

JUVENILE PERPETRATORS OF TRAFFIC OFFENSES: (IR)RESPONSIBILITY OF THE PARENTS?*

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The traffic offenses of minors are in the focus of this paper (misdemeanours and crime) with special emphasis on the (ir)responsibility of parents in the context of their children's delinquency and sanctioning. Statistical data collected from the databases of the Misdemeanour Court and Higher Court in Belgrade, as well as those available in the records of the Statistical Office of the Republic of Serbia, have been presented and analyzed. A significant source of qualitative data were interviews conducted with judges of the previously mentioned courts and consultant for juvenile delinquency issues of the Higher Court in Belgrade with the aim of creating profile of a juvenile traffic offender and his/her parents. In addition to the worrying observation that traffic offenses are on the rise, there are also worrying reviews of the contribution of parents to this type of offenses, their attitude towards them and the consequent responsibility. Special attention was paid to the issue of violations of the provisions of misdemeanour procedure and sanctioning, in light of the latest judgements of the Supreme Court of Cassation that influenced the practice of misdemeanour courts. Some suggestions related to the prevention of traffic offenses committed by minors were also presented, as well as some interventions in normative framework of which the most important is – harmonization of criminal and misdemeanour law responses to juvenile delinquency.

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INTRODUCTION

The global interest in the road traffic safety is embedded in the concept of UN Decade of Action for Road Safety 2021– 2030. Proclaimed through a UN General Assembly resolution in 2020¹, the Decade of Action was launched in October 2021, with the ambitious target of preventing at least 50% of road traffic deaths and injuries by 2030. WHO's „Global status report on road safety 2018“, launched in December 2018, highlights that the number of road traffic crashes remains unacceptably high, and that crashes represent a leading cause of death and injury around the world, killing more than 1.35 million people and injuring as many as 50 million people a year, with 90% of those casualties occurring in developing countries. It also highlights that road traffic accidents are the leading cause of death around the world for children and young people between 15 and 29 years of age (WHO, 2018).

WHO Global Report doesn't indicate the role of the minor drivers in such accidents and devastating consequences, but, Serbian Road Traffic Safety Agency (hereinafter: RTSA) does - victimization of young people (15-30 years of age) in traffic accidents is on the rise, the same category has also contributed to own victimization whether as drivers (or passengers) of motor vehicles (RTSA, 2019: 4). When it comes to victimization of children (up to 14 years of age) in road traffic accidents – 1% of injured were motor vehicle drivers (Ibid: 3). Based on these reports, we cannot draw an accurate conclusion about the participation and victimization of the category that is the subject of this paper: younger juveniles - persons who at the time of commission of the criminal offense have attained fourteen and is under sixteen years of age, and elder juveniles - persons who at the time of commission of the criminal offence have attained sixteen and is under eighteen years of age³. Nevertheless, the reports show that the most common problem is driving a vehicle without a driver's license and participation in road traffic characterized by recklessness in performing traffic actions, inexperience and /or desire to show off (Ibid: 2 and 10). It is also confirmed by our research results that will be discussed later.

Serbian decision makers have been stubbornly trying to make traffic safer by increasing restrictiveness and repressiveness of traffic regulations. The Law on Road

¹ Resolution adopted by the General Assembly on 31 August 2020, Improving Global Road Safety, A/RES/74/299, [N2022630.pdf \(un.org\)](#)

² World Health Organization chairs the UN Road Safety Collaboration and serves as the secretariat for the Decade of Action for Road Safety 2021– 2030

³ Article 3, par. 2 and 3. of the Law on Juvenile Crime Offenders and Criminal Protection of Juveniles, Official Gazette RS (hereinafter: LJCO), No. 85/2005

Traffic Safety (hereinafter: LRTS)⁴ itself has been changed frequently in the last ten years, in 2018 even multiple times. That year is of particular importance when it comes to juveniles (and young, underexperienced drivers in general) and the need to take stricter measures to protect them, bearing in mind that the participation of young drivers in fatal traffic accidents is particularly alarming (the percentage of young drivers killed in road crashes in Serbia is about 15%)⁵.

The Road Traffic Safety Strategy of the Republic of Serbia for the period 2015-2020 emphasizes the protection of young people. It has been pointed out (in the section „Young Drivers“) that young (inexperienced) drivers (with up to three years of experience) are far more likely to cause traffic accidents compared to those with experience, and a number of preventive measures that need to be taken are listed. The measures are primarily aimed at educating young people, but one of them is related to „improving the attitudes of parents regarding the importance of their role in the development process of young drivers“⁶. What exactly this is about and what measures should be taken is not even mentioned neither in the Strategy nor in the Action Plan for its implementation⁷ (and the new traffic safety strategy has not yet been adopted.), although it is a very important issue, which will also be discussed later.

The focus of this paper is on the misdemeanour and criminal law dimension of juvenile traffic offenses, as well as the responsibility of their parents, and for this purpose the data of the Statistical Office of the Republic of Serbia and data from the databases of the Misdemeanour Court and Higher Court in Belgrade were gathered and analyzed. Also, the interviews were conducted with judges and psychologist of the Higher Court in Belgrade in order to shed more light on the existing problems and possible responses.

