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ADEQUATE TRAINING OF JUVENILES DEPRIVED OF LIBERTY: A STEP TOWARD SUCCESSFUL REINTEGRATION[1]

The issue of juvenile delinquency or juvenile criminality is an issue that traditionally occupies a special and very important place in criminal science. One of the indicators of the (un)success of the program through which minors pass during the educational measure of sending to the correctional institution, and thus the success in achieving the basic purpose of criminal law, is the number of persons who were again in the system (recidivists). Following the review of the basic theoretical conceptions, the authors presented international standards regarding child-friendly justice, as well as the normative framework in the Republic of Serbia that is relevant to the subject of this paper. In this sense, in terms of compliance with standards in practice, the authors presented the results of the research carried out by the Institute of Criminological and Sociological Research in cooperation with the OSCE Mission to Serbia in 2017. This is a part of the research related to the recidivism of persons released during the 2012 and 2013 from the Krusevac Correctional Institution. In the last part of the paper, the authors conclude that, in addition to legal standards, for the successful reintegration of minors, it is necessary to establish a good system of postpenal support.

Keywords: *Juveniles, International Standards, Recidivism, Research Study, Krusevac Correctional Institution, Educational (Institutional) Measures.*

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Introduction: Theoretical Review of the Problem of "Juvenile Delinquency" or "Juvenile Criminality"

One of the questions which traditionally attract attention of the scientific and professional public is the issue of juvenile delinquency and criminality of young people. These two terms are often considered the same, although they are not really synonyms. As for juvenile delinquency, most theoreticians agree that this is primarily about unadjusted behavior of young people (Ljubičić, 2011: 21), which implies not only crimes, but also offences, economic offences and disciplinary delicts. At theoretical plan, this implies a difference between these two terms, where criminality is a narrower term (Ignjatović, 2015: 20). However, this view is not absolute, since often the terms "juvenile delinquency" and "juvenile criminality" are identifiable, while the term "antisocial behavior" in another group of theorists has a different and wider meaning (Newburn, 2007: 717-718), including the term "juvenile delinquency" exclusively for the commission of criminal offenses by minors, and no other behavior that could be classified as "anti-social behavior" (Škulić, 2011: 26-27).

Literature about juvenile delinquency points to a series of variables which bring about delinquent behavior, where it is rightly pointed to the fact that examination of risk factors can be of significance for successful reaction in the aim of prevention of juvenile criminality (Church, Wharton & Taylor, 2009: 3). Deviant behavior in youth, i.e., crimes committed in the period of adolescence, is one of the most frequent risk factors the science points to, whose presence enlarges chances for committing crimes later in life, i.e., for recidivism (Haynie, 2001: 1050).

It seems that the above statement is not absolutely undoubted. In fact, if we wish to view a certain problem, i.e., to act preventively on a person, it is necessary to establish the causes which bring about undesirable social behaviors. In this sense, theory of social control, whose foundations were laid by Hirschi in 1969, which is based on over-bridging of the link between individuals and conventional social institutions in the aim of explaining delinquent behavior (this theory postulates that individuals are inherently prone to be deviant), even today receives significant empirical support (Hirschi, 2009: 16). This theory, with regard to young people, is today usually connected with undesirable behavior of children in school, where findings from contemporary research suggest that poor fulfilling of school obligations, i.e., lack of attachment, committing and active participation in work, bring about poor behavior in school, together with the existence of other negative factors, can bring about deviant behavior (Peguero, Popp, Latimore, Shckarkhar & Koo, 2011: 60).

As Loeber et al. rightly note, longitudinal studies were crucial in discovery of developmental paths of delinquency, since they had attempted, in a comprehensive way, to view all possible factors which produce occurrence of juvenile criminality (Loeber, Wei, Stouthamer-Loeber, Huizanga & Thornberry, 1999: 249). Longitudinal studies dating from the fifties of the twentieth century had started studying risk factors which included biological and ecological impacts (Zolkoski & Bullock, 2012: 2296). Contemporary theories, which among other things, are based on longitudinal examinations, apart from risk factors discussed in the theory, focus also on the so-called protective factors. As risk factors exist in various contexts, thus protective factors make a part of specific situations and contexts (Pavićević & Stevanović, 2015: 294). DeMateo and Marczyk define risk factors as "outside or inside impacts or states which are *linked with a negative outcome or are predictive for it*", while they define protective factors in contrast as "outside or inside impacts or states which *lower the probability for a negative outcome or increase the probability of a positive outcome*" (Simeunović-Patić, 2009: 61). As for risk factors, literature usually uses the classification given by Haugen, which includes a multitude of individual factors, into one the following four categories: individual factors, factors linked with the family, factors linked with the neighborhood and community, and factors linked with school and mutual relations with the peers (Haugen, 2000: 7-8). The most important protective factors to which the literature indicates are: the presence of care and support by an important person in a young person's life; high expectations and positive belief that activate innate vitality and self-rectifying capacity of adolescents and finally, last but not least, the possibility of participation of minors in those activities that require of them to show a certain level of responsibility (Pavićević & Stevanović, 2015: 300).

A major contribution to the examination of the possible effects of various factors on personality behavior, which in certain conditions can be expressed as delinquent behavior, has contributed to the factor-analytic theory of Hans J. Eysenck, where the person is viewed as an "established hierarchy", and delinquency appears as a coincidence from certain factors of personality and some situational factors, although Eysenck was inclined to give the highest importance to the factors of personality (Knežević: 1994: 39-41).

Prevention of juvenile delinquency plays an important role in the efforts for reducing criminality, through early identification and targeting of young people at the highest risk to become delinquents. Green et al. have done a longitudinal research, which showed that respondents who had three and more risk factors have as much as eight times more chances to commit a crime, in comparison to persons with absence of three factors, i.e., who had two risk factors at the most (Green, Gesten, Greenwald & Salcedo, 2008: 323).

