

# **Juvenile justice as a key element of national human rights policy and restorative juvenile justice - recent trends in juvenile delinquency and juvenile justice in Bosnia and Herzegovina**

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## **I. JUVENILE DELINQUENCY CONSIDERATIONS**

I would like to start the introductory overview with the following questions: Can juvenile justice be a key element of a national human rights policy? Can restorative juvenile justice have that role? How do we „cope“ with juvenile delinquency in the sense how successful we are in fighting it? Is fighting of juvenile delinquency (preventive and repressive) today the first priority or supremacy should be given to the fairness of proceedings against juveniles or protection of the rights of a juvenile? Are we today concerned with juvenile delinquency as much as with organized crime, terrorism or, e.g. corruption? Are the problems of juvenile delinquency real or do they have a high-profile due to the serious crimes that have been committed by juveniles? Is juvenile delinquency one of the major issues discussed in the contemporary world or is the issue neglected? Is there a need for juvenile justice or should juvenile offenders be treated within criminal justice for adults? These and other unasked questions, the questions and answers which, even if given, cannot be final and acceptable in all circumstances and times, greatly influence the community's response to delinquent behaviour of juveniles. It is no secret that stopping a juvenile's delinquent behaviour, a positive influence on his correction, a positive effect on his personality development and development of his personal responsibility as a member of the community and an individual depends on the community's response to the delinquent behaviour, which includes criminal sanctions and/or alternative forms of addressing the social phenomenon.

Quantitative and qualitative changes in juvenile delinquency that happen in the course of time in various quarters are linked to the development of the particular society. The worst excesses by juveniles, the oscillation in the juvenile delinquency statistics and recidivism of juveniles are frequently favourable toward broad discussions about the danger of juvenile delinquency and call for more severe punishment of juvenile offenders. The discussions have not produced final rules for treatment of a juvenile delinquent. On the contrary, juvenile delinquency provokes various evaluations both at universal or regional level and within national socio-economic, political and legal system. This results in frequent discussions about: - character of juvenile delinquency in the sense whether it has a more specific national or more global character, - measures that are taken for prevention of juvenile delinquency, - criminal sanctions for juveniles and – alternative measures aimed at, inter alia, avoidance of criminal proceedings.

The topic that links social changes and juvenile delinquency, which calls for answers to the questions asked above – is not new. It is old, the evidence of which is historical development from the first written sources from ancient Greece and Rome to the present-day rules on treatment of juveniles. What does the development show today? It shows, inter alia, that the

idea of a separation of juvenile justice from justice for adult offenders shaped in late 19th century. From this perspective special juvenile institutions and juvenile courts were developed and specific laws on protection of children and courts for children and juveniles were established.<sup>1</sup> Since then we have been able to follow the development of juvenile justice as a separate form of response of the then and present-day states to juvenile delinquency. Let's compare the development with a long-term process of development of mechanisms for juvenile delinquency prevention and juvenile justice promotion. Let's compare the development with a host of documents, actions and measures in juvenile justice. Let's compare the development with the change of the juvenile justice concept: from a requirement for adequate treatment of juvenile offenders in terms of correction till a requirement for intensified repression and deserved punishment (just desert). Let's compare the development with the attitude that, from the moment of its inception till late 70-ties, juvenile justice travelled: from a requirement that specialized justice is necessary because a juvenile is entitled to receive „help“ till a requirement that a juvenile is entitled to „fairness“.<sup>2</sup> Let's view the development in the last 30 years and see that „the right path“ is being still looked for and that national legal systems, depending on social, economic, legal, cultural and other shakes-up and changes, fluctuate between an attitude that a juvenile delinquent should be corrected and reinstated in the community as a useful citizen and an attitude that „he should be struck back“ because of his attack on basic social values. These fluctuations are affected, besides the above-mentioned elements, by activities of international organizations, adoption of standards and norms from criminal justice, development and protection of fundamental human rights and freedoms, various researches that show that children and the youth for quite a while have been “skipping the years“ and faster develop bodily and mentally in comparison with their generations in the last century.

## **II. CONTEMPORARY DEVELOPMENTS IN JUVENILE DELINQUENCY AND JUVENILE JUSTICE IN BOSNIA AND HERZEGOVINA**

### **1. General and geographic information about Bosnia and Herzegovina**

#### **1. General information**

The Republic of Bosnia and Herzegovina, whose official name has been “Bosnia and Herzegovina” since the General Agreement for Peace<sup>3</sup>, continued its legal existence as a state

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<sup>1</sup> Jehle, J.-M., Lewis, C., Sobota, P., 2008: 237-247; Šelih, A., 2000: 213.

