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DIFFERENT CONCEPTIONS OF JUVENILE DELINQUENCY

Abstract

The subject matter of this paper is the different conceptions of juvenile delinquency. This issue is particularly important when it comes to the socially unacceptable phenomena, such as juvenile delinquency and juvenile crime. This paper is not aimed at advocating for the specific use of one or the other legal term in the process of defining the illicit behaviour of juvenile offenders. The author underscores that the proper application of these legal terms largely depends on the scope and extent of illicit conduct that the specific term entails and conceptually defines. Different conceptions of juvenile delinquency will be presented both in Serbian and foreign available criminological literature.

Keywords: *juvenile crime, delinquent, criminology, criminal offenders, children.*

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THE BASIC CONCEPT OF JUVENILE DELINQUENCY IN SERBIAN CRIMINOLOGICAL LITERATURE

The process of defining the concept of a social phenomenon shall necessarily start from the etymological meaning of the word. The term “*delinquent*” is a word of Latin origin (Lat: *delinquere*) meaning a perpetrator, a villain (Vujaklija, 1986: 198). Some other dictionaries include more detailed definitions of delinquency. It can be very difficult in defining of complex social phenomena. In the Oxford Advanced Learner’s Dictionary, the term *delinquency* implies bad or criminal behaviour of (usually) minors, whereas the term *delinquent* is used to denote a person who exhibits a tendency towards committing criminal offences (Hornby, 2000: 332). According to the Oxford Dictionary of Law, a juvenile offender/delinquent is a person between the age of 14 and 17 who has committed a crime (Martin (ed.), 2003: 276). In general, a juvenile delinquent may also be defined as a minor who cannot be controlled by parental authority and commits anti-social or criminal acts, such as vandalism or violence (Dictionary.com, 2015). This definition shows the different approaches of juvenile delinquency.

Juvenile delinquency stands out as a distinct criminological phenomenon primarily due to the special biological, psychological and social characteristics of juveniles and their special legal position in criminal justice system. Ample distinctive phenomenological and etiological features distinguish juvenile delinquency from the delinquency of adults. This approach is not pertinent to criminological and sociological research only; it has been widely accepted in criminal law theory and judicial practice in terms of establishing criminal liability (culpability), competence of judicial authorities, criminal proceedings and criminal sanctions which may be imposed on juvenile offenders. There are several approaches to this problem. One interesting conception suggests that juvenile delinquency emerges as a result of discrimination that juveniles are exposed to; as the society does not provide sufficient attention to young people, delinquent behaviour is the youngster’s way of attracting attention to themselves and their needs. Edwin Schur, the proponent of the interactionist school of thought and one of the most radical criminologists who wrote on youth crime, considers that the

youth crime, considers that the juvenile crime problems are only aggravated by intervention of the criminal justice system (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009: 222; Kostić, Mirić, 2015: 46). Although this issue has been present since the earliest human societies organized on the basis of legal norms and other social conventions, the study of this social phenomenon is of a recent date (Knežević, 2010: 11).

First and foremost, any serious study of a social phenomenon calls for establishing the conceptual framework and definition of the concept. In criminological literature, as noted by Ž. Jašović, there are different definitions on juvenile delinquency as a form of socially unacceptable behaviour. However, they are often inconsistent, contradictory and related to different terms and concepts whose content is not always easy to define. Some of the commonly used terms and expressions include: educational disregard or desertion, neglect or deprivation, susceptibility or vulnerability, young people of asocial behaviour, “problem children”, morally impaired youth, morally defective youth, behavioural disorders, habit disorders, social maladjustment, asocial/anti-social or socio-pathological conduct, juvenile delicts (petty offences), juvenile crime, juvenile delinquency, youth violence/bullying and hooliganism (Jašović, 1978: 21). While none of these terms is quite comprehensive, each of them embodies a segment of youth conduct that the society has marked as socially unacceptable behaviour. Thus, depending on the type of delinquent behaviour, juveniles may be classified into three major categories: juvenile deviants, juvenile delinquents and juvenile criminal offenders (Kostić, Mirić, 2015: 46).