1. ROAD TRAFFIC MISDEMEANOURS OF JUVENILES

The misdemeanours are usually perceived as less serious offenses, as „minor“ criminal offences (and in some legal systems there is indeed such a division), so they generally deserve less attention. It is a completely wrong approach, because offenders (especially juveniles) usually open the gate of the world of crime by committing misdemeanours. However, there are not many papers in the literature dealing with juvenile misdemeanours, no specialization of judges for this issue has been carried out until recently, and certain legal solutions and judicial practice have also recently

⁴ Law on Road Traffic Safety, Official Gazette of the RS, Nos. 41/2009, 53/2010, 101/2011, 32/2013 – decision of the Constitutional Court, 55/2014, 96/2015, 9/2016 – decision of the Constitutional Court, 24/2018, 41/2018, 41/2018, 87/2018, 23/2019, 128/2020

⁵ Government of the Republic of Serbia, National Strategy on Road Traffic Safety 2015-2020, Official Gazette of the RS, No. 64/15, p. 23

⁶ Ibid., pp. 36-37

⁷ Conclusion of the Government of the Republic of Serbia 05 No: 344-12121/2016, Official Gazette RS, No. 1/2017

become an issue of interest. Also, the Statistical Office of the Republic of Serbia has no data on misdemeanours, which is not the case when it comes to crime.

In the Misdemeanour Court in Belgrade, until January 1, 2023 there wasn't special department for juveniles, and only recently it is possible to comprehensively consider juvenile misdemeanour delinquency and monitor it more properly. In the case of recidivism of a minor, the same judge (there are four judges in the Juvenile Department) will act in his/her case thus being able to make better individualization of the sanction and monitoring of the perpetrator. Also, with the implementation of the Annual Work Schedule for 2023, the Court began keeping a separate record for every minor who has been sanctioned by an educational measure, in accordance with Article 80 paragraph 2 of the Law on misdemeanours⁸ (hereinafter: LM).

1.1. Traffic misdemeanours and a profile of juvenile offender

The significant frequency of traffic rules violations in the structure of juvenile misdemeanours has been determined in the data base of the Misdemeanour Court in Belgrade (there are no data in records of Statistical Office of the Republic of Serbia as has already been said).

Table 1. Traffic misdemeanours in the structure of juvenile misdemeanours 2015-2022⁹

Year	2015	2016	2017	2018	2019	2020	2021	2022
Total	1474	1069	756	605	1700	2000	1001	886
Traffic m.	629	454	270	197	327	322	328	451
%	42,76	42,47	35,71	32,56	19,24	16,1	32,77	51

With the exception of two years (2019 and 2020), the percentage of traffic misdemeanours of minors is over 30%, and in the last observed year it amounts to even more than half of all juvenile cases before the Misdemeanour Court in Belgrade.

Although the data can not present an accurate picture of the structure of traffic misdemeanours, judicial experience shows that most often it is about driving without a license or traffic rules violations that include driving with a probationary driver's license (usually at night and/or without supervision). In this regard, the aforementioned amendments of the LRTS in 2018 have been related to drivers with probationary driver's license, namely minors, but as it turned out, those perpetrators are still among the most common ones. We can talk about the persistence and recklessness of juvenile offenders, but also of an inadequate approach to the problem of their parents, because they could be the persons who supervise in cases where the supervision is legally required or make minors respect the traffic regulations in other way (e.g. by not

⁸ Law on Misdemeanours, Official Gazette, Nos. 65/2013, 13/2016, 98/ 2016 – Decision of the Constitutional Court, 91/2019, 91/2019, 112/ 2022 – Decision of the Constitutional Court

⁹ Data were available since 2015 and were gathered on April 10, 2023.

allowing them to use a vehicle). Thus, the explanation of the Proposal of amendments to the LRTS outlined that solving the problem of vulnerability of young and inexperienced drivers is one of the main goals of the proposed amendments, because the inexperience of that category of drivers is the most common factor of their victimization risk, but also of the victimization of other participants in traffic accidents (Government of the Republic of Serbia, 2017: 68). The result is the tightening of the conditions for driving a motor vehicle by a driver with a probationary driver's license (extension of the validity period of the license, extension of the period of prohibition of driving a motor vehicle by drivers with a probationary driver's license - from 23.00 to 06.00 h); specified speed limit of the motor vehicle driven by the driver with a probationary driver's license, limited right to drive vehicles whose engine power does exceed 80 kW)¹⁰.

The available data could not be used to create the profile of the juvenile offender, but based on judicial experience it is: a boy, an elder minor (over 90% of cases) and most often a minor over whom parents do not perform or are not able to exercise adequate supervision. More often it is a minor from incomplete family, living with one parent, most often a mother, but as previous research on juvenile delinquency has shown, the contribution to delinquent behaviour of minors comes out from inadequate parental competences, whether the family is complete or not (Simeunović-Patić:112-115; Jovanović, Sofrenović, 2016: 65-66).

In practice, it has been noted that parents most often do not understand the importance of misdemeanour proceedings – they primarily look at the situation through the prism of punishment and minimize the importance of acts committed by their children, which is also determined by previous research on juvenile misdemeanours (Jovanović, Pašalić, 2015: 221). Judges have got the impression that parents even approve of such behaviour by justifying it vigorously. As the judge at the Juvenile Department said: „We often have parents on the opposite side, as enemies”. Parents usually use different justifications and excuses, defending children by not telling the truth. It points out to the conclusion about the parental concept of upbringing a juvenile offender, which certainly cannot be assessed as good as it inevitably leads to juvenile delinquency in future. Such attitude of parents is particularly determined in case of serious offenses, so it can be assumed that it is precisely such an attitude of parents that generally contributed to the commission of the offense, and that recidivism is to be expected. It was also noted that there are many recidivists among minors who commit serious traffic violations, which is also alarming. Usually, the parents of such offenders show the least interest in the problem, which requires thoughtful action regarding both sides – minor and his/her parents. Driving which led to the offense has been most often motivated by entertainment, fun,

¹⁰The limitations envisaged in the Article 182 of the LRTS are very often violated (and parents could be find responsible, too) and they are in focus of this paper.

showing off, not by some serious and urgent need (not including minors' serious need for entertainment, fun and showing off).