It seems that Robinson is right saying that these types of theories are based on probability, and that effects of risk factors to behavior depend on frequency, regularity, intensity and time of exposure of individuals, so that: if a person is more frequently exposed (frequency), if a person is more regularly exposed (regularity), if a person is exposed earlier (time), and if factors are more intense (intensity), it is more probable that antisocial behavior shall occur (Robinson, 2009: 491-492).

Multidisciplinary approach, which is especially emphasized in research of the problem of juvenile delinquency, has contributed to viewing juveniles from the aspect of criminal-legal action not as adult perpetrators, but are treated in a different manner, with the aim to "*give them another chance"* (Škulić, 2011: 26). In modern legislatures, correctional orders usually present instruments which enable diverting from the classical criminal procedure - *diversion model* (Radulović, 2010: 79). Still, we should not neglect the fact that there are juvenile perpetrators for whom, bearing in mind the manner, heaviness and consequences of committed crimes, it would not be justified to implement correctional orders, but they are punished with correctional measures, or with the penalty of serving time in juvenile prisons. Here we could ask - what to do with juveniles after their release from correctional institutions, i.e., juvenile prisons? This question can be asked justifiably, since many juveniles return to their communities with serious risks from repeated committing of crimes, where inadequacy of their acceptance - return to communities, significantly reduces chances for their successful reintegration.

It seems that for this reason it is necessary to define in the introduction itself the term child-friendly judicature (justice)[2], which designates a judicial system which guarantees respect and effective implementation of all children`s rights at the highest possible level,… This is primarily judicature which is accessible, age-adjusted, efficient, adjusted to needs and rights of children[3], and focused on these needs and rights, respects children's rights, including the right on a procedure in accordance to the law, the right to participate in the procedure, and to understand the procedure, the right on respect for private and family life and the right on integrity and dignity. This concept presents the necessary step in realization, promotion and protection of children's rights. Realization of "child-friendly judicature (justice) implies judicature adjusted so as to be more appropriate for children, and efficient procedures accessible for children, with ensuring of necessary

[2] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted on November 17, 2010 at the 1098th session of deputy ministers of the Council of Europe - revised version from May 31, 2011.

[3] In terms of the Convention, a child is a person under 18 years of age.

independent legal representation. This enables children, when they come in contact with judiciary and administrative systems, either as witnesses, victims (injured), or as perpetrators of crimes, accusers and submitters of complaints in civic, administrative procedures and procedures before independent bodies, to be able to adequately protect their rights and interests" (Stevanović, 2016: 590-593).

With regard to criminal procedures, it is notable that attention of the scientific community is usually focused on children as victims of criminal procedures; therefore child-friendly justice is discussed in this context. In this paper authors discuss child-friendly justice primarily from the aspect of juveniles who were in conflict with the law, and the possibilities the system offers for their successful reintegration in the normal course of life. For the said reason, before analysis of the normative framework and presentation of results of the research done by the research team of the Institute of Criminological and Sociological Research in Belgrade, with cooperation with the OSCE Mission in Serbia, we wish to point to the study done by Bouffard and Bergseth, with the aim to review the impact of adequate post-penal acceptance to reduction of recidivism of juveniles. At the end of the twentieth century founding of Community-Based Mentoring Services in the USA was intensified, which, in short, aim to work with juveniles with a strong mentoring component, i.e., to render them services which should bring about "correction of their behavior". These authors did a research whose aim was to review the impact of such Services to reducing of recidivism. They examined two groups of juveniles who had been in correctional institutions and who after release spent at least six months at large. In the criteria group were persons who after release did use services of these Services, while control groups consisted of persons who did not use such a form of post-penal acceptance. The research has shown that respondents who used these services receded in a much smaller degree than those from the control group, by which the authors have pointed to a large significance of post-penal acceptance after release from the correctional system (Bouffard & Bergseth, 2008: 295-297).

1. International standards relevant to the subject of this paper: THIRTY YEARS FROM THE ADOPTION OF THE Convention on the Rights of the Child

With regard to child-friendly justice, respect for the said principle is in accordance with the *Convention on the Rights of the Child*,[4] *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*,[5] *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts*[6], as well as with numerous international documents, especially Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*),[7] United Nations Rules for the Protection of Juveniles Deprived of their Liberty,[8] United Nations Guidelines for the Prevention of Juvenile Delinquency (*Riyadh guidelines*),[9] United Nations Standard Minimum Rules for Non-Custodial Measures (*Tokyo Rules*),[10] Recommendation CM/Rec (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures[11], Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted in 2010[12], as well as Directive (EU) 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings, adopted in 2016.[13]

For the subject analysis of importance are first of all provisions stipulated within articles 39 and 40 of the Convention on the Rights of the Child, based on which the right is

[4]Convention on the Rights of the Child, *Official Gazette of SFRY - International Treaties*, no. 15/90.

[5]Optional Protocol on sale of children, child prostitution and child pornography, to the Convention on the Rights of the Child, *Official Gazette of SRY - International Treaties*, no. 22/02.

[6]Optional Protocol on Involvement of Children in Armed Conflicts, to the Convention on the Rights of the Child, *Official Gazette of SFRY - International Treaties*, no. 22/02.

[7]Standard Minimum Rules for the Administration of Juvenile Justice (*Beijing Rules*) adopted by the United Nations General Assembly Resolution 40/33, from November 29, 1985 (A/Resol/40/33, November 29, 1985).

[8]United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the UN General Assembly Resolution 45/113, from December 14, 1990 (A/Resol/45/113, December 14, 1990).