Juvenile deviants are offenders whose acts constitute a violation of cultural norms and habits of other individuals, religious or customary norms of the immediate social environment, ethnic/minority group or community. Violation of these norms does not involve criminal prosecution and imposing criminal sanctions against the perpetrators. However, these offenders are subject to social condemnation by individuals or groups in the given social environment. *Juvenile delinquency* in a broader sense implies deviant behaviour featuring specific psychological, socio-psychological and individual motives and causes. Such conduct violates the customary and statutory norms and patterns of behaviour (Joksić, Bojić, 2012). Delinquent behaviour includes

criminal behaviour as well as forms of antisocial conduct which are not incriminated in criminal legislation. Criminal offenders are adults, physically and psychologically “normal” people, whose delinquent conduct constitutes a violation of the criminal legislation of the given society. Therefore, criminals are not mentally impaired adults or juveniles but persons who engage in criminal activities which are highly likely to lead to the commission of crime (Nikolić, Joksić, 2011: 103-104).

Taking into account the contemporary achievements of criminology, psychology, criminal policy and other related sciences and scientific disciplines, it is therefore highly unjustifiable to label the young people displaying delinquent behaviour as “criminals” or “deviants”. Bearing in mind the correction and re-education of juvenile offenders, it seems that in many cases a more appropriate term may be “juveniles displaying delinquent conduct”, because it does not refer to the personal characteristics of the juveniles in derogatory terms but underscores the delinquent behaviour which has to be changed. The wording is particularly important in terms of the labelling theory, whose basis postulates apply to juvenile delinquency because people are often identified with the labels they are given by other members of the community or the society as a whole. Besides, such improper designation of juveniles who display delinquent behaviour may lead to emotional unrest, sense of rejection, isolation and depression. It certainly does not exclude the need to clearly and specifically identify the illicit behaviour which contains elements of a criminal offence as – *juvenile crime* (juvenile delinquency in the narrow sense).

Therefore, juvenile delinquency implies an entire spectrum of youth conduct, ranging from maladjustment to commission of serious crime (felonies). Generally speaking, there are two approaches to solving this problem: a (broader) criminological and sociological approach, and a (narrower) formal/legal approach. The domestic criminological and criminal law literature includes a similar classification (Nikolić-Ristanović, 2012; Hrnčić, 2007). This Art. is not aimed at advocating for the specific use of one or the other conception and related legal term in the process of describing the illicit behaviour of juvenile offenders. In fact, the authors wish to underscore that the proper application of these legal terms largely depends on the scope and

extent of illicit conduct that the specific term entails and conceptually defines.

In the broader sense, juvenile delinquency includes all forms of juvenile deviant behaviour, ranging from the pre-delinquent behaviour to criminal offences envisaged in criminal legislation. However, juvenile delinquency does not imply only a violation of legal provisions but also a violation of moral norms of a specific society. Thus, the broader conception of juvenile delinquency comprises a number of interpretations. The first interpretation suggests that juvenile delinquency cannot be defined simply as behaviour contrary to legal norms; namely, it also implies the need to determine the relations between the legal norms and the moral norms in the specific society at a specific time. The second interpretation rests on the fact that it is essential to study the juvenile's delinquent behaviour and to observe one's conduct as potentially criminal conduct, in light of individual and collective morality, just as it is done with criminal offences. The third interpretation implies an eclectic approach where juvenile delinquency is perceived not only as a violation of legal provisions but also as a violation of moral norms of a society. This concept of juvenile delinquency is also designated as "young people's delinquent behaviour". In other words, juvenile delinquency in the broader sense includes "such deviant behaviour of young people of a certain age which constitutes a violation of legal norms of the society" or "any activity of minors or underage group which constitutes a substantial breach of some social norm" (Konstantinović-Vilić, Nikolić-Ristanović, Kostić, 2009:223). In addition to a range of criminal offences, juvenile delinquency includes an array of other forms of deviant behaviour (such as: running away from home, school truancy, vagrancy, begging in the streets, etc.). Some of these forms of behaviour fall into the group of delicts (petty offences), while others violate some social/moral norms which are not explicitly regulated in the positive law.

