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Institute of Criminological and Sociological Research

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**ANALYSIS OF THE IMPACT OF THE IMPLEMENTATION OF THE LAW ON
JUVENILE DELINQUENTS AND CRIMINAL PROTECTION OF JUVENILES
IN THE PERIOD FROM 2006 TO 2020**

- Summary Report and List of Recommendations-

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NOTE: An integral part of this report is a document with a scientific background and evidence of the merits of the findings written by the authors in this report.

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1. Objectives of the analysis

The main goal of the analysis is to assess the impact of the implementation of the Law on Juvenile Delinquents and Criminal Protection of Juveniles (LJDCPJ), as well as to assess its effectiveness in protecting the best interests of the child. The assessment focuses on the following aspects of implementation:

- Juvenile delinquency rate in the period from the beginning of the application of the Law, compared to the general crime rate for that period;
- The most common types of juvenile delinquency (juvenile delinquency structure);
- Efficiency, effectiveness and fairness of criminal proceedings against juveniles;
- Impact of specific sanctions and other measures on the crime rate, especially on the recidivism rate;
- Assess whether the LJDCPJ is an adequate instrument for combating juvenile delinquency and protecting the best interests of the child.

Bearing in mind that amendments to the LJDCPJ or the adoption of a new law are envisaged by a number of strategic public policy documents in the justice sector, this analysis aims at the basic elements provided by the Law on Planning System of the Republic of Serbia and the Decree in the context of ex post analysis. In this regard, additional specific objectives of the analysis include assessing the relevance, efficiency, effectiveness and sustainability of the LJDCPJ, as well as recommendations for improving its implementation in legislation, practice, organizational aspects of law enforcement parties and strengthening administrative capacity.

2. Methodology

The findings presented in this analysis are the result of research conducted in the period from July to December 2020 and involved the application of quantitative and qualitative methods. Both the existing material and the data collected for the purposes of this research were analysed. The work was divided into four phases:

- **Phase 1:** Desk analysis, which includes available secondary material, which includes existing analyses, reports and scientific research relevant to the topic.
- **Phase 2:** Quantitative analysis, which included the processing of available statistics on juvenile offenders, the offenses committed by this category of offenders, as well as criminal proceedings and sanctions and measures imposed. Statistics relevant to the institutional framework and



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administrative capacity are also included.

- **Phase 3:** Qualitative analysis, for the implementation of which protocols for expert interviews and focus groups were developed with relevant actors in the application of the Law, as well as professionals aimed at improving public policies in the field of juvenile justice.
- **Phase 4:** Comprehensive analysis of collected data and writing of the final report, with special emphasis on the relevance, efficiency, effectiveness and sustainability of the Law, as well as recommendations for improving the legal text and its implementation.

Data from the **quantitative analysis** include the following:

- Data from the Republic Bureau of Statistics (RBS), which includes data on the number of criminal reports, the number of court cases, gender, type of crime and the regional appellate court for both adults and minors; data concerning minors only and include: age, number of criminal offenses, data on imposed criminal sanctions, data on educational orders, imposed security measures, data on return, data on detention, measures during the preparatory procedure, decisions on initiating proceedings or rejection of the application, duration of the procedure, decisions of the court panel. These data are available for the period 2007-2019. The SK3 database contains data on proceedings completed upon criminal charges, while the SK4 database contains data on legally terminated criminal proceedings.
- Data from the Republic Institute for Social Protection (RISP), which includes data on the number of juvenile offenders, recidivism, age, gender, executed educational orders and executed criminal sanctions. Data were requested for the period 2006-2019, but available for the period 2011-2019, and some of the data are not available for all years within the second period, because the method of data collection by the RBS has changed.
- Data of the Supreme Court of Cassation (SCC) available within the statistics on the work of courts of general jurisdiction in the Republic of Serbia, which include data on the influx of cases per judge, duration of proceedings, number of resolved cases per judge, quality of trial (expressed as a percentage of revoked decisions) inflows, presented by the competent courts of appeal. Data are available for the period 2011-2019, due to changes in the methodology for recording case data and the unavailability of data in electronic form for the period 2006-2010.
- Data of the Republic Public Prosecutor's Office (RPPO) available in the annual reports on the work of the RPPO, which include data on the total number of juveniles against whom criminal charges were filed, the number of rejected reports based on age (under 14), the principle of opportunity and others the foreseen reasons, as well as the number of educational orders and imposed criminal sanctions for the period 2011-2019, for which reports are available in electronic form.
- Data from the Administration for the Execution of Criminal Sanctions (AECS), which includes data on the number of juveniles admitted and serving juvenile imprisonment in the Valjevo Penitentiary and the Pozarevac Penitentiary (for females), and with the educational measure of



