially reduced to the concept of culpability, corresponding, in principle, to the concept of *mens rea*. In other words, the Law on Misdemeanours clearly separates the concept of misdemeanour (which is reduced to the existence of an act, its statutory definition, and unlawfulness) from the concept of misdemeanour liability, which, in the case of natural persons, is possible only when there exists an appropriate subjective relationship, namely culpability. Therefore, we conclude that this terminological designation is legally and doctrinally acceptable, as it does not inherently imply the culpability of these individuals.¹³

2. The commission of a misdemeanour must be a result of parents' failure to exercise due supervision. Parents, according to the Family Code provisions, have both the right and duty to care for their child. Childcare includes protection, upbringing, education, representation, maintenance, and management and disposal of the child's property (art. 68, paras. 1–2 of the Family Code). In this context, parents serve as protective guarantors in relation to their child. Additionally, parents also stand in the position of supervisory guarantors regarding their children.¹⁴ The cited provision of the Law on Misdemeanours specifically reflects the latter obligation. What is unusual for penal law, which is founded on the principle of individual subjective liability, as we have already emphasised, is that parents here are not held liable for the act of neglect itself as a separate offense, but rather the children's actions are attributed to them based on their failure to exercise due supervision over the child. However, there are varying opinions in domestic legal theory regarding the legal nature and basis of this liability. On one hand, this liability is characterised as responsibility for another's misdemeanour, given that parents are responsible due to negligence in supervising the child.¹⁵ Although this appears to have been the legislator's intention, to make this position clearer, the formulation in the Law on Misdemeanours suggesting that they are liable *for* the misdemeanour should be replaced with the formulation that they are liable *because of* the misdemeanour.¹⁶ On the other hand, precisely owing to the use of the words *for* the misdemeanour, there is an opinion that this liability is actually

12 Official Gazette, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

13 Cf. Škulić, 2013b, p. 81.

14 Vuković, 2024b, p. 112.

15 Mrvić Petrović, 2015, p. 172.

16 Pihler, 2016, p. 27.

objective in nature, due to the circumstance that the parent is not actually punished for failing to exercise due supervision, as the provision implies, but rather as if they had committed the misdemeanour themselves.¹⁷

Although the phrase ‘failure of due supervision’ might suggest the exercise of factual supervision implying the mandatory physical presence of parents, these provisions should not be interpreted so narrowly. In the context of the specifics of misdemeanour proceedings, it is essential to consider the manner in which the misdemeanour was committed and the circumstances of the particular case, including whether the offense resulted from educational neglect or lack of care by these individuals.¹⁸ Regarding this circumstance, according to judicial practice, a report should be obtained from the guardianship authority.¹⁹ In any case, a causal link must be established between the specific omission and the committed misdemeanour.²⁰

3. The next condition that must be met relates to the circumstance that the parents were in a position to exercise supervision over the child. This provision addresses the so-called factual possibility of fulfilling the guarantor obligation in a specific case.

In this case, the parents are liable for the misdemeanour as if they had committed it themselves. Legal theory emphasises that the phrase *as if* indicates this is a legal fiction.²¹

As the basis for parental liability for a child’s misdemeanour is explicitly prescribed in the Law on Misdemeanours, this implies that it is unnecessary to explicitly prescribe such liability in special laws.²²

Some scholars argue that it would also be appropriate to allow liability for the misdemeanour to extend to other individuals responsible for supervising the child, such as educators or teachers.²³

While there is an irrebuttable presumption that persons under 14 years of age (children) cannot be held liable for criminal acts and misdemeanours, juveniles are, in principle, liable for misdemeanours. In this regard, misdemeanour liability, similar to criminal liability, is established at the age of 14 years in Serbian law. In accordance with the general rule on the liability of natural persons, a juvenile is liable for a misdemeanour that can be attributed to their fault if they were mentally competent and committed the misdemeanour either negligently or intentionally and were aware or should have been aware that such conduct was prohibited (art. 18, para. 1 of the Law on Misdemeanours). Art. 71, para. 2 contains a general provision stating that special

17 Ristivojević and Milić, 2013, pp. 160–161.

18 Milić, 2013, p. 15.

19 Misdemeanor Appellate Court, Decision Prž. No. 20799/15, 20 November 2015.

20 Vuković, 2024a, p. 132.

21 Pihler, 2016, p. 27.

22 Ristivojević and Milić, 2013, p. 161.

23 Jovanović and Marinović, 2016, p. 183.

provisions of Chapter VI apply to juveniles between the ages of 14 and 18 years who commit a misdemeanour, while other provisions apply only if they do not conflict with these special provisions.