Although they rarely appear as offenders, girls are usually perceived as „more serious problem“, as in the background of an offense there is usually a complicated family situation, domestic violence, and abuse of psychoactive substances. In general, minors who commit serious offenses, including those in the field of traffic, are often users of psychoactive substances (Jovanović, Pašalić, 2015: 220).

1.2. Outcome of the misdemeanour proceedings

The data show high percentage of cases in which statute of limitations on institution and conducting misdemeanour proceedings expired. It is generally the problem in the misdemeanour law due to short periods of limitations on institution and conducting misdemeanour proceedings (for most misdemeanours, including those in question, relative time limit is one year from the commission of the offense, and two years is absolute one). Thus, it seems quite justified to extend the time limits, e.g., as it has been done in Croatian misdemeanour legislation (Jovanović, Marinović, 2017: 189). There is also a problem related to the application of the principle „ne bis in idem“ - since neither as parallel nor as successive two penal proceedings, misdemeanour or criminal proceedings, could be conducted for the same offense (on the sense of its factual set) and priority has been given to the latter (judging by the provisions of Article 8 and Article 183 of the LM). Usually, the notice of dismissal of a criminal complaint (for an offense containing the characteristics of an offense, which is precisely the case with traffic offenses) arrives too late, when such a case could no longer be handled in misdemeanour proceedings due to expiry of the statute of limitations. Longer periods of limitations on institution and conducting of misdemeanour proceedings would be particularly important in the sphere of juvenile offenses in order to provide conditions and better chances for the realization of educational influence on minors.

Table 2. Limitations on institution and conducting of misdemeanour proceedings 2015-2022

Year	2015	2016	2017	2018	2019	2020	2021	2022
Traffic m.	629	454	270	197	327	322	328	451
Expiry of statute of limitations	265 42,13%	207 45,59%	97 35,92%	71 36,04%	88 26,91%	131 40,68%	49 14,93%	4 ¹¹ 0,89%

Different outcomes of the proceedings are shown by the data in the following table:

¹¹ This number should not be taken as final, bearing in mind that there is a large number of pending cases for the year in question.

Table 3. Decisions in the proceedings for traffic misdemeanours of minors 2015-2022

Year	2015	2016	2017	2018	2019	2020	2021	2022
Conviction	250	166	119	97	96	101	107	65
	39,74 %	36,56 %	44,07 %	49,24 %	29,36 %	31,37 %	32,62 %	14,41 %
Educational measure	38 6,04%	28 6,17%	25 9,26%	17 8,63%	27 8,26%	30 9,32%	32 9,76%	42 9,31%
Acquittal	24 3,82%	16 3,52%	10 3,70%	7 3,55%	5 1,53%	23 7,14%	2 0,61%	2 0,44%
Discontinuation of the proceedings	52 8,27%	37 8,15%	19 7,04%	5 2,54%	111 33,94 %	37 11,28 %	52 15,85 %	54 11,97 %

It is significant that in the case of serious traffic offenses, the guardianship authority whose opinion is sought in the proceedings, usually suggests discontinuation of the proceedings, because the minor in question is already in the proceedings before the criminal court or has already been sanctioned by that court (but not for the same event). Thus, judges come into a difficult situation when the case is assessed as serious one. It even happens that the court „obey” guardianship authority, but the police file an appeal, because police officers repeatedly encountered the same minor in serious situations, and the court decision is assessed as inadequate. Perhaps, in such situations, when the aforementioned decisions on the discontinuation of proceedings are made, one can really talk about the „leniency” of the judicial system towards minors (Ignjatović, 2013: 135). So, it might be more expedient for a juvenile to be sanctioned in misdemeanour proceedings also, regardless of the fact that this reproach would remain at the declarative level. If the proceedings are pending before the criminal court, notice about the committed offense, i.e. about the discontinuation of the misdemeanour proceedings due to inexpediency, should be always presented to the criminal court (it could be done by the guardianship authority). The Misdemeanour Court in Belgrade always submits decisions made at the end of the proceedings against the juvenile offender to the guardianship authority (although there is no such explicit legal obligation, except in the case of issuing a decision on the discontinuation of the proceedings due to the inexpediency of its conduct, in accordance with Article 297 of the LM).

When it comes to educational measures imposed on minors (the database does not contain data on individual measures), the most common educational measure is the reprimand (as it is the case with other offenses (Cvjetković, 2013: 60)), but the minor is always confronted with the possibility of imposing other, more severe sanctions in case of recidivism. A fine is mandatory to be imposed on a minor who has attained 18 years of age before initiating or during misdemeanour proceedings.

1.3. Parental responsibility

When it comes to the liability of parents, which is a very important issue in this field, bearing in mind the above stated about the behaviour of parents in the misdemeanour proceedings, i.e. their attitude towards the offense and liability of their child as well as their own responsibility, the Article 72 of the LM is of great importance. As outlined above, parents often minimize the significance of the offense, even when it comes to a more serious one or joinder of offenses. It is very likely that this attitude has to do with the „traditional“ training of minors to drive long before passing the driving test, and even the benevolent attitude towards driving without a license or despite certain restrictions when it comes to minors with a probationary driver's license.