<sup>2</sup> Šelih, A., *ibidem*, p. 218.

<sup>3</sup> The General Framework Peace Accords for Bosnia and Herzegovina, which was initialled on 21 November 1995 in Dayton (USA) and signed on 14 December 1995 in Paris, set forth the basic principles of legal and political system of Bosnia and Herzegovina as a state. An inherent part of the Agreement, included as Annex 4, is the Constitution of Bosnia and Herzegovina consisting of Preamble and 12 articles. Article 1 of the Constitution sets forth basic principles such as continuance, democratic principles, composition, trade in commodities, services, and capital and movement of people, the capital, symbols and citizenship of Bosnia and Herzegovina. Other articles of the Constitution regulate and determine matters such as human rights and fundamental freedoms, competences and relations between Bosnia and Herzegovina institutions and Entity institutions, Parliamentary Assembly, Presidency, Council of Ministers, Permanent Military Commission, Constitutional Court, Central Bank, finance and budget, general provisions, amending, transitional provisions

under international law with an internal structure modified by the Constitution of Bosnia and Herzegovina and within the existing internationally recognized borders. Bosnia and Herzegovina is a democratic state, functioning in accordance with law and on the basis of free and democratic elections. It consists of two Entities (Federation of Bosnia and Herzegovina and Republika Srpska) and one district (Brčko District of Bosnia and Herzegovina). Sarajevo is the capital of Bosnia and Herzegovina.

Bosnia and Herzegovina was part of the Austrian–Hungarian Monarchy until the end of 1918 when it became part of Yugoslavia. In 1991, Yugoslavia disintegrated and the independent Republic of Bosnia and Herzegovina was established. Bosnia and Herzegovina joined United Nations in spring 1992 and to the Council of Europe 10 years later – in spring 2002.

## 1. 2. Geographic information

Bosnia and Herzegovina is located in the south-eastern part of Europe and covers an area of 51,209.2 sq km, the land taking up 51,197 sq. km and the sea 12.2 sq km. Today it is one of the smallest European countries, with around 4 million inhabitants. Owing to its geographic position Bosnia and Herzegovina is located on the borders of two climate zones in the west part of the Balkans. The climate is predominantly continental in the major part of country and Mediterranean in the south. Bosnia and Herzegovina shares borders with Montenegro, Croatia and Serbia. The highest mountain in Bosnia and Herzegovina is Maglić with an altitude of 2,386 m, the longest river is the Drina – 346 km, and the largest lake is the Buško Lake of 55.8 sq km in area at altitude of 716.6 m and deepest part of 17.3 m.

## **2. Development of juvenile justice in Bosnia and Herzegovina and some specific characteristics in treatment of juvenile offenders**

### 2. 1. Introduction

Development of juvenile justice in early 20th century was recorded also in Bosnia and Herzegovina, which becomes part of the Kingdom of Yugoslavia when the I World War ended. According to the 1929 Criminal Procedure Code of the Kingdom of Yugoslavia, juveniles were classified in two groups: - younger minors (between 14 and 17 years of age), county courts having separate chambers known as „younger minors courts“ and – older minors (between 17 and 21 years of age) who were treated as adult offenders, although sentences were less severe. Younger minors were always tried by a single judge, while a public prosecutor was specially appointed for younger minor offenders. The younger minor offenders had to have defence counsel and the procedure was urgent; the public was excluded from trials; the course of proceedings or a judgment could not be published in press without the judge's approval, and if approved the publication could not indicate even initials of the

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and coming into effect. The Constitution of Bosnia and Herzegovina (Annex I) takes over human rights conventions and declarations of United Nations and the Council of Europe to be applied in Bosnia and Herzegovina. They include e.g.: International Covenant on Civil and Political Rights (1966) and Optional Protocols (1966 and 1989), Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984), Convention on the Rights of a Child (1989), European Convention on the Protection of Human Rights and Fundamental Freedoms (1950) and European Convention on Prevention of Torture, Inhuman or Degrading Treatment or Punishment (1987).