Art. 72, para. 2 of the Law on Misdemeanours introduces a form of joint liability of parents and juveniles. Specifically, special legislation may stipulate that for a misdemeanour committed by a juvenile, the parents, adoptive parents, guardian, or foster parent of a juvenile aged between 14 and 18 years shall also be held liable if the misdemeanour resulted from their failure to exercise due supervision over the juvenile, provided they were in a position to exercise such supervision. As evident from this provision, the conditions are very similar to those prescribed by the Law on Misdemeanours regarding parental liability for children, so the principles we discussed in analysing parental liability for children apply here as well. However, there are certain exceptions, which are addressed below.

Firstly, it is emphasised that this possibility of cumulative liability must be explicitly prescribed. The option to introduce this parallel liability is reserved exclusively for the law, which is crucial to highlight as misdemeanours, under the general provision, can also be established by acts of lower legal force, such as government regulations or decisions of local self-government assemblies (art. 4 of the Law on Misdemeanours).

Furthermore, this liability, unlike the liability for children, is cumulative, meaning that both the parents and the juvenile are liable together. However, the basis for their liability differs significantly. The juvenile is liable based on their culpability, assessed against the objective elements of the misdemeanour, while the parent is liable for failing to exercise due supervision over their child. Here too, this relates to failures in upbringing and neglect of parental duties. Nevertheless, in legal theory, it is suggested that owing to the formulation of this provision, which requires parental liability to be explicitly prescribed, it is unclear whether this special offense should be formulated to penalise the failure of due supervision or if, as in the case of liability for a child, parents should be liable as though they had committed the misdemeanour themselves.²⁴

Finally, in addition to parents, adoptive parents, guardians, or foster parents, the law may prescribe that other persons who have a statutory duty to supervise the juvenile who committed the misdemeanour may also be held liable.

Regarding parental liability in place of children or their joint liability with juveniles, as we have seen, several questions arise. We now add one more, which concerns the selection of sanctions to be imposed on parents. As parental liability is based on a failure of supervision in both cases, this should, in principle, be a factor in determining the appropriate sanction. However, this is extremely difficult, if not impossible, to implement in practice. Furthermore, the Law on Misdemeanours is silent on whether

24 Ristivojević and Milić, 2016, p. 164.

in this case, both parents should be punished instead of the child or jointly with the juvenile, or just one parent, and whether their liability is joint.²⁵ Overall, these provisions appear to leave numerous ambiguities.²⁶

Ultimately, a characteristic of juveniles' misdemeanour liability, which differs from their treatment in criminal proceedings, is the absence of special privileges for so-called young adults, that is, persons who have reached 18 but not 21 years of age. Specifically, under certain conditions, the Law on Juvenile Criminal Offenders may apply to persons who committed a criminal offense as young adults, that is, after turning 18 but before reaching 21 years of age. The literature emphasises that this solution of the Law on Misdemeanours (non-existence of this privilege) is justified, particularly considering the general legal status of persons under 18 years, and their ability to, for example, marry at 16 years and enter employment contracts at 15 years, among other such pursuits.²⁷

3.

Misdemeanour Sanctions Against Juveniles

Although penal law in general (which includes criminal, misdemeanour, and economic infractions law) today recognises various forms of sanctions serving different purposes, punishment remains one of the main instruments of this branch of law. Regardless of the various purposes of punishment discussed in penal law theory today, the essence of any punishment is the infliction of certain harm on the perpetrator due to their conduct.²⁸ However, in the realm of juvenile penal law, including juvenile misdemeanour law, this is not the case. As 'educational neglect' or insufficient parental care is most commonly cited as one of the reasons for delinquent behaviour by juveniles,²⁹ the primary sanctions intended for juvenile offenders, whose purpose can be somewhat inferred from their very name, are educational measures.

25 According to the ruling of the Misdemeanour Appellate Court, Pržm. No. 192/15, 29 October 2015, if proceedings are conducted against both the juvenile and the parents under art. 72, par. 2, and the court finds grounds to hold them responsible, it has two options. If it decides to conduct a joint proceeding, it will conclude with a judgment. However, if it opts to separate the proceedings, in the proceeding against the juvenile, it will rule by decision if it finds that an educational measure should be imposed, while the proceeding against the parents will be concluded with a judgment, in accordance with the general provisions applicable to proceedings against adult offenders.