There are two different situations, depending on the age of juvenile person. When a child (juvenile under 14 years of age) has committed a misdemeanour due to an omission to supervise him/her by the parents, adoptive parents, guardians i.e. foster parents, if these persons were capable of exercising such supervision, the parent, adoptive parent, guardian i.e. foster parent of the child shall be punished for the misdemeanour as if they have committed it themselves. On the other hand, the law *may prescribe* that the parents, adoptive parent, guardian i.e. a foster parent of a minor aged from fourteen and up to eighteen years of age shall also be punished for a misdemeanour committed by a minor if the misdemeanour committed has been a consequence of an omission to exercise due supervision over the minor, where they were capable of exercising such supervision. In addition to the parent, adoptive parent, guardian i.e. foster parent, the law may prescribe that other persons for whom the obligation to exercise supervision over a minor who has committed a misdemeanour is prescribed shall also be liable for a misdemeanour by a minor. The question arises - why the responsibility of another person for whom the obligation to supervise a child (e.g. educators, teachers) has not been envisaged, while such a possibility exists when it comes to minors who attained 14 years of age (Article 72 paragraph 3 of the LM). By envisaging that possibility, the obligation to supervise and care for minors would be more comprehensively emphasized (Jovanović, Marinović, 2015: 183).

The LRTS has envisaged the responsibility and sanctioning of parents for offenses committed by their child, wheter child is under 14 years of age or older (in Article 318). However, in practice (of the Misdemeanour Court in Belgrade) there has been no motion to institute misdemeanour proceedings against parents, although (based on the circumstances of the given case) the omission to exercise due supervision over the minor was evident, and parents were capable of exercising such supervision. Whenever a minor uses a parents' vehicle - the situation could be interpreted in that sense, especially when the vehicle keys were easily accessible. Keys should be treated almost as weapons that must be secured and kept out of the reach of minors.

The parents could have responsibility on the basis of Article 182 paragraph 5 item 5 in terms of securing supervision by „family member”¹². They could be held liable for particular misdemeanour as paragraph 6 of the same article stipulates: „A driver who has a probationary driver's license to drive a category B vehicle until he attained 18 years of age must not drive a vehicle without the supervision of a person in that vehicle who has a valid driver's license to drive a category B vehicle for a period of at least five years.” The person performing supervision could be a parent who in that status (and according to paragraph 8) would be obliged to ensure that the driver drives the vehicle in a safe manner and in accordance with the regulations. In Article 344 paragraph 1 item 44 is envisaged punishment for that person.

The parents of minors are always questioned in the misdemeanour proceedings, and the opinion of the centre for social work is always respected, although the court may decide differently because Article 292 of the LM stipulates that the court is obliged to obtain an opinion of the guardianship authority before imposing an educational measure or punishment, and Article 297 of the LM stipulates that the court may decide not to conduct misdemeanour proceedings if this is not appropriate.

1.4. Problems in normative sphere and judicial practice

When it comes to punishing minors for traffic (but also other misdemeanours), it should be pointed out to the discrepancy between criminal law and misdemeanour law response to juvenile offenses. Traffic rules violations are particularly interesting, because the line between the description of the criminal offense (endangering road traffic referred to in Article 178 of the Criminal Code¹³ (hereinafter: CC)) and road traffic misdemeanours is very thin. Alternatively set objective conditions of incrimination incorporated in the description of the criminal offense referred to in Art. 178 of the CC (minor bodily injury or property damage exceeding two hundred thousand dinars) serve for demarcation. Namely, the LM has envisaged fines for elder juvenile (which is not provided by the LJCO). An unpaid fine imposed against a juvenile shall be collected through confiscation of property of the juvenile, his/her parents or another person in charge of taking care of him/her (Article 41 paragraph 7 of the LM). Thus, reproaching of parents is achieved indirectly. It is not such a bad solution considering the attitude of parents towards misdemeanours of their children in the proceedings, and non-application of other provisions on parents' liability for the offenses of their children in practice. On the other hand, it cannot be disputed that the educational benefits in that case are not that significant, unless the payment of the fine

¹² A driver with a probationary driver's license must not drive a category B vehicle whose engine power exceeds 80 kW, unless he is under the supervision of a family member, who is in that vehicle and who has a valid driver's license to drive a category B vehicle for a period of at least five years.

¹³ Criminal Code, Official Gazette, Nos. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009, 111/2009, 121/2012, 104/ 2013, 108/2014, 94/2016, 35/2019.

force the parents to engage more adequately in the upbringing and education of their children.

It is also important to point out that if a minor has reached age of majority prior to or during the misdemeanour proceedings, provisions on minors shall apply, except for the provisions on educational measures (Article 83 paragraph 1 of the LM). Therefore, if a 17-year –old minor, who possesses a probationary driver's license for a category B vehicle, commits an offense, he/she is very likely to reach the age of majority before the end of the misdemeanour proceedings and this provision will be applied. However, the judgments of the Supreme Court of Cassation of Serbia (hereinafter: SCC), from the previous three years, have raised some questions in connection with cases of traffic misdemeanours of elder minors, regarding the judicial practice and the aforementioned provision, and the relationship between the LM (its provisions on minors) and the CC and LJCO, which has been already seen as rather problematic in other aspects, too¹⁴. All decisions (five judgments abolishing final judgments of misdemeanour courts issued upon the requests for the protection of legality submitted by the Republic Public Prosecutor) are related to cases of minors with a probationary driver's license who have reached age of majority during the misdemeanour proceedings (and the most common offenses were related to violation of the provisions of Article 182 of the LRTS (driving a motor vehicle between 23,00 and 06,00 h (paragraph 5 item 3), driving a category B vehicle without proper supervision (paragraph 6). All minors have been sanctioned in the same manner: a fine, penalty points and a safeguard measure -prohibition to drive a category B motor vehicle for a certain period of time (all but one are obliged to pay the costs of the misdemeanour proceedings). For example, a minor who committed six traffic misdemeanours was sentenced to a single fine in the amount of 73,000 dinars, 12 penalty points and a safeguard measure of banning the driving of a B category motor vehicle for six months. Those who committed only one offense were sanctioned with (minimum) fine of 10,000 dinars, six penalty points and a three-month ban on driving a motor vehicle.