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sending to the Krusevac Correctional Facility), data on gender, age category, duration of the measure or punishment, structure of criminal offenses and structure of release. Data were requested for the period 2006-2019, but submitted for the period 2009-2019.

- Data from the Ministry of the Interior (Moi), which includes the number of criminal charges, the number of criminal offenses, the number of reported persons, both in total and by age and sex, for adults and minors, for the period 2006-2019.

Data collection for the **qualitative part of the analysis** included:

- Conducting a focus group with employees at the Educational-Correctional Home in Kruševac, of which 8 participants from the treatment service (most of whom had previous years of experience in educating minors within the correctional institutions), two participants from the training and employment service and three participants from the education service. All participants have been employed in the correctional institution for many years, and have adequate expertise and experience to work with minors.
- Expert interviews with representatives of the Council for Monitoring and Improving the Work of Criminal Procedure Bodies and Execution of Criminal Sanctions against Juveniles (hereinafter: the Juvenile Council).
- Expert interviews with two judges of the High Court in Novi Sad, who deal with juvenile cases.
- Expert interviews with representatives of three civil society organizations (CSOs), which provide services for the implementation of educational orders and special obligations: EDUCENTAR and GRIG from Belgrade, as well as "Princess Ljubica" from Kragujevac, which operates a day care centre for children and youth with behavioural problems.
- Expert interview with representatives of the Centre for the Rights of the Child (CRC), engaged in projects to improve the justice of the child. One of the representatives also works as a defence counsel in cases against minors.
- Expert interview with the representative of UNICEF Serbia, engaged in improving public policies in the field of juvenile justice.
- Expert interview with a representative of the Republic Institute for Social Protection.

2. Summary findings

Juvenile delinquency rate in Serbia after the period of stability 2006-2012, and the maximum peak in the year 2013, was until 2016 in a sharp decline, until the period of 2016-2019, when it showed uniform values. **Although the juvenile crime rate was stable in the period 2016-2019, its share in the general crime rate increased slightly, which shows a declining trend for the same period. The share of the**



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juvenile crime rate (in terms of the number of recorded crimes) in the overall crime rate for the period 2006-2019, shows a trend of relative stability with a value range of 8.3-11%.

Deviation of trends in the total number of completed proceedings and legally terminated proceedings, in relation to trends in the rate of recorded juvenile delinquency is visible in the years when the functioning of the judiciary was hampered by major legal and organizational reforms (2010-2011 and 2013-2014).

Regarding the **geographical distribution of juvenile delinquency**, it is important to point out that there is no long term, significant changes in the percentage of crimes committed by juveniles according to regional appeals, but they are mostly one-year or two-year level and with a change of no more than 2%, when they return to previous values. Deviations are even smaller and rarer when it comes to the distribution / share of juvenile offenders according to appeals. The area of the Belgrade and Novi Sad appeals together covers 65-70% of juvenile crime annually, which corresponds to the number of inhabitants and the population density of the areas they cover.

Regarding the **age structure of perpetrators**, it is worrying that between 16% and 20% of criminal charges filed against juvenile offenders annually are rejected after it is determined that the child is under 14 years of age, which indicates the need for significant normative and institutional engagement in the field of prevention and treatment of delinquency in children under 14 years of age. A significant trend of decreasing the average age of juvenile perpetrators was noticed at the moment of the final completion of the proceedings (16.4 years in 2019). Having in mind that the data of the Ministry of the Interior show that there is no lowering of the average age limit of juvenile offenders, it seems that the mentioned downward trend is caused by improved efficiency and lack of turbulent organizational and reform efforts in the last five years.