name of the minor; no trials of younger minors were allowed in absentia; a sentence or correctional order could be pronounced only if maturity of a younger minor was proved. After II World War and the establishment of new, Socialist Yugoslavia (Bosnia and Herzegovina being its part), the trend of separate treatment of juvenile offenders in the criminal justice continued. In this sense no special law on juvenile delinquents was enacted, but the rules of juvenile justice were part of general criminal law (substantive, procedural, enforcement and organizational law). Thus, juveniles were classified as a separate group of offenders and were given a separate place in the criminal law system. According to the criminal legislation having come into effect in early 1960-ties<sup>4</sup>, juveniles were classified in two groups: younger minors (between 14 and 16 years of age) and older minors (between 16 and 18 years of age).<sup>5</sup> Important specific characteristics of treatment of juvenile delinquents were: specialized judges and lay judges were engaged in proceedings involving juveniles; urgent procedure, especially if a minor was deprived of freedom for preventive purposes; pronouncement of a sentence or correctional order depends on competency of a minor, his age and how serious the committed crime was; correctional orders were the basic sanction for both younger and older minors; sentencing of older minors was exceptionally allowed if they were found to be criminally liable; in juvenile proceedings the level of mental development was particularly established, his personality and family situation were analyzed; cautious treatment of a minor by prosecuting authorities was mandatory, especially during interrogation; preliminary injunctions were issued to protect a minor and he was placed in appropriate institutions as an alternative for deprivation of liberty; in the event of deprivation of liberty, a juvenile was kept in detention separately from adults; no trial of juveniles in absentia; the right to defence counsel; the role of a juvenile welfare service; the public was excluded from juvenile proceedings; the role of a juvenile judge was extended to the stage of enforcement of correctional orders, as the juvenile judge was in charge of supervision of enforcement of correctional orders imposed. All along, until the dissolution of former Yugoslavia (1991), juvenile criminal legislation and juvenile justice in then Yugoslavia (and in Bosnia and Herzegovina as one of its six republics) developed and adjusted (more or less successfully) to global development and European developments in particular. In that sense, in 1960-ties and 1970-ties the idea of correction as a fundamental content of treatment of juvenile offenders was accepted. So the correction and remedying of what was neglected in their upbringing were put on the first place. Given the idea was implemented in a criminal law framework, repression naturally came as part of the „correction“.<sup>6</sup> Interestingly, former Yugoslavia did not follow other countries and failed to introduce alternative treatment of juvenile offenders in terms of „avoidance“ of criminal proceedings by mediation or some other types of restorative justice.

## 2. 2. Since 1992 to date

In Bosnia and Herzegovina, in the post-war (since 1995)<sup>7</sup> transformation of social, political, economic and legal system, an important place has been taken, on one hand, by the process of

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<sup>4</sup> We are talking about novelties in the 1959 Criminal Code and Criminal Procedure Code. According to literature, the new legislation was a modern approach to the issue of juvenile delinquency. Truly, the approach came out in Yugoslavia (and thereby in Bosnia and Herzegovina) only when Europe and the USA experienced first instances of criticisms of the juvenile justice system. Let's add that the criminal legislation in early 1950-ties replaced extremely retrograde and repressive measures provided for in 1947 and 1948 legislation. See Šelih, A., 2000: 216-217.

<sup>5</sup> Criminal legislation was not applied to children who at the time of commission of a crime did not turn 14

<sup>6</sup> As footnote 4.

<sup>7</sup> The war lasted from April 1992 till the signing of the General Framework Peace Accords for Bosnia and Herzegovina (see footnote 3).

changing the inherited (from ex-Yugoslavia) criminal justice system and, on the other hand, reforms of criminal legislation (substantive, procedural, enforcement and organizational law). In that sense, organization of criminal justice, modernization of traditional concepts in criminal legislation, protection of human rights and freedoms, accepting of new measures in the fight against crimes and development of the execution of criminal sanctions are being considered in particular. Reasons for these changes are numerous. Nevertheless, four of them are particularly prominent: - ensuring the efficiency of criminal procedure in fighting against crime, - protection of rights and freedoms of a suspect/defendant, - accepting international standards (for efficiency and human rights protection) in Bosnia and Herzegovina criminal legislation, – harmonization of criminal legislation within Bosnia and Herzegovina.

The values respected by a state within the above-mentioned activities are significant also in regulation of juvenile delinquency. Juvenile delinquency is a complex phenomenon that has been changing in Bosnia and Herzegovina as well, particularly in the last decades.<sup>8</sup> Generally, the changes affect: - an increase in juvenile delinquency,<sup>9</sup> - recidivism,<sup>10</sup> - juvenile that start criminal activities at young age (i.e. before turning 14; and in Bosnia and Herzegovina criminal legislation traditionally is not applied against children who have not turned 14 years of age at the time of commission of a crime),<sup>11</sup> - association of juvenile delinquents in gangs and – structure of crimes committed by juvenile offenders, i.e. usually very serious crimes (we can denote them as excessively grave crimes) and violent crimes.