The SCC has established the existence of significant procedural violations related to non-compliance with the provisions of the LJCO. Namely, minors who have reached the age of majority were not summoned through their parents, the parents were not informed about the institution of the proceedings nor they (neither the guardianship authority) were summoned to the hearing, and the public was not excluded from the hearing, nor did they have a defense attorney (chosen or ex officio), which are all the rules of procedure envisaged by the LJCO, but some are also provided for by the LM itself when it comes to the proceedings conducted against a minor. In summary - the misdemeanour courts treated a minor who has reached the age of majority before or during the proceedings as an adult and did not apply special provisions regarding

¹⁴ More about the inconsistencies of these two laws resulting in paradox – an offender could be sanctioned more seriously for a misdemeanour than for a (similar) criminal offense: Jovanović, Marinović, 2016.

minors. It was assessed by the SCC as substantive violation of the provisions of procedure. In this regard, aforementioned provision of the Article 83 of the LM, from which the SCC begins in explaining its decision, is important. Namely, the provisions on minors, except for the provisions on educational measures, will be applied to a minor offender who has reached the age of majority before or during the misdemeanour proceedings (Article 83 paragraph 1 of the LM). One could conclude that the legislator was primarily referring to substantive legal provisions, i.e. those from Chapter VI, under title „Provisions on minors“ (consisted primarily of the provisions on the liability and sanctioning of minors, not on the procedure). The provisions on the proceedings against minors are in Chapter XXXIII – „Proceedings against minors“ containing rules that essentially coincide with those envisaged in the LJCO (e.g. regarding the urgency of the procedure, exclusion of the public, summoning minors through their parents, the rights of parents and guardianship authority). In this regard, broader interpretation of the term „provisions on minors“ and acceptance of the opinion that it should be related to all provisions on minors (that will also be applied to those who have become adults before or during misdemeanour proceedings) seem justified. This opinion could also be supported by the claim that minors are a specific category of offenders, and that the same rules apply in criminal proceedings against a minor who has reached the age of majority during the proceedings.

The provision of Article 291 paragraph 2 of the LM, which refers to the appropriate implementation of the LJCO, unless otherwise stipulated by the LM is also very important. The SCC refers to it in its judgements, and in one of them has been stated: „The Law on Misdemeanours is defined as *lex specialis* in relation to LJCO which is *lex generalis* and is applied accordingly when there is no special regulation in the LM in relation to a particular issue. The primary application is the application of the LM, and when a particular issue is not regulated by it, the LJCO will be applied. In this particular case, it is a misdemeanour procedure conducted against a person who, at the time when the offense that is the subject of this procedure, was an elder minor, for whom there is an assumption that he cannot fully take care of his rights and interests due to insufficient mental development and age, in which proceedings the public, with the aim of the predominant interest of the minor, was not excluded, as follows from the transcript of his hearing, nor did he have a defense counsel in the proceedings, and the defense counsel was not appointed by the court *ex officio*“¹⁵.

Other SCC judgements are in alignment with aforementioned (when it comes to violation of the right to defense, exclusion of the public, attendance of parents at the hearing of minors, participation of guardianship authority), but there are two judgements outlining that „as the defendant was sentenced and the safety measure prescribed for adult persons, it was a violation of the provisions of Article 9 paragraphs 3 and 4 of the LJCO, given that the provision of Article 40 paragraphs 2 and 4 LJCO stipulated that an adult who committed a criminal offence as a minor, and at the time

¹⁵ Judgement of the SCC, Kzz Pr 34/2020, January 21, 2021

of the trial did not reach the age of 21, may be imposed an relevant educational measure, and for the reasons provided for in Article 28, paragraph 1 – juvenile prison sentence, while the imposition of safety measures is possible only in accordance with and under the conditions provided for by LJCO¹⁶.

It is disputable why the safety measure prescribed for adult persons imposed on a minor (who has reached 18) is mentioned, because it is not a safety measure at all, but a safeguard measure envisaged by the LM (indeed, almost identical with safety measure as criminal sanction). Nevertheless, if we were to determine what safety measures could be imposed on a minor – a safety measure „prohibition to drive a motor vehicle“ is one of them, so this argument does not stand. The same goes with a safeguard measure envisaged by the LM (Article 52 paragraph 1 item 5 of the LM). If the SCC was referring to pronounced punishment also (although the linguistic interpretation suggests that only a safety measure is emphasized) it has been also disputable what the judges meant, i.e. what the violation consisted of. Penalty points (imposed in the said case) are not even a punishment nor safety/safeguard measure, but a special sanction for road traffic misdemeanours. Namely, when it comes to sanctioning a minor who has become an adult before or during the misdemeanour proceedings, the provisions of the LM are clear – therefore, educational measures cannot be imposed, and in this sense referral to the LJCO is not justified, i.e. there could not be violations. One could argue whether such a solution is rightful, but it should be considered as a problem of the legislator who has not harmonized misdemeanour and criminal law matters timely (not only in the field of juvenile offenders).

In the field of offenses (misdemeanours and criminal ones) of juvenile offenders there is the special need to correct shortcomings and overcome gaps arising from non-compliance and/or overlap of two penal legal spheres. If the best interest of the minor is in the first place, and his/her upbringing and proper development are the main goals, the best solution would be to regulate both legal matters on the same principles, thus securing protection of the rights of minor offender and choice of the best sanction.