[9]United Nations Guidelines for the Preventtion of Juvenile Delinquency (*Riyadh guidelines*), adopted by the UN General Assembly Resolution 45/112 from December 14, 1990 (A/Resol/45/112, December 14, 1990).

[10]United Nations Standard Minimum Rules for Non-Custodial Measures (*Tokyo Rules*), adopted by the UN General Assembly Resolution 45/100, from December 14, 1990 (A/Resol/45/110, December 14, 1990).

[11] Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures[11], adopted by the Committee of Ministers of the Council of Europe on November 5, 2008 at the 1040th session of deputy ministers.

[12] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.

[13] Directive (EU) 2016/800 of the European Parliament and of the Council, adopted by the European Parliament and the Council of the European Union on 11 May 2016.

recognized of each child who was in conflict with the law, in the sense of perpetration of a crime. In accordance with the provision of Art. 39 of the Convention: States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. However, for the subject of this paper, it is important to point out the following rules, prescribed in Art. 40 of the Convention:

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

    a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

    b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

        (i) To be presumed innocent until proven guilty according to law;

        (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

   a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

   b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate

to their well-being and proportionate both to their circumstances and the offence.

After this we point out to the fact that the Committee for the Rights of the Child, wishing to especially encourage countries signatories to adopt and implement a comprehensive policy of juvenile justice for prevention and treating of juvenile delinquency based on and in accordance with the *Convention on the Rights of the* Child, has passed the *General Comment No. 10*: "Children's Rights in Juvenile Justice" (from hereon: *General Comment No. 10*).[14] The goal of passing the General Comment No. 10 are as follows: offering guidelines and recommendations to member-countries concerning the content of the comprehensive policy in the field of juvenile justice, with special accent on prevention of juvenile delinquency, introduction of alternative measures to ensure that the issue of juvenile delinquency is solved without court procedures, as well as during interpretation and implementation of all other provisions contained in articles 37 and 40 of the *Convention on the Rights of the Child*, as well as stimulating countries to include the newly-adopted international standards in their national systems of juvenile justice (Vučković Šahović, Doek, Zermatten, 2012: 303-309). The Committee is of the opinion that this goal can be best achieved through full respect and implementation of the leading and comprehensive principles of juvenile justice contained in the *Convention on the Rights of the Child,* defining in the *General Comment No*. 10 a set of basic principles for treatment which should be adjusted to children in conflict with the law:

- *Treatment that is consistent with the child's sense of dignity and worth*. (This principle reflects the fundamental human right enshrined in article 1 of UDHR, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child);

- *Treatment that reinforces the child's respect for the human rights and freedoms of others.* (Within the juvenile justice system, the treatment and education of children shall be directed to the development of respect for human rights and freedoms, as well as respect for and implementation of the guarantees for a fair

[14]General Comment No. 10: "Children`s Rights in Juvenile Justice", adopted by the Committee for the Rights of the Child on April 25, 2007, at the 44th session (CRC/C/GC/10).

trial recognized in article 40 (2) of the *Convention on the Rights of the Child* (Paragraph 40-67 of the General Comment No. 10). The Committee also states the question: "If the key actors in juvenile justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?";

- *Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society*. (This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being);

- *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented*. (The Committee for the Rights of the Child especially insists on this since reports received by the Committee show that violence occurs in all phases of the juvenile justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other facilities for children sentenced to deprivation of liberty. The committee urges the States parties to take effective measures to prevent such violence).

Taking into consideration the above stated, here we would like to especially point out to the importance of the document adopted by the Committe of Ministers of the Council of Europe titled: *European Rules for juvenile offenders subject to sanctions or measures* (Recommendation CM/REC (2008)11) which offers guidelines to all member-countries of the Council of Europe for further development of national systems for treatment of children in conflict with the law, including situations when juveniles appear as offenders and are subject to "sanctions or measures".These are the following guidelines:

- Juvenile offenders subject to sanctions or measures shall be treated with respect for their human rights.

- The sanctions or measures that may be imposed on juveniles, as well as the manner of their implementation, shall be specified by law and based on the

principles of social integration and education and of the prevention of re-offending.

- Sanctions and measures shall be imposed by a court or if imposed by another legally recognised authority they shall be subject to prompt judicial review. They shall be determinate and imposed for the minimum necessary period and only for a legitimate purpose.

- The minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law.

- The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.

- In order to adapt the implementation of sanctions and measures to the particular circumstances of each case the authorities responsible for the implementation shall have a sufficient degree of discretion without leading to serious inequality of treatment.

- Sanctions or measures shall not humiliate or degrade the juveniles subject to them.

- Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm.

- Sanctions or measures shall be implemented without undue delay and only to the extent and for the period strictly necessary (principle of minimum intervention).

- Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention.

- Sanctions or measures shall be imposed and implemented without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status (principle of non-discrimination).

- Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.

- Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.

- Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile. Where the offender is over the age of majority, the participation of parents and legal guardians is not compulsory. Members of the juveniles' extended families and the wider community may also be associated with the proceedings where appropriate.

- Any justice system dealing with juveniles shall follow a multi-disciplinary and multi-agency approach and be integrated with wider social initiatives for juveniles in order to ensure a holistic approach to and continuity of the care of such juveniles (principles of community involvement and continuous care).

- The juvenile's right to privacy shall be fully respected at all stages of the proceedings. The identity of juveniles and confidential information about them and their families shall not be conveyed to anyone who is not authorised by law to receive it.

- Young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.

- All staff working with juveniles perform an important public service. Their recruitment, special training and conditions of work shall ensure that they are

able to provide the appropriate standard of care to meet the distinctive needs of juveniles and provide positive role models for them.