26 For more on this and other issues, see Ristivojević and Milić, 2016, pp. 162–165.

27 Mrvić Petrović, 2015, p. 172.

28 Stojanović, 2018, pp. 224–227.

29 Milić, 2013, p. 10.

The system of misdemeanour sanctions adopted in the Law on Misdemeanours, similar to the Law on Juvenile Criminal Offenders, is based on the so-called social-protective model, which is modified by the justice model, aiming to achieve reintegration and rehabilitation of the juvenile misdemeanour offender.³⁰

While in the case of juveniles' liability, the only relevant distinction made by the Law on Misdemeanours is between those not liable for misdemeanours (children) and those who are liable (juveniles), when prescribing types of sanctions and possibilities for their imposition, the Law makes another distinction. Specifically, it introduces a division between younger juveniles, who are persons who at the time of committing the misdemeanour had reached 14 but not 16 years of age, and older juveniles, which refers to persons who at the time of committing the misdemeanour had reached 16 but not 18 years of age. Only educational measures may be imposed on a younger juvenile. This solution is fundamentally based on the understanding that this category of offenders has not reached an appropriate level of biological, psychological, and social development to warrant the application of punishment.³¹ Older juveniles, in addition to educational measures, may also be subject to punishments or penalty points. Furthermore, if necessary owing to the nature of the misdemeanour, protective measures may be imposed along with the punishment or educational measure (art. 73).

Several conclusions can be drawn from the formulation of art. 73, para. 4, which stipulates that only a court may impose educational measures, fines, penalty points, juvenile detention, and protective measures on a juvenile. First, juvenile offenders who commit misdemeanours for which the only prescribed punishment is a fixed-amount fine cannot be issued a misdemeanour order.³² Furthermore, although the Law on Misdemeanours provides for three types of punishment – imprisonment, fines, and community service – only fines may be imposed on juveniles. Instead of imprisonment, juvenile detention is imposed on juveniles, which has the status of a distinct type of punishment specifically designed for this category of persons, while community service cannot be imposed on juveniles.³³ Finally, a warning cannot be issued to juvenile offenders, as the system of juvenile sanctions includes a modified and age-appropriate version of this measure, a reprimand, which is a specific type of educational measure.

30 Mrvić Petrović, 2015, p. 172. For different models see Škulić, 2015, pp. 39–40.

31 Perić, 2007, p. 29.

32 A misdemeanour order is issued for offenses that are punishable only by a fixed monetary fine. It is typically issued by authorised officials, such as police or inspectors. The person who receives a misdemeanour order can either accept responsibility and pay the fine (if done within eight days, they can pay only half of the fine), or if they do not accept responsibility, they can initiate misdemeanour proceedings to challenge the ticket (arts. 168–178 of the Law on Misdemeanours).

33 Cf. Samardžić and Milić, 2014, p. 385–386.

The Law on Misdemeanours does not specifically define the purpose of sanctions that may be imposed on juvenile offenders; rather, this is done by the Law on Juvenile Criminal Offenders.³⁴ Art. 10 stipulates that within the general purpose of criminal sanctions (art. 4 of the Criminal Code),³⁵ the purpose of criminal sanctions against juveniles is to influence the development and strengthening of the juvenile's personal responsibility through supervision, protection, and assistance, as well as through the provision of general and vocational training, to promote education and healthy personality development, with the aim of ensuring the juvenile's reintegration into society. From this formulation, and from other provisions governing sanctions, it appears that the primary goal of sanctions against juveniles, particularly educational measures as we shall see later, is special prevention.³⁶ Although this provision speaks of criminal sanctions, this does not preclude the conclusion that it can also apply to the purpose of misdemeanour sanctions in general, given that the system of misdemeanour sanctions for juveniles is, in principle, aligned with the criminal system.