The formal/legal conception has been accepted by a vast majority of European scholars. In the narrow sense, juvenile delinquency encompasses all forms of juvenile behaviour which are explicitly envisaged as criminal offences in the criminal legislation. This formal/legal concept of juvenile delinquency is clearly distinct from other forms of deviant behaviour. Thus, juvenile crime has to be

distinguished from pre-delinquent behaviour which serves only as a wake-up call for taking preventive measures. This conception of juvenile delinquency includes several interpretations. According to one of these interpretations, juvenile delinquency includes not only the violation of criminal law provisions but also different delicts (misdemeanor) and violations of administrative law norms (such as: vagrancy, begging, prostitution, etc.) which are from criminological standpoint perceived as forms of pre-delinquent behaviour. In criminal law literature, juvenile delinquency in the narrow sense is often designated as juvenile crime. Juvenile crime implies a set of criminal offences committed by (senior and junior) juvenile offenders in a specific society in a specific period of time (Jovašević, 2006: 280). Thus, in criminological and criminal law literature, some authors consider that the term *juvenile crime* is more acceptable than the term *juvenile delinquency* (Nikolić-Ristanović, 2014 :11). On the other hand, the idea to avoid the use of the term *juvenile crime* comes from the school of thought called “New Social Defence”, whose representatives point out to the “stigmatizing” effect of the term *crime* (Ignjatović, 2015 : 20).

Both conceptions of juvenile delinquency have their advantages and disadvantages. The broader conception is most frequently criticized for being somewhat vague, imprecise, diffused and potentially leading to negative consequences in practice; on the other hand, its most prominent advantage is the opportunity for preventive action aimed at suppressing and counteracting a large number of socially dangerous phenomena, which is of particular relevance in juvenile delinquency. The major advantage of the narrow conception of juvenile delinquency is a more precise and specific definition as compared to the broader conception, but its basic drawback is the limited scope of this concept in the provided legal norms and explicit formalism. Different approaches to defining juvenile delinquency additionally prove the complexity of this issue, which sometimes generates problems in theoretical and empirical research (Mirić, 2014: 8). Thus, the scope, aims and purpose of scientific research largely determine which conception of juvenile delinquency will be accepted within the framework of the specific research. The concept of juvenile delinquency in many ways affects the process of devising measures for its prevention and suppression. If the juvenile delinquent

behaviour is observed from the aspect of motivation, causation and social conditioning, it is certainly more appropriate to use the broader conception. On the other hand, if the specific research is aimed at exploring the punishable conduct of juveniles demonstrating some forms of delinquent behaviour which are envisaged in the criminal legislation, it is certainly more opportune to use the narrower (legal) conception. The use of either of these conceptions is largely determined by the competences of public authorities which are entitled to counteract juvenile delinquency, i.e. whether the social reaction will be limited only to judicial authorities or whether the subject matter involved in the specific case requires the participation and activity of a number of other bodies and institutions (such as: social welfare services, correctional facilities, etc.). Therefore, given that the preferential use of the two theoretical concepts on juvenile delinquency largely depends on the method of researching a specific social phenomenon, neither of these two concepts may be accepted *a priori* (Kostić, Mirić, 2015:48).

The measures for preventing and counteracting juvenile delinquency include general and special prevention measures. It seems that in no other area of life the role of prevention and comprehensive consideration of all criminogenic factors is so significant as in the area of juvenile delinquency; namely, due to their young age and future prospects, juveniles still have a chance to change, adopt proper patterns of behaviour and return to life in the society, particularly if the society provides them the relevant assistance in that process. The future of a society significantly depends on the relations which the society has with juveniles in conflict with the law. For this reason, combating juvenile delinquency is not merely a political or criminal law issue which should be resolved by the members of the scientific, academic and professional communities. It is a much wider struggle for a more just and humane society, a society of equal opportunities for all (Dimovski, Mirić, 2013: 191).

CONCEPT OF JUVENILE DELINQUENCY IN FOREIGN LITERATURE

Juvenile delinquency is a complex legal and criminological phenomena. We will present some important issues in various legal systems as an example of different

conceptions pointed by some authors in foreign criminological literature.

The age criteria for being a juvenile vary from country to country, state to state. In ancient India, a parent was supposed not to punish a child who is under five years of age for any offence. As per the law then prevailing a children of such tender age should be nursed and educated with love and affection only. After the age of five, punishment may be given in some suitable form such as physical chastisement or rebuke by the parents, towards the later half of the childhood, punishment should be gradually withdrawn and replaced by advice. From the age of sixteen upwards sons and daughters should be treated as friends by the parents. Some Smritis, like the Brahd-Yama and the Sankha say that a boy over five and less than eleven, if guilty of some Patakas such as drinking Sura, has not to undergo penance personally but his brother, father or other relations or friends have to undergo for him and that if a 'child is less than five, then whatever the act may be, it is not deemed to be a crime nor a sin and the child is consequently not liable to any punishment (Maheshwari, 2016).