Regarding the **gender of juvenile offenders**, there is a stable trend that indicates the predominant representation of male juvenile offenders (over 89%). However, at the same time there is a continuous downward trend in the share of male juvenile offenders (from 95% to 89%), but also a continuous upward trend in the share of female juvenile offenders (from 5% to 10%), which indicates the need for greater respect for gender aspect when changing and applying the normative framework that regulates this area, and also when developing and applying gender-specific practices, interventions and treatments.

When it comes to the **structure of juvenile delinquency in terms of the representation of certain crimes, or groups of crimes**, the data shows mutual uniformity in terms of the total number of completed proceedings on the complaint, and the number of final proceedings, indicating that the most numerous crimes are property crimes (over 56%), then crimes against life and limb and crimes against public peace and order (represented by 11-13% each) and crimes against human health (represented in 4-7% of cases).



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The application of diversionary models of conduct is still an exception instead of the rule, so in the observed period **the rate of application of opportunity** was between 6% and 12.5%. Apart from the fact that the percentage of opportunity is extremely low, the interruption of the growth trend is also worrying, more precisely the expressed decline in the application of this institute in 2019 from 12.35 to 8.78%.

When it comes to the **efficiency of proceedings against juveniles**, given the still insufficient use of diversionary models of treatment, reducing the duration of criminal proceedings against juveniles focuses on annual management of inflows, increasing timeliness and reducing the number of revoked decisions. Although the data show that the duration of criminal proceedings has been declining from the initiation of preparatory proceedings until the final decision, starting in 2011 (from over 400 to about 300 days), data on annual control of inflows still shows positive and negative peaks annually in various courts, which points to the absence of a more serious systemic solution, but also the existence of local problems in terms of efficiency, most often related to the number of judges in a particular court in the observed year. At the same time, there is a negative peak in one year, as a rule followed by a positive one in the next year, which speaks of timely recognition and response to efficiency problems.

By prescribing in principle broad legal conditions **for the application of diversion orders**, as well as their number and diversity, the legislator created the basic preconditions for their wide application. However, despite the absolutely positive assessment of professionals regarding the results achieved by the implementation of diversion orders in individual cases, even 15 years after the adoption of the law, the normative framework is not completed by adopting the necessary bylaws and internal acts. In addition to the unfinished normative framework, professionals continue to criticize its restrictiveness, proposing that the legal limit for the possibility of applying diversion orders be moved to acts for which a prison sentence of up to eight years can be imposed. In addition, the lack of programs for the implementation of diversion orders in practice is one of the main reasons that the percentage of implementation in the last two years has stagnated at about 7%. In terms of structure, or frequency of individual diversion orders, settlement with the injured party is applied twice as often in relation to involvement in humanitarian work and almost six times more frequent than regular school / work attendance and twenty times more frequent than involvement in treatment. The use of alcohol or drug addiction treatment is almost non-existent in practice, as there is no institutional framework for implementation. The declining trend of applying settlement with the injured is also worrying, having in mind the character of this diversion order, while the trend of increasing the use of inclusion in humanitarian work is not accompanied by a relatively positive assessment of professionals on the capacity to implement this diversion order in practice.

When it comes to **criminal sanctions against juveniles**, despite the positive assessment of professionals in terms of the concept of the system regulated by the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, quantitative and qualitative analysis shows a number of problems in practice. In terms of representation, enhanced surveillance measures slightly dominate over warning and guidance measures and are ten times more prevalent than institutional measures or juvenile detention, which



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reflects the structure of juvenile delinquency in terms of the most common groups of crimes and the severity of committed crimes.