3.1. Educational Measures

When selecting an educational measure, the court considers the juvenile's age, level of mental development, psychological characteristics and motives for committing the misdemeanour, previous upbringing, environment and living conditions, severity of the misdemeanour, whether any educational measure has previously been imposed, and all other circumstances that affect the choice of educational measure best suited to achieve the purpose of education. These circumstances are both objective and subjective in nature, but their enumeration clearly shows that the focus of examination when selecting the measure is on the juvenile's personality rather than the misdemeanour itself.³⁷ To establish these circumstances, the court must hear the parents and adoptive parents of the juvenile, their guardian, and other individuals who can provide necessary information (art. 78). This provision is mandatory in nature, and its purpose is to consistently implement the aforementioned principle of individualisation of sanctions, enabling the court to learn all circumstances relevant

34 Nevertheless, in art. 78, para. 1, which addresses the conditions for educational measures, while listing these conditions, the legislator emphasises that circumstances that 'affect the choice of educational measure that will best achieve the purpose of education' will be considered, from which we indirectly conclude that the purpose of educational measures is to influence the juvenile's education.

35 The general purpose of prescribing and imposing criminal sanctions is to suppress acts that violate or endanger values protected by criminal legislation.

36 Perić, 2007, p. 31.

37 Ristivojević and Milić, 2023, p. 194.

for selecting an appropriate educational measure that will, given the specifics, yield the best results.³⁸ It is also important to emphasise here that no one can be exempted from the duty to testify about circumstances necessary for assessing the juvenile's mental development, understanding their personality, and the conditions in which they live (art. 294).

In addition to being obligated to consider numerous circumstances when selecting an appropriate measure, the court must ensure that the purpose of the educational measure continues to be fulfilled after it has been imposed. In this regard, the Law on Misdemeanours stipulates that when circumstances appear after the decision imposing an educational measure that either did not exist at the time of the decision or were unknown, and these circumstances would have influenced the decision, the execution of the imposed measure may be suspended, or the imposed measure may be replaced with another educational measure (art. 79). This provision indicates a certain flexibility in the system of educational measures, as the court may modify its own final decision if it becomes aware of new circumstances, which is not possible in the system of sanctions for adult offenders.³⁹ The provision requiring the court to reconsider the necessity of executing the imposed measure or special obligation, or replacing it with another educational measure or special obligation, if more than six months have elapsed since the decision imposing any of the educational measures or special obligations became final and execution has not begun (art. 80), also demonstrates that the juvenile is monitored throughout the process of measure execution. Here too, the need to consider the effectiveness and suitability of the measure is emphasised, which may be compromised due to the fact that execution has not even begun after a certain period of time.

The Law on Misdemeanours recognises two types of educational measures: warning and guidance measures, which include reprimand and special obligations, and measures of increased supervision. Warning and guidance measures are imposed when such measures are necessary to influence the juvenile's personality and behaviour, and when they are sufficient to achieve the purpose of these measures. Measures of increased supervision are imposed when longer-term educational measures with appropriate professional supervision and assistance are needed for the juvenile's education and development (art. 74).

Reprimand is the mildest sanction that can be imposed on a juvenile and corresponds to the judicial warning imposed on adult criminal offenders, and the judicial reprimand imposed on juvenile criminal offenders. It is imposed when longer-term educational measures are not necessary for the juvenile offender, particularly when it can be concluded from their attitude towards the committed misdemeanour and

38 Milić, 2013, p. 24.

39 Ristivojević and Milić, 2023, p. 195.

their willingness to refrain from future misdemeanours that the imposed educational measure will achieve its purpose (art. 75, para. 1). For it to achieve its purpose, it is necessary that the juvenile is capable of understanding the significance of their actions, the social unacceptability of their act, and the possibility that other measures may be applied to them in the future – in other words, they must possess a certain level of awareness.⁴⁰ Its content amounts to admonishment, specifically pointing out to the juvenile that their behaviour is socially unacceptable, while simultaneously warning them that if they repeat the misdemeanour, there is a possibility of imposing other educational measures (art. 75, para. 2). In this sense, this measure is completely devoid of repressive character, which does not mean it lacks justification.⁴¹ As the content of this measure is exhausted in pointing out the aforementioned aspects to the juvenile, there are suggestions that this should be done in a special, even ceremonial form.⁴²

Special obligations represent a distinct type of guidance and warning measures that are imposed when the court assesses that it is necessary to influence the juvenile and their behaviour through appropriate requirements and prohibitions (art. 76, para. 1 of the Law on Misdemeanours). They do not have a repressive character; rather, their aim is to influence the proper development of the juvenile and strengthen personal responsibility.⁴³ Special obligations, besides ‘respecting the principle of individualisation when imposing sanctions’,⁴⁴ are significant because by requiring the juvenile to undertake certain actions or refrain from them, compliance with these obligations demonstrates in a concrete way that they accept responsibility, which is of exceptional importance for further development and steering away from a ‘criminal career’, by reducing the likelihood of committing offenses or crimes in the future.⁴⁵

Through this measure, the court may impose one or more of the following obligations on the juvenile:

- 1) to apologise to the injured party;
- 2) to repair or compensate for the damage caused, within their capabilities;
- 3) to avoid certain places and the company of certain persons who negatively influence them;
- 4) to undergo rehabilitation and treatment for addiction to alcohol and other psychoactive substances;

40 Milić, 2013, p. 19.

41 Škulić, 2020, p. 82.