Children are greatest national asset and resource. They should be allowed and provided opportunity to grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with skills and activations needed by the society. Children are expected to be obedient, respectful and imbibe virtues and good quality in them. Due to various reasons children do not follow settled social and legal dictum.

In recent years, it has become very clear that juvenile delinquency is the most important aspect of the subject matter of criminology. Delinquent behaviour has assumed serious forms among the juveniles, which is a sign of sick society. The disorder and destruction due to deviant behaviour, a worldwide phenomenon, is assuming alarming proportions.

The word delinquency is derived from the Latin word "delinquere" meaning *de* i.e. away and *linquere* i.e. to leave thus, meaning to leave or to abandon. Originally, the word had an objective meaning as it referred to parents who neglected and abandoned their children. In present day, it is used and applied to those children who indulge in wrongful and harmful activities.

Juvenile can be defined as a child who has not attained a certain age at which he, like an adult person under the law of the land, can be held liable for his

criminal acts. The juvenile is a child who is alleged to have committed /violated some law which declares the act or omission on the part of the child as an offence.

Juvenile and minor in legal terms are used in different context. Juvenile is used when reference is made to a young criminal offenders and minor relates to legal capacity or majority.

In India, until passing of Children Act, 1960 there was no uniformity regarding age limitation of juvenile delinquent. Bombay Children Act 1948 defined "Child" to mean a boy who has not attained the age of sixteen years or girl who has not attained the age of eighteen years (Maheshwari, 2016).

Delinquency is an act or conduct of a juvenile which is socially undesirable. Juvenile delinquency generally means the failure of children to meet certain obligations expected of them by the society. The juvenile delinquent has even been defined as "a child trying to act like a grown up". In fact there is a haze of vagueness and confusion surrounding the definition of juvenile delinquency and there is no single definition that may be acceptable to all.

The juvenile delinquency is expression of unsatisfied desires and urges. For a delinquent, his deviant act is a normal response to his inner desire. Like a non delinquent a delinquent is also conditioned by various attending and prevailing circumstances around him. A juvenile delinquent is a person who has been so adjudicated by a judicial court though he may be no different from other children who are not delinquent. Delinquency is an act, conduct or interaction which is socially undesirable. The concept of delinquency also varies with the point of view of the people who feel challenged by it.

According to a social worker, "delinquency consisted of socially unaccepted acts". A psychiatrist suggests that delinquent behaviour is activity which deviates from the normal. And a lawyer would say juvenile delinquency is what the law says it is. In the words of W.H. Sheldon, it is "behavior disappointing beyond reasonable expectation".

Cyril Burt says, delinquency occurs in a child 'when his antisocial tendencies appear so grave that he becomes or ought to become the subject of official action. According to Robison Holt, "we use the term delinquent as we

sometimes use the term 'love' as though it were a simple concept whereas it actually embraces complex patterns of behaviour."

Delinquency, it is clear, is many things to many people. The man in the street is concerned chiefly with behaviour that interferes with his property, his person and his rights. He believes that the official label of delinquency is attached only when the behaviour is really harmful and has occurred repeatedly.

Frederick B. Sussmann presents a summary list of acts or conditions included in delinquency definition or description, viz, violation of any law or ordinance, habitual truancy, association with thieves, vicious or immoral persons, and incorrigible beyond control of parent or guardian and so on. Thus the term delinquency does not have a fixed meaning. However, there are two generally accepted approaches to the interpretation of the term, viz the sociological and the legal.

The sociological view gives a liberal interpretation to the term delinquency. This view is well expressed by the definition given by Clyde B. Vedder who says, 'juvenile delinquency refers to the anti-social acts of children and of young people under age. Such acts are either specifically forbidden by law or may be lawfully interpreted as constituting delinquency, or as requiring some form of official action. It means deviation from the normal behaviour.

According to Robison the legal term "delinquency" is an umbrella for a wide variety of socially disapproved behaviour that varies with the time, place and the attitudes of those assigned to administer the law. This behaviour may include such acts as , incorrigibility, disobedience, lying, running away from home, frequent visits to the cinema, visiting places of ill repute and coming home late at night, habitually remaining truant from school, habitually using vile, obscene or vulgar language in Public Place, immoral conduct around school.