- Sufficient resources and staffing shall be provided to ensure that interventions in the lives of juveniles are meaningful. Lack of resources shall never justify the infringement of the human rights of juveniles.

- The execution of any sanction or measure shall be subjected to regular government inspection and independent monitoring.

Finally, we would like to point out the provisions of the Directive (EU) 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings. In accordance with the provision of Article 12, item 5, when children are detained, Member States shall take appropriate measures to:

a) ensure and preserve their health and their physical and mental development;

b) ensure their right to education and training, including where the children have physical, sensory or learning disabilities;

c) ensure the effective and regular exercise of their right to family life;

d) ensure access to programmes that foster their development and their reintegration into society; and

e) ensure respect for their freedom of religion or belief.

The measures taken pursuant to this paragraph shall be proportionate and appropriate to the duration of the detention. Points (a) and (e) of the first subparagraph shall also apply to situations of deprivation of liberty other than detention. The measures taken shall be proportionate and appropriate to such situations of deprivation of liberty. Points (b), (c), and (d) of the first subparagraph shall apply to situations of deprivation of liberty other than detention only to the extent that is appropriate and proportionate in the light of the nature and duration of such situations.

2. Normative Framework IN THE REPUBLIC OF SERBIA: Ordering and Enforcement of Educational Measure Remand to Correctional Institution and Postinstitutional Treatment

According to Article 3 Para 1 of the Law on Juvenile Criminal Offenders and Criminal Protection Law (here and after: JL)[15] a juvenile is a person who at the time of commission of the criminal offence has attained fourteen years of age and has not attained eighteen years of age. The JL makes the difference between younger and elder juvenile. A younger juvenile is a person who at the time of commission of the criminal offence has attained fourteen and is under sixteen years of age (Article 3 Para 2 JL), while an elder juvenile is a person who at the time of commission of the criminal offence has attained sixteen and is under eighteen years of age (Article 3 Para 3 JL).

The Court shall order remand of a juvenile to a correctional institution when, in addition to separation from current environment, increased supervision measures and specialized professional educational programs have to be applied. In deliberating whether to order this measure the Court shall particularly take into account previous lifestyle of the juvenile, degree of personal and behavioral deviation, gravity and nature of the committed criminal offence and previous criminal or misdemeanor records of the juvenile (Article 21 Para 1 and 2 JL).

The juvenile shall remain in the correctional institution for minimum six months and maximum four years, and every six months the Court shall reconsider whether grounds for suspension of enforcement of this measure or its substitution with another educational measure exist (Article 21 Para 3 JL). During execution of educational (correctional) measures of sending to correctional institutions for juvenile it is passed on, the following is valid: general rules on execution of criminal sanctions for juveniles, general rules relating to execution of institutional correctional measures, as well as special rules applied exclusively in case of execution of these institutional correctional measures.

Enforcement of educational measures and juvenile prison sentences is based on individualised program of treatment of the juvenile that is adapted to his character and is in accordance with contemporary achievements of science, pedagogy and penology practice. Individualised programs are compiled on basis of comprehensive understanding of the maturity and other personal characteristics of the juvenile, his age, education level, previous life and behavior within the social context, form of behavioral deviation, type of

[15]Law on Juvenile Criminal Offenders and Criminal Protection Law. *Official Gazette RS*, no. 85/05.

criminal offence and circumstances of its commission. Individualised programs particularly determine: the maturity of the juvenile, other personal characteristics, feasibility of inclusion into an educational or vocational program, use and organization of leisure time, work with the juvenile's parents, adoptive parent or guardian and other family members, as well as other forms of psychosocial, pedagogic and penology impact on the juvenile (Article 93 JL).

The educational measure of remand to a correctional facility is enforced in the correctional facility. The educational measure of remand to a correctional facility ordered to a female person is enforced in the women's ward of the correctional facility. A person of legal age to whom the educational measure specified in paragraph 1 of this Article is ordered and the juvenile who attains legal age in the correctional facility during enforcement of this measure shall be accommodated in a separate ward of the correctional facility. A person to whom remand to a correctional facility has been ordered may remain there until attaining twenty three years of age (Article 124 JL).

2.1. Postinstitutional treatment of juveniles after release from the correctional institution

A juvenile is discharged from serving of educational measure, including the educational measure of sending to the correctional institution, after expiry of the longest statutory duration of the measure or when the Court orders: 1. revoking of its enforcement, 2. substitution of the ordered educational measure by another or 3.conditional release (Article 119 Para 1 JL). When a juvenile is in the finishing grade of school or at the end of his vocational training and discharge from the facility or institution where the measure is enforced would prevent completion of schooling or vocational training, the facility or institution may at the application of the juvenile enable him to complete schooling or vocational training. In such cases provisions of Article 120, paragraph 4 JL and Article 124, paragraph 4 JL hereof shall not apply to the juvenile (Article 119 paragraph 3 JL).

For the duration of the institutional measure and juvenile prison sentence the competent guardianship authority shall maintain constant contact with the juvenile, his family and institution in which the juvenile is remanded, in order to better prepare the juvenile and his family for his return to the former social environment and inclusion in social activities (Article 147 paragraph 1 JL).

An institution or facility in which the juvenile is serving his juvenile prison sentence are required to notify at least three months in advance of the scheduled leave of the juvenile,

his parents, adoptive parent, guardian, and/or close relatives with whom the juvenile used to live, as well as the competent guardianship authority, and suggest measures for accepting the juvenile on his return (Article 147 paragraph 2 JL).

A parent, adoptive parent or guardian, and/or close relative with whom the juvenile used to live before serving his institutional sentence or juvenile prison sentence, is required to notify the competent guardianship authority about the juvenile’s return to his family. Competent guardianship authority is required to provide necessary assistance to the juvenile, after he has served criminal sanction under paragraph 1 of this Article (Article 148 JL).