42 Perić, 2007, p. 39.

43 Radulović, 2018, p. 139.

44 Theoretical frameworks emphasise that the general condition for the success of special obligations is precisely strict individualisation when imposing them. The court must ensure that it is appropriate both with regard to the juvenile’s personality and the type and circumstances of the committed misdemeanour; Obradović, 2010, p. 55.

45 Stevanović, 2014, p. 104.

- 5) to be referred to a competent driver training institution for learning or testing knowledge of traffic regulations;
- 6) to engage, without compensation, in activities organised by humanitarian organisations or in environmental, social, or community projects;
- 7) to engage in school sports or other extracurricular activities under the educational supervision of a teacher.

All measures (except for the apology, which is of immediate nature) may last up to six months and must not interfere with the juvenile's regular education (art. 76, para. 2). Additionally, when imposing special obligations, the court shall warn the juvenile that failure to fulfil certain obligations may result in their replacement with another obligation or educational measure (para. 4).

Measures of increased supervision are a special type of educational measures imposed when a more lasting educational measure needs to be implemented for the juvenile (art. 77, para. 1). The Law on Misdemeanours recognises two types of this measure: increased supervision by parents, adoptive parents, or guardians, and increased supervision by the guardianship authority. The condition for imposing the first measure is that the parents, adoptive parent, or guardian have failed to exercise necessary care and supervision over the juvenile, while being capable of exercising such supervision and this can reasonably be expected from them. Legal theory rightfully emphasises that this measure could not be imposed without previously obtaining the opinion of the guardianship authority, or without presenting evidence to determine whether the misdemeanour was committed due to the legal representatives' failure, as well as whether they are capable of consistently implementing the measure.⁴⁶ If this is not the case, or if such a possibility does not exist, the court will impose the latter measure. In this sense, it can be said that it is of a subsidiary nature, meaning its application comes into consideration if there are no conditions for applying increased supervision by parents and other persons.⁴⁷ These measures may last from three months to one year.

3.2. Penalties

Besides educational measures, penalties may also be imposed on juveniles. However, the punishment of juveniles is established as an exceptional measure, in a dual sense. First, it can only be imposed on an older juvenile, meaning a person who had reached 16 years of age at the time of the offense. Additionally, the exceptional nature of the

⁴⁶ Milić, 2013, p. 23.

⁴⁷ Škulić, 2020, p. 91.

measure is evidenced by the formulation used in the Law on Misdemeanours (may be imposed *only if*), as well as the conditions for its imposition: only if at the time of committing the misdemeanour, based on their mental development, they could understand the significance of their action and control their conduct, and if due to more serious consequences of the misdemeanour or a higher degree of culpability, it would not be justified to apply an educational measure (art. 81, para. 1). Unlike educational measures, which consider circumstances related to the juvenile's character, here, the court is obliged to consider circumstances related to the offense itself, as well as the degree of culpability,⁴⁸ with particular emphasis on the component of the juvenile's mental capacity.⁴⁹

The Law on Misdemeanours does not contain special rules regarding the imposition of fines on juveniles; thus, general provisions relating to fines should apply here. The only particularity that exists here relates to the impossibility of converting unpaid fines into imprisonment – they will be collected through enforcement measures (art. 81, para. 4). When imposing a fine, consideration should be given to the realistic possibility of it achieving its purpose, especially vis-à-vis the juvenile's ability to pay by themselves. If the juvenile is unemployed, which will typically be the case, the burden of the fine will ultimately fall on the parents.⁵⁰ In this sense, it cannot achieve its purpose.⁵¹ Therefore, it is not surprising that it is rarely imposed in practice.⁵²