At this moment a juvenile offender can be sanctioned more seriously for a traffic misdemeanour than the one who committed a criminal offense (because LJCO does not envisage a fine, as well as penalty points for criminal offenses). In this regard, the judgement of the Misdemeanour Appellate Court, Department in Novi Sad¹⁷ is very interesting as the court reversed the judgement of the Misdemeanour Court in Šabac regarding the decision on punishment, and pronounced a reprimand (an educational measure) to the minor (who reached the age of majority during the proceedings). As stated in the explanation of the SCC judgement ¹⁸ the court has „removed“ penalty

¹⁶ Judgement of the SCC, Kzz Pr 7/21, March 9, 2021

¹⁷ Ruling of the Misdemeanour Appellate Court, Department in Novi Sad, III-306 Pržm 169/21, September 28, 2021

¹⁸Judgement of the SCC, Kzz Pr 43/2021, December 23, 2021

points. The safeguard measure, prohibition to drive a motor vehicle, remained. This decision of the Misdemeanour Appellate Court followed the decision of the SCC, which has opened the question about sanctions in the case of minors who become adults before or during misdemeanour proceedings. As already stated, the provisions of the LM are clear and exclude the application of educational measures in those cases, and the reprimand is one of them.

However, in the next SCC judgment¹⁹ the aforementioned violations of the procedure have been determined, but the SCC also has stated, taking into account the provisions of Article 83 paragraph 1 of the LM: „...in this case, according to the law, an educational measure cannot be imposed, but with regard to the mentioned procedural provisions, the court violated the law, because it did not apply the provisions of the LM”, which seems to be the right point of view. But, the latest judgement of the SCC²⁰ paid attention to aforementioned procedural violations (adding a new one – „...obtained evidence was not submitted to the defendant and his defense counsel for examination, and the defendant did not have an opportunity to state his position in relation to evidence against him”), but the SCC also referred to the imposed sanctions. It seems again that the „safety measure for adults” has been emphasized. The SCC outlined: „...the court also imposed a safety measure on the defendant in addition to a fine and penalty prescribed for adults, thus violated the provisions of Article 9 paragraphs 3 and 4 of the LJCO, given that the provision of Article 40 paragraphs 2 and 4 of the LJCO stipulated that an adult who committed a criminal offense as a minor, and at the time of the trial did not reach the age of 21, may be imposed an relevant educational measure, and for the reasons provided for in Article 28 paragraph 1 – juvenile prison sentence, while the imposition of safety measures is possible only in accordance with and under the conditions provided for by LJCO“.

It is worth mentioning the paragraph 2 of the Article 83 of the LM related to another effect of the legal age. Namely, if a minor has become of the legal age following handing down of the decision whereby an educational measure is imposed, the enforcement of such measure shall be discontinued. This legal solution is in alignment with the conclusion that preventive (educational) effects of misdemeanour sanctions are disputable, and that some changes are needed if „a sanction for misdemeanour must fit into the unique response to juvenile delinquency” (Stevanović, 2013).

2. CRIMINAL OFFENSES AGAINST ROAD TRAFFIC SAFETY

When it comes to traffic-related criminal offenses perpetrated by minors (endangering road traffic (Article 289 of the CC) and grave offenses against traffic safety (Article 297 of the CC), their percentage in the structure of reported juvenile

¹⁹ Judgement of the SCC, Kzz Pr 36/2021, October 21, 2021

²⁰ Judgement of the SCC, Kzz Pr 37/2022, August 30, 2022

crime is (according to the data of the Statistical Office of the Republic of Serbia for the period 2017-2021) about 2% per year (while offenses against property are most frequent - about 50%, followed by offenses against life and limb (about 14-16% per year), offenses against public order and peace (9-14%), offenses against human health (6-9%), offenses against the rights and freedoms of people and citizens (4-6%). Offenses against sexual freedom have a similar percentage as traffic offenses in the structure of reported criminal offenses, and offenses against economic interests are below 1%, as expected. Cases in which criminal sanctions were pronounced are in range of 1.5 to 2.3% per year for traffic offenses (Statistical Office of the RS, 2022: 2). Therefore, one could not say that traffic offenses perpetrated by minors are a particularly important problem (although in the last year (2021) for which statistical data were published, the highest percentage of minors sanctioned for traffic offenses has been recorded).

2.1. Criminal offenses against road traffic safety in judicial practice

If we take a look at the data of the Department for Juveniles of the Higher Court in Belgrade, we can see that offenses against traffic safety do not have primacy in Belgrade, too. The most common offenses are those against property, offenses „related to drugs" and lately, offenses related to the pornographic material shooting. The following tables show data that were available in the database of the Higher Court in Belgrade for period of ten years (2013-2022)²¹.

Table 4: Perpetrators and final court decisions - Article 289 of the CC, 2013-2022

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Boys	5	2		3	1	1		5	4	3	24
Girls	1								1	1	3
Court admonition	3			1				2	2		8
Special obligations		1		1						2	4
Increased supervision by parents	1	1						1			3
Increased supervision by guardianship authority									1	1	2
Remand to correctional institution				1					1		2
Discontinuation of the proceedings	2				1	1		1	1	2	8

²¹ Data are gathered on April 3, 2023.

*Table 5: Perpetrators and final outcomes of the proceedings -
Article 297 of the CC, 2013-2022*

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Total
Boys	5	3	3		2	3	4	5	6	5	36
Girls	2								1		3
Admonition by court		1	2	1						2	4
Special obligations		1				1	1				4
Increased supervision by parents	1										1
Increased supervision by guardianship authority	3	1		1	1	1		2	3	2	14
Remand to correctional institution		1	1								2
Discontinuation of the proceedings	3	1	1	1	1	2	3	2	2	1	14

According to the data for the ten-year period (2013-2022) there were 27 proceedings for the offense of endangering road traffic (Article 289 of the CC) while there are almost 50% more of those charged with the offense under Article 297 of the CC (39). The most common perpetrators are male, while only five girls were in the proceedings (three for the offense under Article 289 of the CC and two for the offense under Article 297 of the CC). The most common outcome of the proceedings was its discontinuation - 39% (14 cases) in the case of offenses from Article 297 of the CC and 30% (8 cases) for the offense from Article 289 of the CC.