Regarding the problems observed in the **system of educational measures**, the overlap of competencies of the Ministry of Justice, the Ministry of Health and the Ministry of Labour, Employment, Veterans and Social Policy dominates, which in practice is an insurmountable obstacle for establishing a specialized institution for treatment and training of minors, and made the imposition and execution of an educational measure of referral to such an institution completely impossible. In interaction with the non-existence of a special department for juveniles within the SZB intended for the implementation of security measures of mandatory treatment and custody in a health institution, it makes the category of juveniles whose delinquent behaviour is closely related to mental disorders and / or alcohol and / or drug abuse systemically invisible. There are also difficulties in the realization of the educational measure of referral to an educational institution, since this measure can be implemented only in two institutions for education of children and youth in Serbia, but also its implementation in social protection institutions is often associated with a number of challenges. The problems that existed in the initial stages of the implementation of the educational measure of referral to the correctional institution have been overcome over time, while employees today generally face increasingly frequent health problems among minors.

Although the trend of **imposition of juvenile detention** is not increasing, the number of persons serving this sentence is increasing, but due to the small number of sentences imposed annually, the appearance of positive peaks of longer sentences in just one year (for example in 2018) is automatically shown as a growth trend of the number of persons serving a sentence of juvenile detention in the next 2-5 years according to RZSZ statistics.

The **system of post penal reception of minors** is still not established. It is necessary to develop and implement specific programs for preparation for dismissal aimed at education and vocational training with the aim of facilitating employment and self-employment after discharge from VPD Kruševac and KPZM Valjevo, as well as effective psychosocial support and assistance aimed at more efficient (re) integration into the community and tertiary prevention, based on positive experiences from the pilot program. In addition, there are no official records within which the criminal return of minors can be comprehensively and reliably monitored.

When it comes to **protection of best interests of the child**, in the observed period significant progress has been made in exercising and protecting this right through specialization of all actors and rules and procedures applicable to juveniles in the criminal justice system, both in terms of procedural guarantees and their position during the execution of institutional sanctions. It is noticeable, however, that the best interest of the child in practice is still not accepted as a framework and goal of all subjects' treatment of minors, but more as a principle of declaratory character.

Having in mind all the above, the fourteen-year period of application of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles without any amendments showed in full light all the greatness of this legislative endeavour at the time it was performed, **as well as its relevance in response to juvenile delinquency**. In addition, the fact that the law has remained unchanged to this day has



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indicated the significant flexibility of the juvenile justice system that applies it. However, the fact that the problems identified in this analysis were identified after several initial years and as such remained unchanged, shows that the relevance of the legal response to juvenile delinquency could be improved by amending the law and its more efficient and effective application. Based on the previously presented findings, it can be concluded that **no serious shortcomings have been identified that would prevent the effectiveness of the law at the normative level**, since most of the identified problems are related to the institutional framework, administrative capacity and cross-sectoral cooperation in its implementation. In this regard, regarding the **effectiveness** of the law, it was noted that the sensitivity of professionals and the overall approach is necessary in relation to gender, age and family and developmental context of minors, especially in terms of timely breaking the chain that often begins with neglect and victimization in microsocial environment, continues with different types of antisocial behaviour and milder forms of delinquency, and ends with the commission of first minor and then more serious crimes. In that sense, the inadequate response of the social protection system, which plays a key role in breaking this chain, is more than noticeable, whether it is the phase when the future perpetrator is still a victim or the perpetrator who is still not criminally responsible. The proactive approach of the social protection system and its responsiveness are crucial both in the context of the implementation of educational measures and in the process of acceptance in the community of children in conflict with the law. With this in mind, it is necessary to insist on strengthening the professional and material capacities of the social protection sector, and on intensifying cooperation with the judiciary. Regarding **the sustainability of existing legal solutions**, given the long-term inconsistency of Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles not only with criminal and judicial legislation, but also with the RS Constitution, public policy documents and recommendations of relevant treaty bodies in the field of children's rights and the fact that despite inconsistencies it continues to function exclusively thanks to the experience, enthusiasm and often the ingenuity of professionals in the sector, there is no doubt that **it is time for an effective reaction of both the authorized proposer and the legislator**, so that not only the legal, but also the bylaw framework would be revised and completed.