Punishing juveniles should be reserved only for exceptional cases, as previously mentioned. Within this 'system of exceptionality', juvenile detention penalty holds a special status as the most severe punishment for juveniles. In other words, the need for this measure to be imposed exceptionally is further emphasised in art. 81, para. 2 of the Law on Misdemeanours. Additionally, the legislator uses the term *may be imposed*, which leaves the court with the discretion even if all conditions for imposition are met. When imposing this punishment, the nature of the misdemeanour and the juvenile's personal characteristics and behaviour must be considered. The application of juvenile detention penalty is not directly linked to any prescribed range of penalties, unlike juvenile imprisonment as a criminal sanction (which can be imposed for offenses carrying a prison sentence of over five years). It is argued that

48 The legislator emphasises that in this case, there should be a higher degree of culpability. The question may be raised whether this provision limits the application of juvenile detention only to misdemeanours committed with intent.

49 Cf. Perić, 2007, p. 73.

50 Jovanović and Pašalić, 2016, p. 222.

51 Jovanović and Marinović, 2016, pp. 182–183.

52 Jovanović and Sofrenović, 2018, p. 192.

this penalty might be appropriate, for instance, in particularly serious traffic offenses or in cases of extreme recklessness in offenses against public order.⁵³

In legal theory, concerns have been expressed about whether juvenile detention penalty can achieve its purpose, given that its duration is limited to a maximum of 30 days, which is insufficient for it to have a re-educational effect on the juvenile. However, it is also emphasised that if its duration were longer, it would transform into a punitive-preventive measure, which has been generally abandoned in the Serbian legal system suited for juveniles.⁵⁴ Nevertheless, considering that deprivation of liberty itself, regardless of duration, can influence reconsideration of the justification for behaviour that led to the deprivation of liberty, and that during the punishment, trained personnel conduct treatment with the juvenile, some authors believe this punishment is quite adequate and can achieve expected results.⁵⁵

Several factors should be considered here. First, short-term imprisonment penalties are not new in penal law. Moreover, authors see their main advantage precisely in their shorter duration.⁵⁶ Meanwhile, in misdemeanour law, the duration of imprisonment is generally limited to 60 days (under exceptional circumstances, up to 90 days), while the minimum imprisonment term is one day. If the justification for the duration of juvenile detention penalty is questioned, this would directly question the justification of one-day imprisonment imposed on adult offenders. However, the question of whether imprisonment is an appropriate sanction for juvenile misdemeanours in general is of a different kind. It should be kept in mind that misdemeanours are lighter penal offenses compared with criminal offenses.

Finally, in accordance with art. 73, para. 2, penalty points may also be imposed on a juvenile. This is a specific type of sanction that can be prescribed for offenses against road traffic safety. These points are not imposed independently but alongside a penalty. If necessary, additional obligations may be imposed on the offender for driver education or to monitor their behaviour in traffic.

4.

Review of Certain Procedural Legal Solutions

Chapter XXXIII of the Law on Misdemeanours is dedicated to the specific features that apply in proceedings conducted regarding juvenile offenders: in such cases, the provisions of this chapter apply, and other provisions of misdemeanour proceedings apply only if they do not conflict with these provisions. Additionally, unless otherwise

53 Milić, 2013, p. 26.

54 Jovanović and Marinović, 2016, p. 182.

55 Milić, 2013, pp. 26–27.

56 Stojanović, 2018, pp. 234–235.

prescribed by this law, the provisions of the Law on Juvenile Criminal Offenders apply *mutatis mutandis* in misdemeanour proceedings regarding juveniles (art. 291). We proceed to address only certain provisions that we consider particularly important.

The Law takes special care regarding the terminology used, and instead of conducting proceedings against juveniles, it speaks of proceedings and sanctions *regarding* juveniles, which according to some authors, reflects the relationship of the state and society vis-à-vis these categories of misdemeanour offenders.⁵⁷

The Law on Misdemeanours explicitly stipulates in art. 292 that proceedings regarding juveniles are urgent. Although procedural efficiency is a general principle of misdemeanour proceedings (which is generally designed as summary criminal proceedings), here, this efficiency gains particular importance as it evolves into urgency. While the literature emphasises that urgency is justified considering that the primary goals of proceedings regarding juveniles are to prevent future behaviours and exercise supervision,⁵⁸ particular attention should be paid, especially with older juveniles, to the potential for them to lose juvenile status due to delays and reach adulthood.