The competent guardianship authority shall on release of the juvenile from serving of his institutional measure or juvenile prison sentence take special care of a juvenile without parents and of a juvenile whose family and material circumstances are in disorder. This care shall particularly include accommodation, nourishment, provision of clothing, medical treatment, assistance in settling family circumstance, finalizing vocational training and employment of the juvenile (Article 149 JL).

As for cooperation with custodial bodies concerning post-institutional acceptance of juveniles and prevention of recidivism, it is necessary to point to several provisions of the Law on Social Prevention (here and after: LSP)[16], which are relevant for regulating of this issue.

Article 7 of LSP regulates that institutions and other forms of organizing regulated by the law, which perform activities, i.e., render social protection services, are to cooperate with the following institutions: institutions of pre-school, elementary, high school and university education, health care institutions, police, judicial and other governmental bodies, bodies of territorial autonomy, i.e., bodies of local self-management units, associations and other legal and physical entities. Also, the same provision emphasizes that cooperation in rendering social protection services is realized primarily within the framework of and in the manner defined by agreements on cooperation. Thus, LSP also provides for cooperation among social work centers and police and judicial and other governmental bodies, which, among other things, includes cooperation with correctional institutions during and immediately after release of juveniles from serving their

[16] Law on Social Protection, *Official Gazette RS*, no. 24/11.

correctional measures in correctional institutions, although this is not explicitly stated in the LSP.

With regard to post-institutional treatment of juveniles after release from correctional institutions, we should consider the provision of the Law on Execution of Criminal Sanctions (here and after: LECS)[17], which regulates the issue of providing help and acceptance to adult persons after they have served time in prison. This is Article 186 of LECS which, as emphasized in Article 4 of JL, may be applied to juveniles and young adults, provided it is not contrary to JL. According to paragraph 1 of Article 186 of LECS, in realization of providing help and acceptance, institutions (for execution of correctional sanctions) in question cooperate with custodial bodies competent according to last places of residence of convicted persons before their sending to prisons, with the police, and the appropriate organizations or associations. According implementation of this provision to juveniles released from correctional institutions would indicate that correctional institutions are obliged to cooperate with custodial bodies competent per last places of residence of convicted persons before they were sent to prisons, with the police, and the appropriate organizations or associations. In this, apart from cooperation with custodial bodies (i.e., competent social work centers, which is emphasized by the currently valid decisions from the system of juvenile legislature) cooperation could be especially useful of correctional institutions with the non-governmental sector, especially with organizations and associations of citizens dealing with protection of rights of children and young people, as well as persons belonging to marginalized social groups.

In fact, the obligation to cooperate with "appropriate organizations or associations", regulated in paragraph 1 of Article 186 of LECS, really clears the space for inclusion of the non-governmental sector into the post-institutional acceptance and treatment of offenders. Although the stated provision relates to persons of age, there are no hindrances to implement it accordingly also to juveniles, i.e., to non-governmental organizations which have capacities, whether as ancillary or additional subjects, or as equal partners with competent governmental institutions, to participate in creation and implementation of various programs and measures for post-institutional treatment of juveniles.

Here we wish to point to the necessity of creating conditions for linking of the said systems, especially bearing in mind that primarily persons of age come out of correctional institutions, after having served their time, i.e., after suspension of correctional measures. It could be rightly advocated that passing of similar provisions for juveniles, or according

[17] Law on Execution of Criminal Sanctions, *Official Gazette RS*, no. 55/14.

implementation of appropriate provisions of the Law on Execution of Out-of-Institutional Sanctions and Measures[18] to juveniles, could contribute to establishing of a more efficient system for their post-institutional acceptance and their better reintegration into communities, and thus to reducing of recidivism.

3. Research of Juvenile Recidivism in the Krusevac Correctional Institution

3.1. Introductory and methodological notes

<u>*3.1.1. Background, subject and goal of the research*</u>

The research of recidivism among juvenile offenders for whom correctional measure of sending to a correctional institution was passed is a part of a large research performed in 2017 by the Institute for Criminological and Sociological Research, supported by the OSCE Mission in Serbia.[19] It is important to emphasize that this research was preceded by a pilot research of needs of juvenile offenders - perpetrators of crimes, who were given correctional measures of sending to correctional institutions, which was done in March 2016 in the Krusevac correctional institution. There were two focus groups which consisted of two specific populations of adolescents, and two group testings of juveniles from open and semi-open departments. The first focus group consisted of all female adolescents who were in the institution at the time (N=8), and the second consisted of all juveniles who were in the closed department because of disciplinary offences (N=10). Apart from these two focus groups, group testing was done in which 40 juveniles participated.[20]

[18] Law on Execution of Out-of-Institutional Sanctions and Measures, *Official Gazette RS*, no. 55/14, 35/19.

[19] This is a research whose primary goal was to review the impact of professional training on recidivism in the Republic of Serbia, as well as, based on special models, to make a prediction of criminal recidivism. Apart from the research performed in correctional institutions in Sremska Mitrovica, Pozarevac and Nis, persons were considered toward whom the measure of mandatory treatment of drug addicts was applied, and the security measure of mandatory treatment of alcoholics, and alternative criminal sanctions to recidivism. The principal results of the research, adjusted to the profession, were published in the following publication: Stevanović, I., Međedović, J., Petrović, B. & Vujičić, N. (2018) *Ekspertsko istraživanje i analiza povrata u Republici Srbiji*. Beograd: Institut za kriminološka i sociološka istraživanja & Misija OEBS u Srbiji.