In case of the endangering road traffic (Article 289 of the CC) the most common sanction was the most lenient one – court admonition, while just in two cases institutional educational measures were imposed - remand to correctional institution (perpetrators were minors who committed joinder of criminal offences (traffic offenses and offenses against property - robbery, serious theft)).

The measure of increased supervision by the guardianship authority is more frequent when it comes to Article 297 of the CC, which has envisaged the more aggravated forms of the criminal offense referred to in Article 289 of the CC, i.e. traffic accidents resulting in serious bodily harm or death of another person or property damage to large extent.

Increased supervision by parents is pronounced just in five cases (for both offenses).

When it comes to the discontinuation of the proceedings due to inexpediency, it is most often due to the fact that it is about minors who are in the proceedings for the first time, and other circumstances also indicate no need for sanctioning. There

are rarer situations when a measure has already been imposed on a minor, the execution of which has not yet started or has only just started, so the measure could not give an effect, but in no case it has been imposed for the same or similar offense. Dilemma in practice is – what should be do with the safety measure prohibition to drive a motor vehicle, bearing in mind that perpetrators often do not have a driver's license, so it is rarely in use.

2.2. Profile of juvenile offender and parents' attitude

Since no more data could be obtained from the database of the Higher Court in Belgrade, the interviews with the president of the Department for Juveniles, the judge for juveniles, Vera Sofrenović, and the consultant for juvenile delinquency issues, Ljubinka Marković, were used to create a profile of a juvenile perpetrator of a traffic offense, but and his parents, that is, social and family circumstances. The profile does not differ from the profile of a minor perpetrator of traffic misdemeanours.

The perpetrator is usually male, an elder minor, without a driver's license or with a probationary driver's license, often under the influence of psychoactive substances (more often alcohol) at the time of offense commitment. It is not possible to draw a conclusion about the specific social milieu from which offender comes, because there are perpetrators from different social and family settings. However, one thing is certain - none of them sat behind the steering wheel for the first time, that is, they have some experience in driving a vehicle, but most often they do not have a license. Even in the cases of the criminal offense of unauthorised use of another's motor vehicle (Article 213 of the CC), the perpetrators are always minors who have some driving experience. Their parents taught them to drive or encouraged them to learn driving skill in an informal setting, and later on, they even encourage them in violating traffic rules by driving without license or in other way. Very often minors are taught to drive when they „go to grandparents' village“ or in general - where there is no traffic, i.e. where it is safer to learn to drive. Such a practice is viewed as good, especially in rural areas, even among minors under the age of 14, in order to train children timely to use agricultural machines and other motor vehicles thus helping their parents and other family members.

On the other side, (rare) female perpetrators are not from rural areas (which could also be linked to the patriarchal heritage that is more firmly rooted in rural areas), but they often present more serious cases than boys on other grounds – they abuse psychoactive substances more intensively, they are victims and/or commit domestic violence themselves (Jovanović, Sofrenović, 2016: 61). Often, when they have committed the criminal offense of endangering road traffic, there are a long history of abuse of psychoactive substances, and dramatic family situation, and more often measures of a medical nature are outcome of the proceedings (even psychiatric treatment). This observation, which coincides with the one obtained at the Misdemeanour Court, could also be explained by the fact that various restrictive and

stimulating factors encourage girls to respect social norms, and they are usually subject to stricter parental control. Cultural concepts all over the world are less tolerant of girl's deviant behaviour than boy's (UN, 2003:192).

As stated in the previously presented data (from the report of the RTSA) - in the case of juvenile perpetrators, in the background of the offense are inexperience, recklessness in the performance of actions in driving the vehicle, but also the desire to show off. An illustrative case is the group of minors who sneaked out at night, with their parents' car keys (which they secretly took) in order to have fun - driving around and racing. Due to reckless driving (while racing), another, parked vehicle was hit, and the case appeared before the court. There were both male and female minors in the racing cars. In another interesting case, the car was driven by a 16-year-old minor who, at the time of the accident (the car hit a pole, bounced, then hit a tree, then hit the pole again) had 1.62 ‰ of alcohol in his blood, which is, as the expert witness said „the state of moderate alcohol intoxication according to forensic psychiatric literature“, but according to the LTRS – it is the state of severe alcohol intoxication. Diminished mental competence was found (but not significantly diminished), without indications for the application of the safety measure of compulsory treatment of alcoholics. There were five other minors in the car, close relatives of the perpetrator, three of whom were seriously injured, one person lightly, while one person died. The minor did not have driving license, but the parents of all minors in the vehicle knew how they would have been transported to the place where a certain celebration was held and gave permission for it. The juvenile offender was sanctioned with an educational measure - increased supervision by the guardianship authority. For the first time he was in conflict with the law, he comes from an incomplete family in which the father took care of the children and in which, as stated in the report of the guardianship authority, „positive norms and values were adopted“. Is a positive norm to drive a vehicle without license with father's consent and approval, even incitement? That is the problem in general – parents often recklessly assume that accident would not occur. The guardianship authority has also determined that „the boy's intellectual capacity is diminished, his emotional and social development slow“.

In another case (of a very wealthy parents), the mother, shop-owner, asked her minor son, who does not have a driver's license, to transport some goods. After traffic accident caused by the minor who was also injured, he was treated for a long period of time due to mental health problems as the result of traumatic experience. In this case, the sanction was increased supervision of the guardianship authority, too.

Therefore, a particular problem related to traffic offenses perpetrated by minors is the attitude of parents who could be held responsible as abettors or even in some cases as perpetrators of the offense – causing of general danger. In this regard, let's mention the case in which a minor took the keys of his parents' car and gave them to his friend, also a minor, who caused the accident. The boy who took the keys and three

other minors were found in the car after the accident. They were injured as well as the man hit by the car.