4. List of recommendations for improving the normative framework and practice

- 1 Adopt amendments to the Law on Juvenile Delinquents and Criminal Protection of Juveniles or a new law that would comprehensively regulate the subject area, taking into account the findings of this analysis, provisions of national public policy documents, including those adopted in EU accession negotiations, recommendations UN Committee on the Rights of the Child and other relevant treaty bodies of the UN and the Council of Europe, but also to ensure its full compliance with the provisions of the Constitution and relevant national legislation.



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| 2 | Simultaneously with the amendments to the legal framework, prepare a set of bylaws which would avoid possible inconsistencies, legal gaps and delays in the adoption of bylaws, but also enable a transparent consultative process on the entire normative framework relevant to the position of juveniles in the criminal justice system. |
| 3 | Establish a dialogue at the highest political level and with the support of professionals from all three sectors, work on a clearer delineation of legal competencies of the Ministry of Justice, Ministry of Health and Ministry of Labour, Employment, Veterans and Social Affairs in the field of educational orders, special obligations and educational measures. |
| 4 | Establish a special institution for treatment and training of minors, which would provide institutional preconditions for adequate implementation of educational and security measures prescribed by law. |
| 5 | Conduct a comprehensive analysis of the results of the Council for Monitoring and Improving the Work of Criminal Procedure Bodies and Execution of Criminal Sanctions against Juveniles and define recommendations regarding its legal status, powers and administrative capacities, with the aim of improving work. |
| 6 | Strengthen the capacity of the criminal justice system by employing psychologists in all higher courts, which would ensure a higher level of training and adjustment of the course of criminal proceedings and its actors in accordance with the principle of the best interests of the child. |
| 7 | Improve the system of training of professionals in the sector of police, justice and social protection, through the improvement of the curriculum and extended duration of initial mandatory training, but also the introduction of the obligation of continuous professional development during professional careers. |
| 8 | Continuously work on the promotion, training for the application and improvement of the application of the principle of opportunity in practice, and in accordance with the internationally recommended application of diversionary models of treatment of minors, as a rule and not an exception. |
| 9 | Improve the system of certification of civil society organizations with the aim of raising the expertise and quality of their services, and in the context of improving the implementation of educational orders and special obligations. |
| 10 | Improve in practice the mechanisms of procedural discipline, as well as the efficiency of the work of the disciplinary bodies of the Serbian Bar Association with the aim of combating the abuse of the right to mandatory professional defence of minors. |



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| 11 | Continuously work on improving the infrastructure of detention units with an emphasis on providing conditions for separate and adequate accommodation of minors. |
| 12 | Continuously work on improving accommodation conditions in institutions where institutional sanctions are applied, with a focus on improving infrastructural capacities in the context of professional training and development of practical skills and creativity of minors, including technological modernization of institutions and encouraging digital literacy. |
| 13 | Develop and apply a unified methodology for collecting and centralized storage and processing of statistical data necessary for efficient and continuous monitoring of the application of the normative framework governing the position of minors in conflict with the law. Make these data publicly available to the interested scientific and professional public and thus contribute to the intensity and quality of social dialogue in this area, as well as the quality of public policies. |
| 14 | Continuously work on the development, implementation and improvement of programs for preparation for release of minors, aimed at education and vocational training with the aim of facilitating employment and self-employment after release from correctional institution for juveniles in Kruševac, juvenile prison in Valjevo and correctional institution for women in Požarevac. |
| 15 | In cooperation with line ministries, local governments and civil society organizations, develop a network of efficient and sustainable psychosocial support services aimed at more efficient community reintegration and relapse prevention, in accordance with post-penal admission programs tailored to the individual needs of minors. |
| 16 | Establish a proactive approach to the social protection system and improve its responsiveness to the treatment of children in conflict with the law under the age of 14, as the most effective mechanism for preventing juvenile delinquency. In this context, work on strengthening the professional and material capacities of the social protection sector, among other things through the design and implementation of an adequate budget, but also on intensifying cooperation with the judiciary and the police. |