[20] Results of the pilot research are presented in the following study: "Analysis of the current state, identification of needs of juveniles and proposal for the reintegration program", made by the professional team of the Institute for Criminological and Sociological Research (Stevanović, I., Želeskov Đorić, J., Batrićević, A. & Milojević, S.). Some conclusions of this research are available in: Stevanović, I., Batrićević, A. & Milojević, S. (2016) What to expect after juvenile correctional institution? Recidivism or reintegration. In I. Stevanović & A. Batrićević (Eds.) *Criminal and Misdemeanor Sanctions and Measures: Imposing, Enforcement and Conditional Release* (pp. 307-319). Belgrade: Institute of Criminological and Sociological Research.

Bearing in mind the normative framework described previously, the subject, i.e., goal of the research was to review the success of the system of criminal-legal reaction, via the answer to the question how many persons who received correctional measures to be sent to correctional institutions found themselves again in the system of execution, i.e., how many of them were recidivism. This is of special importance because this institutional criminal sanction for juveniles is passed by judges for juveniles annually only for 4 to 5%, and presents, apart from juvenile prisons, the hardest institutional measure, to which most often multiple recidivism are sentenced (Stevanović et al., 2018 29).

3.1.2. Sample, instrument and variables

The sample included 181 persons (94.5% males and 5.5% females) in the Krusevac correctional institution, whose correctional measures expired in 2012 (79 of them, i.e., 43.6%) and 2013 (102 of them, i.e., 56.4%), i.e., who left the institution based on some other legal basis. Data on criminal recidivism were collected based on the records of the Directorate for Execution of Criminal Sanctions, with the final date being November 20, 2017.

Apart from the basic socio-demographic (gender, year of birth, type of finished training and year of expiry of the penalty) and data on the correctional measure, variables were registered of crimes because of which the persons were sanctioned, and on recidivism.

As for *data on crimes*, the following variables were registered:

Criminal offense. The original variable has 26 categories and represents the exact type of criminal offense for which the respondent has served the last criminal sanction.

Number of criminal offenses. Exact data on the number of criminal offenses committed by the respondent for which he was criminally sanctioned.

Multiplicity of crimes. A variable that indicates whether the respondent was previously sanctioned for only one type of crime (coded with 0) or had valid verdicts for a different type of criminal offenses (coded by 1).

Type of crimes. The variable "criminal offense" is binarized and reduced to criminal offenses with elements of violence (coded with 1) and criminal offenses without elements of violence (coded with 0).

As for data on *recidivism*, the following variables were registered:

Recidivism. Binary variable - recidivist respondents are coded with 1,and with 0 coded respondents who were not recidivated.

Year of the new verdict. This variable indicates the year when a new verdict was passed.

New criminal offense. The original variable has 12 categories that represent the exact type of criminal offense, due to which respondents are again in the execution system.

Number of new criminal offenses. Exact data on how much the total number of new criminal offenses was committed by the respondent for which he was pronounced a new criminal sanction.

Type of new criminal offense. The variable "criminal offense" is binarized and reduced to criminal offenses with elements of violence (coded with 1) and criminal offenses without elements of violence (coded with 0).

The type of new punishment. A categorical variable indicating whether a new sanction implies the execution of a prison sentence (coded by 1), some of the alternative sanctions (coded by 2), or the safety measure of compulsory treatment, i.e. Special Prison Hospital (coded with 3)**.**

The length of the new criminal sanction. A variable that represents the exact data on the duration of the new sanction imposed in months.

3.2. Results of the research

The average respondent was born in 1992 (SD = 1.65), with the age span from 1989 to 1996 year of birth. During execution of correctional measures all respondents in the sample had attended and finished mandatory trainings, where most of them finished training for the following professions: moulder, brick-layer, plummer, car-mechanic and smither. In recent years there is an increased trend of persons training for florists, which is the consequence of the innovative program implemented in the Krusevac correctional institution - production of flowers which are subsequently sold at free market. Here it is important to point to the difference between these responders and adult responders,

responders who are in prisons. In fact, in contrast to juveniles who all go through special trainings, this is not the case with adult offenders.[21]

3.2.1. Data on crimes, numbers, multiple character and type of crimes

Data on crimes - Viewed by crimes, the largest number of persons was sanctioned because of Compound Larceny from Article 204 SCC[22] (41.4%), Robbery from Article 206 SCC (14.4%) and Theft from Article 203 SCC. As we can see, around 2/3 of all criminal acts are acts relating to property.23 After these three most frequent crimes, these crimes appear in the following order: Murder from Article 113 of SCC (6 respondents), Unauthorized Use of Another's Vehicle from Article 213 of SCC (6 respondents), Domestic Violence from Article 194 of SCC (4 respondents), Rape from Article 178 of SCC (4 respondents), Unlawful Production and Circulation of Narcotics drugs from Article 246 of SCC (3 respondents), Violent Behavior from Article 344 of SCC (3 respondents) and Aggravated Murder from Article 114 of SCC (3 respondents). Individually viewed, participation of the said crimes is below 5% of the total structure of performed crimes. The category *other* includes crimes whose participation is negligible.

Type of crimes[24] - the respondents in 40.3% cases committed crimes with elements of violence, while with 50.2% of respondents absence of violence was recorded in their execution of crime. As for types of crimes, data are not available for 7.2% persons.

Number of crimes-The research has also shown that responders from this sample were, in average, sanctioned for two crimes (SD = 1.12), while the number of crimes per

[21] This was the reason that the so-called VET project was implemented in the largest correctional institutions in the Republic of Serbia (Sremska Mitrovica, Pozarevac and Nis) – "Support for professional education and training in prison institutions in Serbia", which is an example of good practice after about twenty years of ''terminating" of education in our prisons. On the project itself you can see more here: Knežić, B. (2017) *Obrazovanje osuđenika: način da se bude slobodan*. Beograd: Institut za kriminološka i sociološka istraživanja.