One of the questions that arises is whether a juvenile must have defence counsel in the proceedings. On one hand, art. 49 of the Law on Juvenile Criminal Offenders stipulates that a juvenile must have defence counsel during the first hearing and throughout the proceedings. As this law applies *mutatis mutandis* in misdemeanour proceedings regarding juveniles and considering the purpose of mandatory defence for juvenile defendants, it could be concluded that the provision on mandatory defence should apply in this case as well. On the other hand, considering that misdemeanours are less severe types of offenses, and that mandatory appointment of defence counsel could prolong proceedings and make them far more expensive, theoretical perspectives suggest limiting cases of mandatory defence to proceedings against older juveniles for misdemeanours punishable by juvenile detention.⁵⁹ Newer judicial practice aligns with the first viewpoint, asserting that, in accordance with the aforementioned provision of the Law on Juvenile Criminal Offenders, a juvenile must have a defence attorney in misdemeanour proceedings.⁶⁰ In one of its decisions, the Supreme Court goes even a step further, requiring that a juvenile must have defence counsel even if they reach adulthood during the proceedings, citing art. 83, para. 1 of the Law on Misdemeanours, which stipulates that when a juvenile offender reaches

57 Milić, 2013, p. 14.

58 Stevanović, 2014, p. 104.

59 Delić and Bajović, 2018, pp. 386–387.

60 Decision of the Misdemeanour Appellate Court, Novi Sad Department, Pržm No. 173/21, 06 July 2021.

adulthood before or during proceedings, provisions regarding juveniles apply to them, except for educational measures.⁶¹

The Law on Juvenile Criminal Offenders stipulates that proceedings conducted against juveniles must involve persons who have acquired special knowledge in the field of children's rights and juvenile delinquency. This applies to prosecutors, judges, lay judges, and defence counsel. The Law on Misdemeanours contains no such provision. Therefore, in scientific papers, particularly those authored by misdemeanour court judges who adjudicate in juvenile proceedings, it has been emphasised that rules on the specialisation of proceeding participants are necessary in misdemeanour cases as well.⁶² In this regard, the Belgrade Misdemeanour Court has established a special Juvenile Department through its Annual Work Schedule for 2023, and subsequently for 2024. The Division was formed in accordance with the Court Rules of Procedure and recommendations of international instruments, enabling judges to accurately assess and maintain uniform procedure in cases of juvenile misdemeanour liability through joint sessions, continuous training, and monitoring of judicial practice. Additionally, in cases of recidivism, judges again handle cases against the same juvenile offenders, allowing them to evaluate the effect of previous sanctions and individualise new measures.⁶³

Art. 296 prescribes a special role for guardianship authorities,⁶⁴ parents, and legal representatives of juveniles. Specifically, these persons have the right to be informed about the course of proceedings, make proposals during proceedings, and point out facts and evidence important for reaching the correct decision. The active participation of these persons in the proceedings is justified considering the specific structure, nature, and objectives of juvenile proceedings, and the fact that

61 Supreme Court Decisions, Kzz Pr No. 36/2021, 21 October 2021, and Kzz Pr No. 43/2021, 23 December 2021. However, in one decision, the Misdemeanour Appellate Court notes that 'if the juvenile was of legal age at the moment of hearing before the first-instance court, and gave their defense in the presence of their father stating that they wish to defend themselves without the presence of counsel, and signed the hearing record personally and without objections', their right to defence was not denied; Judgment of the Misdemeanour Appellate Court, Prž M No. 289/22, 15 November 2022.

62 Jovanović and Sofrenović, 2018, p. 193.

63 Ristanović and Milić, 2024.

64 One of the important links in society's response to penal offenses by children and juveniles belongs to the social protection system. Social protection services treat these offenses as results of problems in social development and the fulfilment of social needs. Their primary goal is the humanisation of relations towards this population, which, owing to their age and developmental characteristics, perceives unlawful conduct differently compared with adult offenders. A particularly important role belongs to the guardianship authority, specifically the centre for social work, which has an irreplaceable function in responding to juvenile delinquency. This centre has a dual role in proceedings against juveniles: on one hand, as an auxiliary body of the court, and on the other, as an independent body that can influence the course of proceedings through its decisions, Jugović and Bogetić, 2018, p. 53.

data concerning the juvenile's personality, intelligence, and maturity are collected during the proceedings.⁶⁵

Art. 297 contains a special provision on the court's ability to discontinue proceedings for reasons of expediency. The court may decide not to conduct misdemeanour proceedings regarding a juvenile if it considers that proceedings would not be expedient given the nature of the misdemeanour, the circumstances under which it was committed, the juvenile's prior life, and their personal characteristics. This possibility is not conditional upon the severity of the misdemeanour for which proceedings are being conducted. Para. 2 of the same article stipulates that the court shall terminate misdemeanour proceedings by ruling, which implies that it must in any case initiate proceedings, and then potentially decide on termination by ruling if it finds that conditions for applying this provision are met. The parent, adoptive parent, guardian, or foster parent of the juvenile and the guardianship authority shall be notified of the committed misdemeanour for the purpose of taking measures within their authority.⁶⁶

5.