It will also include a child who is homeless, destitute and neglected. In short, delinquent in the sociological view is a child whose activities cause concern and alarm to parents and teachers and others responsible for his care and education (Maheshwari, 2016).

Based on all the above, it can be concluded that in the foreign criminological

literature, juvenile is defined in a similar way. Legal and sociological approaches are dominant. The social response to juvenile delinquency is much more than legal norms. It is an investment in the future of society and the mission of all scientists and practitioners who encounter juveniles with delinquent behavior in their work.

CONCLUSION

The first stage in the substantial exploration of a social phenomenon is the process of defining its conceptual determination. The terminological designation of a specific concept becomes even more consequential in view of the fact that juveniles may be active participants and perpetrators of various crimes and delicts (misdemeanors). Yet, it should be borne in mind at all times that the ultimate objective of the social and legal response to juvenile delinquency is rehabilitation and resocialization of minors displaying delinquent behaviour rather than mere punishment; thus, punishment should never be administered as an end in itself (just for the sake of punishment) but as a means to an end i.e. rehabilitation and resocialization (Kostić, Mirić, 2015:49).

As already mentioned, the legal understanding of juvenile delinquency has a number of advantages. The most important of these is a clear definition in the law. The disadvantage of this understanding is the inability to analyze all anti-social behaviors of minors.

On the other hand, the broader (sociological) understanding of juvenile delinquency has its advantages and disadvantages. Namely, by adopting this understanding, a number of anti-social behaviors (such as wandering or begging) can be legally sanctioned. The disadvantage of this approach is that it is quite diffuse and can lead to legal and normative uncertainty.

Which of these two approaches should be adopted? The answer to this question is not simple because it reflects all the complexity of juvenile delinquency. As with other criminological phenomena, the most precise is an eclectic approach that would take into account the positive characteristics of both approaches. Unfortunately, in the real circumstances in which our society finds itself, it

seems that the application of an eclectic approach in penological, pedagogical and criminological practice would require additional financial investments in the modernization of treatment programs intended for juveniles with delinquent behavior.

Considering all the above, we may conclude that the concept of juvenile delinquency is a highly complex issue which may be approached in different ways depending on the scope and extent of illicit conduct it encompasses. In that context, the legal doctrine has made a distinction between the broader criminological and sociological approach, and the narrower formal/legal approach. This paper is not aimed at advocating either of these approaches and related concepts; rather, it underscores the complexity of the observed issues and calls for careful examination of the underlying implications.

It may be concluded that the concept of juvenile delinquency is hardly ever a matter of linguistic and terminological designation or definition of an unacceptable social phenomenon. As a rule, the specific designation has a significant impact not only on the overall social response embodied in the mechanisms of legal and social control but also on the attitude of individual members of the specific society towards the phenomenon. Therefore, we underscore that both conceptions of juvenile delinquency are highly relevant and that the proper application of related terminology depends on the subject matter, goals and the ultimate purpose of the specific research on socially unacceptable juvenile conduct.

Regardless of whether the broader or narrower conception of juvenile delinquency has been adopted, it is quite clear that this is not just a linguistic issue.

The answer to the illegal behavior of minors, and thus the success of their resocialization, also depends on resolving this issue.

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РАЗЛИЧИТА СХВАТАЊА МАЛОЛЕТНИЧКЕ ДЕЛИНКВЕНЦИЈЕ

Апстракт

Предмет рада је појмовно одређење малолетничке делинквенције, њено разграничење у односу на малолетнички криминалитет и друга девијантан понашања малолетника. Ово је нарочито значајно када је реч о друштвено негативним појавама каква је свакако малолетничка делинквенција, односно малолетнички криминалитет. Није намера аутора да пледира за употребу одређеног од ова два термина за одређење противправног понашања малолетника, већ да укаже на чињеницу да њихова употреба зависи од обима и опсега противправног понашања малолетника, већ да укаже на чињеницу да њихова употреба зависи од обима и опсега противправног понашања који се љиме жели обухватити, односно појмовно одредити. Различита схватања појма малолетничке делинквенције су приказана према доступној српско криминолошко литератури.

Кључне речи: *малолетнички криминал, делинквент, криминологија, преступници, деца*