We can conclude that these are phenomena that in Bosnia and Herzegovina, and elsewhere in the world, undermines the fundamental concepts of juvenile justice.

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<sup>8</sup> Bosnia and Herzegovina has recorded cases of extremely serious delinquency where one juvenile has committed hundreds of crimes. Contrary to the extreme instances, in Sarajevo Canton, in the period between 2000 and 2005, an overall evolution shows that in the structure of juvenile offenders, half of them or 51.2% have committed only one crime, one fourth or 23.8% committed between two and five crimes, usually „petty“ ones, given the circumstances of commission and statutory punishment. An analysis of juvenile delinquency in the Municipal Court of Sarajevo in the period between 2000 and 2005 indicates the following: - in the analyzed period no increase in juvenile delinquency was recorded, on the contrary, there was a downward trend in the number of cases in comparison with the previous years, - in the period between 2000 and 2002 juveniles committed criminal offences of theft and aggravated theft, while since 2003 an increase in crimes related to trafficking in drugs and possession of drugs and violent crimes was reported, - in a majority of cases the proceedings against juveniles were terminated (79%), while only in 21% cases correctional measures and juvenile imprisonment were imposed, - in cases where the criminal sanctions were imposed, correctional measures were predominant, whereas sentences of juvenile imprisonment were imposed very rarely (one a year). See Obradović, V., 2008: 195, 212, 301-303. et al.

<sup>9</sup> According to the statistics in the Federation of Bosnia and Herzegovina and data recorded by prosecutor's offices in the Republika Srpska, in the period between 2002 and 2004 an upward trend of juvenile delinquency was recorded. In 2005 the trend continued in the Federation of Bosnia and Herzegovina, while in the Republika Srpska a slight decline was recorded in the number of reported juveniles. For more details, see below.

<sup>10</sup> Indicators in the Federation of Bosnia and Herzegovina and the Republika Srpska show the number of about 10% recidivists among juveniles. Cited from the Strategy against Juvenile Delinquency in Bosnia and Herzegovina (2006-2010), p. 5.

<sup>11</sup> The statistics covering entire Bosnia and Herzegovina show that most crimes are committed by juveniles at the age of between 14 and 17. Also a trend is noticed that younger and younger children come into conflict with law. This is a great danger because the newest researches reveal that potential recidivism of juvenile is higher if they start committing crimes at younger age. See Obradović, V., 2008: 298.

Development of laws respecting juvenile justice and juvenile delinquency (within development of criminal justice and criminal legislation) can be viewed through four independent but yet linked stages.

**The first stage** begins with the process of “inheriting” the legislation from former Yugoslavia. This process ran in 1992 and 1993. A partial modification of criminal legislation after Bosnia and Herzegovina became independent did not result in changing the legal position of juveniles in the criminal law. Thus, the concept that confirmed in the period of 30-tish years of development the attitude that the legal position of juvenile delinquents has to be substantially different from the position of adult offenders was taken over. The inherited legal standards should have been replaced by legislation of Bosnia and Herzegovina over time, which was done in the second stage. Therefore **the second stage** was marked by enactment of new legislation in the Federation of Bosnia and Herzegovina (Criminal Code, Criminal Procedure Code and Law on the Execution of Criminal Sanctions) taking effect in late 1998 and in the Republika Srpska by limited amendments to the criminal legislation of ex-Yugoslavia in 1997 and by enactment of the Criminal Code and Criminal Procedure Code of the Brčko District of Bosnia and Herzegovina in 2000. From the aspect of the topics we are discussing, this stage will be remembered by “new spirit” in the regulation of the legal position of juvenile delinquents. Namely, the criminal legislation of the Federation of Bosnia and Herzegovina provides for, in accordance with international standards on the protection of rights and freedoms of a child and juvenile, **correctional recommendations as an alternative for treatment of juvenile having committed less serious crimes.**<sup>12</sup> Introducing the alternative responses meant the alleviation of juvenile stigmatization and better positive social integration. The correctional recommendations are envisaged as an alternative to „classic“ criminal measures, remedying unwarranted and detrimental results of criminal sanctions. **The third stage** is linked with 2003 for at least three reasons. Namely, the new criminal legislation came into effect in 2003.<sup>13</sup> Although the reforms of criminal justice and criminal legislation were targeting an adult offender, the new criminal legislation enabled correctional recommendations as alternative forms of response to juvenile delinquency to extend throughout Bosnia and Herzegovina, as they were introduced in the criminal legislation of Bosnia and Herzegovina and the Republika Srpska (in Brčko District of Bosnia and Herzegovina correctional recommendations were introduced in October 2000). Then, the criminal legislation was harmonized throughout Bosnia and Herzegovina and the four separate criminal systems (Bosnia and Herzegovina, Brčko District of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and Republika Srpska) were harmonized and there are no differences in them now. And, thirdly, in 2003 a new draft of the Law on Juvenile Offenders was presented to crown the drafting of separate legislation respecting juveniles.<sup>14</sup> This draft encompassed in one legal text all provisions on juveniles from the Criminal Code, Criminal Procedure Code and the Law on the Execution of Criminal Sanctions. **The fourth stage** was opened in late 2008. Namely, in 2008 some juveniles