[22] Serbian Criminal Code. (2005) Official Gazette *RS*, (85/05, 88/05 - revise, 107/05 - revise, 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16). - *here and after*: SCC.

[23] It is interesting to mention that Serbia during 2013 and 2014 participated in the international survey of self-reporting of delinquency (ISRD 3) where one of the results of this study matches with the findings of this research, which is that juveniles in the Republic of Serbia most often perform crimes of property character. See: Ćopić, S. & Stevković, Lj. (2018) Parental Supervision and Control as a Factor of Juvenile Delinquency in Serbia: Results of the International Self-Reported Delinquency Study. In I. Stevanović (Ed.) *Child Friendly Justice* (pp. 279-29). Belgrade: Institute of Criminological and Sociological Research.

[24] These are essentially forms of violent (includes crimes where for achieving of certain goals attack on victims were applied, or threatened) and property criminality (includes all crimes concerning property, and their perpetrators try to gain benefits for themselves or somebody else, or to cause damage for somebody), where individual crimes regulated in a separate part of SCC are grouped in one of the stated two categories. The consequence of this is that the criminal act of robbery is from the criminological aspect viewed as a form of a violent crime, although the SCC regulates it is a property crime (Ignjatović, 2016: 110, 118).

respondent was from one to four. We should state that only in 36% of cases respondents performed only one crime, while in 31% of cases they committed three or more criminal offenses.

As for the **multiplicity of crimes**, it was recorded in 42.9% cases, i.e., was not recorded in 57.1% cases.

3.2.2. Recidivism - descriptive statistics

Juvenile recidivism was registered for 36% respondents (65 of them were recidivated). The biggest number of new convictions was passed after 2015, more than 83% of the total number of new convictions.

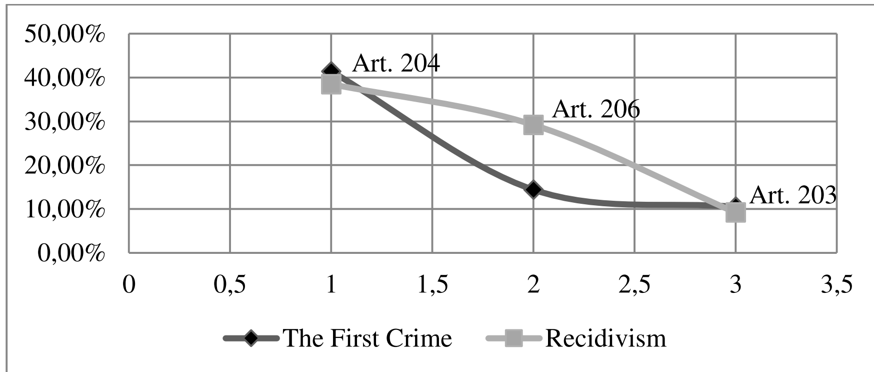
Data on new crimes-Viewed by crimes, the largest number of persons- 38.5%is again within the system for execution because of performed crimes from Article 204 of the SCC - Compound Larceny, then because of the crime of Robbery from Article 206 of the SCC – 29.2%, crime of Theft from Article 203 of the SCC - 9.2% and crime of Aggravated Murder from Article 114 SCC - 4.6%. With 3.1% each in the total structure of crimes, there are the following crimes: Murder from Art. 113 SCC, Domestic Violence from Article 194 SCC and Unlawful Production and Circulation of Narcotics from Article 246 SCC. Individual participation of other crimes is negligible.

In around 85% cases new criminal sanctions followed after a single crime, while in around 15% cases there were two crimes (*concatenation of crimes*). It is important to point out to the fact that **in more than 52% new crimes included elements of violence**.[25] This difference is especially visible if we consider three most frequent crimes. At first sight we could say that there is no essential difference in the original structure of crimes *(crimes because of which respondents were convicted to a correctional measure*) and crimes done in recidives (*recidivism*). However, if the procentual decrease for new acts is negligible for crimes of Compound Larceny from Article 204 SCC and Theft from Article 203 SCC, this is not the case for the crime of Robbery from Article 206 SCC, whose participance is

[25] In contrast to ISRD3 studies, the last, fifth issue of the Sourcebook of Crime and Criminal Justice Statistics, gives the data that, although juveniles in Serbia most frequently commit property crimes, on the other hand they in a much larger degree commit crimes with elements of violence than their peers in other European countries. See: Aebi et al. (2014), *European Sourcebook of Crime and Criminal Justice Statistics*. Helsinki: European Institute for Crime Prevention and Control. Similarly, if we view generally Robbery as a form of a violent crime (juvenile and adult perpetrators of crimes) the Republic of Serbia is at the top of the European list of committed crimes of Robbery. According to: Vujičić, N. (2017) Razbojništvo-kriminološki aspekti. In N. Kršljanin (Ed.) *Identitetski preobražaj Srbije: prilozi projektu 2016 – kolektivna monografija* (pp. 319-331). Beograd: Pravni fakultet Univerziteta u Beogradu.

by 102.8% larger than in the original structure of crimes. This difference is shown in Diagram 1.

Diagram 1.Structure of most frequent crimes before and after recidivism



Average duration of a newly passed penalty is 50.95 months (something more than 4 years), but the span is very large, from 3 months to as much as 20 years.[26] It is important to say that those whose new crimes do not include elements of violence are sentenced with averagely 37 months of imprisonment, while those who committed crimes with elements of violence were convicted in average to 66 months of imprisonment, which was expected. This difference is statistically significant ($t_{(55)}$=-2.172, p=.034).