When it comes to the attitude of the minors towards the criminal offenses they have committed: they are most often sincerely remorseful, some escape after the accident, some stay; some perpetrated the offense in joinder with other offenses – but there is no strict rule. However, the rule is the attitude of the parents towards the offense. Even though they themselves undoubtedly contributed to its commission - either by encouraging minor to drive a motor vehicle against the rules (it could be even said that the parents in such a case consented to the consequences caused by the minor) or by not exercising adequate supervision over him/her (and the vehicle) - they never assume responsibility, which is in alignment with their attitude in the misdemeanour procedure.

It is also noticed that the Court does not receive information about previous misdemeanour sanctioning nor about the discontinuation of the proceedings due to inexpediency (when of course it is not the same event) which could affect decision, so such practice should be change.

CONCLUDING REMARKS

Research on juvenile traffic delinquency whether it is a misdemeanour or a criminal offense (it is only a question of achieving the objective condition of incrimination in a given case) shows that special attention must be paid to this problem, especially in the field of misdemeanour law. There are few reasons for that: 1) high percentage of traffic violations in the structure of misdemeanour offenses committed by minors, and their dangerousness; 2) problem in legal sphere, and in judicial practice, emphasized by the latest judgements of the Supreme Court of Cassation as the result of the mismatch between the criminal law and the misdemeanour law response to the offenses of minors.

Undoubtedly, a unique, harmonized legal regulation of that area is necessary, with the main goal - the development and enhancement of personal responsibility of the juvenile, education, and his proper personality growth. The misdemeanour procedure, judging by state of affairs, is not among the best means to achieve those goals, but certain corrections could yield results - extension of the statute of limitations in misdemeanour proceedings, amendments to the LM provisions on minors (e.g. disputed provision that refers to punishing minors with a fine that has no special preventive effects, and is not envisaged in the provisions of the LJCO)²².

One of the specific suggestions for intervention in the normative framework (that comes from the misdemeanour judges, partly because of to the latest judgments of the

²² Disputable punishment for misdemeanours is juvenile imprisonment, too, but it is out of the scope of this paper. See: Mrvić-Petrović, 2013: 174-175.

SCC) is denying minors the right to have a driver's license before they turn 18. One of the alternative sanctioning measures (special obligation) for minor who has committed a (serious) traffic offense could be additional training at the Road Traffic Safety Agency.

Parents and their competences are perceived as serious problem. They are the ones who even directly stimulate minors to participate in traffic illegally, so the importance of programs that will be dedicated to them and to the development of their competences should be highlighted (although research shows that the involvement of parents is considered a greater challenge than the involvement of minors in prevention programs (Meško, Simeunović-Patić, 2014: 151)). The deconstruction of current attitudes about the use of vehicles by minors in a way that implies unadequate understanding of risks and possible consequences is of particular importance (it would be necessary that adults themselves possess the appropriate traffic culture, which obviously is not the case in Serbia).

Special attention should be paid to already existing provisions on the responsibility/liability of parents, when it comes to misdemeanours committed by minors that have no application in practice. It should be change as well as in case of parental liability for criminal offenses in traffic perpetrated by children due to the lack of adequate supervision.

As things now stand, it is better for parents if their children commit offenses qualified as criminal, because they could not be held liable, while the minor will be sanctioned most likely with the same sanction that would be imposed on him for a misdemeanour – by court admonition, bearing in mind the relation between the systems of sanctions for misdemeanours and criminal offenses for minors and their parents. Things change only if the sanction for the offense is a fine, because the parents will pay the fine eventually, so it can be expected that this sanction will have an educational effect on the parents, and indirectly on the minor as well. Its retention in the sphere of misdemeanor law must be reconsidered definitively by the legislator, bearing in mind the normative inconsistency within the sphere of juvenile penal law.

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MALOLETNI UČNIOCI SAOBRAĆAJNIH DELIKATA: (NE)ODGOVORNOST RODITELJA?

Saobraćajni delikti maloletnika (prekršaji i krivična dela) su predmet ovog rada, sa posebnim naglaskom na (ne)odgovornost roditelja u kontekstu prestupništva njihove dece. Statistički podaci iz baza Prekršajnog suda i Višeg suda u Beogradu, kao i oni iz izveštaja Republičkog zavoda za statistiku su analizirani. Značajan izvor kvalitativnih podataka bili su intervjui sa sudijama pomenutih sudova i konsultantkinjom za pitanja maloletničke delinkvencije Višeg suda u Beogradu, sa ciljem da se kreira profil maloletnog saobraćajnog prestupnika i njegovih roditelja. Uz zabrinjavajući podatak da su ovi delikti u porastu, zabrinjavajući je i osvrt na doprinos roditelja ovoj vrsti delikata, njihov odnos prema prestupništvu dece i sopstvenoj odgovornosti. Posebna pažnja je posvećena povredama pravila prekršajnog postupka i u vezi sa sankcionisanjem učinilaca u svetlu najnovijih presuda Vrhovnog kasacionog suda Srbije koje su od uticaja na praksu sudova za prekršaje u sferi maloletničkog prestupništva. Date su i sugestije u vezi sa preventivnim postupanjem i intervencijama u normativnoj sferi, od kojih je najvažnija – usklađivanje dva postojeća odgovora na prestupništvo maloletnika, krivičnogopravnog i prekršajnogopravnog.

KLJUČNE REČI: maloletni učinilac / saobraćajni prekršaj / ugrožavanje javnog saobraćaja / teška dela protiv bezbednosti javnog saobraćaja / odgovornost roditelja