Conclusion

The overall impression following the analysis of provisions relating to juveniles is that the legislator has not devoted equal attention and diligence in drafting provisions on misdemeanour liability and misdemeanour proceedings for juveniles as in the case of criminal liability (though such a conclusion could be drawn for misdemeanour law in general, not just the segment relating to this category of offenders). Some oversights relate to legislative technique. Thus, many article titles do not correspond to the content of their provisions (e.g. art. 71), and certain paragraphs seem to be misplaced (see para. 3 of art. 297). Thus far, we have pointed out some problems that may arise in applying (primarily substantive) provisions on liability. However, we have decided to end with the positive aspects of Serbian regulations.

The fundamental idea of proceedings regarding juveniles is that they are conducted in accordance with the juvenile's well-being, while respecting the principle of proportionality. The aim of this approach is to positively influence the juvenile to change their attitude towards socially unacceptable behaviour.⁶⁷

65 DeliĆ and Bajović, 2018, pp. 389–390.

66 The formulation stating that the mentioned persons are notified 'of the committed misdemeanour' may be questionable, due to the fact that the court does not determine whether a misdemeanour was committed or not in the proceedings, but quite the opposite, whether it is justified to conduct proceedings or not; Ristivojević and Milić, 2023, p. 583.

67 Milić, 2013, p. 33.

The balance between rehabilitation and responsibility in Serbian juvenile misdemeanour law appears to be clearly expressed, as evidenced through several key provisions, both substantive and procedural. The legislator has established a framework allowing differential treatment of juveniles depending on their age and level of psychological development, with special emphasis on measures aimed at rehabilitation and improvement, and punishment only in exceptional cases.

First, art. 71 makes a clear distinction between children under 14 years and juveniles aged 14–18 years. Children under 14 years cannot be liable for misdemeanours, which aligns with the principled position that these are persons whose level of development, intelligence, life experience, and other factors are not such as to make them suitable subjects of penal liability. Meanwhile, for juveniles aged 14–18 years, the law provides for more lenient treatment compared with adults, while still introducing responsibility for their actions.

Second, art. 73 further contributes to this balance by introducing different types of sanctions for younger and older juveniles. For younger juveniles (14–16 years), only educational measures may be imposed, while older juveniles (16–18 years) may also receive penalty points, fines, or a juvenile detention sentence in exceptional cases, but with a maximum limit of 30 days. This approach clearly shows the tendency towards rehabilitation, as the law considers younger juveniles more susceptible to behavioural changes through education and educational measures, while providing somewhat stricter treatment for older juveniles due to their maturity.

Third, art. 72 introduces the liability of parents, guardians, or foster parents in cases where the juvenile's misdemeanour results from their failure in supervision. This provision can be said to show how the law balances between individual responsibility of juveniles and the responsibility of adults who have the obligation to supervise and guide juveniles. Such joint responsibility can provide additional support to the rehabilitative approach, as parents and guardians become active participants in the process of correcting the juvenile's behaviour. Although when explained thus, the liability of parents may appear to be a reasonable aspect, joint or vicarious liability is far from the usual approach. In this sense (aside from our intention to conclude on a positive note), we again refer to its criticism, which we have written about extensively in previous lines.

Finally, the law enables a wide spectrum of educational measures, from warnings and reprimands to increased supervision, and special obligations can be directed at changing bad habits and repairing damage caused by the misdemeanour. This introduces flexibility in the approach through the law – the court can adapt the type of measure depending on the specific circumstances of the case and the juvenile's needs, enabling achievement of the rehabilitative goal.

Because of these provisions, the balance between rehabilitation and responsibility in Serbian misdemeanour law is set so that priority is given to re-education

and social reintegration, while punitive measures are applied only when absolutely necessary, always with clear limitations ensuring that the goal remains rehabilitation, not repression.

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