New sanctions (mostly imprisonment, in 93.8% cases) were mostly passed for crimes of Compound Larceny from article 204 SCC and Robbery from Article 206 SCC. In three cases the court passed, together with imprisonment, the mandatory measure of treatment for drug addicts, while in one case the court passed implementation of an alternative criminal sanction – Community Service.

3.2.3. Prediction of recidivism

In order to make a model for prediction of recidivism (*multivariate analysis - MVA*)in which all potential predictors participate, we used the binary logistic regression. It controls mutual correlations of the predictors themselves, so that redundancy is avoided in prediction. Results (Table 1) have shown that the suitability of the model is good

[26]This was a respondent who had committed several crimes, and according to data of the Ministry of Justice - Directorate for Execution of Criminal Sanctions (these are individual convictions) this person was sentenced to 287 months of prison in total. By implementation of provision from article 60, paragraph 2 item 2 SCC, the court passed a unique penalty in duration of 240 months.

(χ^2=11.267; p=.187) and regression itself was statistically significant (χ^2=25.606; p=.000). With the help of the used collection of predictors 20% recidivism variances was explained.

In such a set model only two predictors have remained statistically significant: the number of previously committed acts and the type of committed acts -in fact, respondents prone to committing of a larger number of crimes which do not include elements of violence shall have a bigger chance of recidivism.

Table 1. Multivariate model for prediction of recidivism

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1[a]	Gender	-.897	.729	1.512	1	.219	.408
	Year of Birth	.087	.109	.644	1	.422	1.091
	Number of Crimes	**.593**	**.208**	**8.137**	**1**	**.004**	**1.809**
	Multiple Crimes	.108	.492	.048	1	.826	1.114
	Type of Crime	**-1.532**	**.429**	**12.727**	**1**	**.000**	**.216**
	Year of Release	-.378	.358	1.117	1	.290	.685
	Constant	586.430	746.502	.617	1	.432	4.821E254

Conclusion

Bearing in mind the presented results of the rate of recidivism of juveniles sentenced to correctional measures of serving time in correctional facilities in Serbia, and the necessity to reduce them in future, it is necessary to make an analysis of the needs of juvenile perpetrators of crimes and a comprehensive plan for their (re)integration into the community. The next necessary step is to consider the possibility for implementation and modification, and scopes of potential solutions, i.e., to design a formal program of reintegration which would best responds to specific needs of juveniles. We should especially bear in mind that because of specific needs of juveniles programs for treatment and reintegration of juveniles must be especially targeted. All of the above must have its legal basis in the sense of promotion of the normative-legal basis, but also its implementation in practice.

Here we wish to point to the necessity of creating conditions for better linking of the system of juvenile criminal legislature with the system of post-penal acceptance of adult perpetrators of crimes, especially bearing in mind that primarily adult persons are released

from correctional institutions after having served their time there, i.e., after suspension of correctional measures. In this sense, we may justifiably advocate that according implementation of provisions of the Law on Execution of Out-of-Institutional Sanctions and Measures to juveniles could contribute to establishing of a more efficient system for their postinstitutional acceptance and their better reintegration in the community. This would create more space for inclusion of the non-governmental sector in postinstitutional acceptance and treatment of juvenile perpetrators of crimes (see: article 186. pgs. 1 and 3 of LECS),[27] i.e., this would create space for citizens` associations which have the capacity, as auxiliary or additional subjects, equal partners with competent governmental institutions, to participate in creation and implementation of various programs and measures for postinstitutional treatment of juveniles, and possibilities which we hope shall be more frequently used, which are linked also with the institute of paroles releases with institutional correctional measure of serving time in correctional facilities. Here we should mention that at the end of March 2019 the *Network of organizations for postpenal support of Serbia* was founded, whose principal cause is improvement of policies and practices in the field of reintegration and postpenal acceptance, so that they are in accordance with the needs of persons who received criminal sanctions, and juveniles who were, or are in conflict with the law, which should contribute to their better acceptance in the community.

Of course, we should always bear in mind that in the Republic of Serbia, the system of social and health protection is the basis for support to juveniles in conflict with the law during the process of their resocialization and reintegration. Better connecting of these two systems with the system of juvenile legislature, as well as continual support to primary families, if juveniles have them, during and after institutional correctional measures, also are a precondition for reducing the rate of recidivism of this age category.

International standards stated in the paper surely present guidelines both for legislature and practice. However, we should not forget the fact that pure legal transplantation for juveniles in conflict with the law does not have to mean a step forward in situations when the norm and the practice are not in harmony. The research presented in this paper, in the part concerning juveniles` training, in fact shows that in this sense the goal is to try and realize the right on their reintegration, since education and trainings are the path for juveniles, after being released from an institution, to apply for jobs, and in this sense be

[27] In Article 186 Para 3 of the LECS it is stated that the procedure for providing assistance and acceptance of the convicted person after the imprisonment is regulated by a special law. This is the already mentioned Law on Execution of Out-of-Institutional Sanctions and Measures.

turned toward socially acceptable behavior. Still, as it was mentioned several times, juveniles after being released from institutions primarily need post-penal support. In other words, we could hardly expect that most of them will by themselves, without help from others, continue with their lives in the right direction, i.e., abandon criminal behavior. For this reason we believe that international standards, but also current legislative framework in the Republic of Serbia, offer sufficient space for further development of the practice, which should be especially insisted on.

Because of all this future reform processes of juvenile legislature in the Republic of Serbia should insist that what is set in the legislative framework, concerning the necessity for the program of postinstitutional acceptance of juveniles, must be set and developed from the entry of these persons in institutions, as well as during the process of their (re)integration in the community. This is because the success of a criminal policy of a country, especially concerning juveniles, is measured primarily through the rate of recidivism.

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