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<sup>12</sup> The new spirit was brought by **Justice Renate Winter**, who tirelessly drew attention, in 1997 and 1998 and later on, to the significance of „avoidance“ of criminal proceedings against juveniles and application of restorative justice in addressing juvenile delinquency.

<sup>13</sup> It means the criminal legislation of Bosnia and Herzegovina (so-called state-level criminal legislation), the criminal legislation of the Brčko District of Bosnia and Herzegovina, the criminal legislation of the Federation of Bosnia and Herzegovina and the criminal legislation of the Republika Srpska.

<sup>14</sup> The draft has resulted from a research project: Young People In Conflict With Law In The Light of Topical Problems Concerning Juvenile Criminal Justice in Bosnia and Herzegovina. The project was implemented under auspices of the Open Society Fund Bosnia and Herzegovina and UNICEF. The Draft was prepared by: Ms. Jasmina Kosović, Judge of the Court of Bosnia and Herzegovina, Prof. Hajrija Sijerčić-Čolić, PhD, the University of Sarajevo and Prof. Miodrag Simović, PhD, the University of Banja Luka.

committed very serious and violent crimes that had been very unusual in the Bosnia and Herzegovina social and cultural setting (murders in public places, cruel murders, aggravated robberies). Under the pressure of the public and seriousness of crimes, incorporating additional amending in accordance with the recommendations by United Nations and the Council of Europe and an analysis of the case law involving treatment of juvenile offenders, the Draft became Bill on Juvenile Offenders and Legal Protection of Children and Juveniles in the Criminal System which was sent to the Bosnia and Herzegovina Parliament for deliberation and passage. Unfortunately, owing to politically inopportune timing the Bill was not passed in the Parliament and did not become the Law on Juvenile Justice valid in the entire country.<sup>15</sup> At the time of this text, debates on special legislation respecting juveniles are under way in the Entities and the Brčko District of Bosnia and Herzegovina. It means that, at least for a while, a chance to regulate legal position of juvenile offenders in one single law valid throughout Bosnia and Herzegovina was missed. The negative ramifications of such an action for the development of juvenile justice and extension of the modalities of restorative justice and fighting against juvenile delinquency as well are evident and it is not necessary to elaborate them specifically!

### **3. Alternative measures as a response to juvenile delinquency. Results of their implementation in the practice**

With regard to alternative forms of response to juvenile delinquency, it was only in the last decade (see developments in the second and third stage) that Bosnia and Herzegovina had the legislation incorporating this approach to the treatment of juvenile delinquency. Providing for correctional recommendations as alternative measures that are applied outside criminal proceedings to juveniles having committed less serious crimes, juvenile justice in Bosnia and Herzegovina joined the modern criminal and political endeavours to respond to criminal behaviour of juveniles giving a priority to extrajudicial forms of intervention and imposing criminal sanctions when the correction of juveniles cannot be achieved by other means or when it is required by the gravity of crime. The essence of correctional recommendations is to avoid stigmatization of juveniles due to commission of a less serious crime and to deter reversal negative effect of the course of criminal proceedings upon the juvenile's personality and future. Thus, the correctional recommendations are an alternative to prosecution and criminal proceedings and are applied outside the formal criminal proceedings. The model that is developed through correctional recommendations re-directs a juvenile having committed a less serious crime towards other non-judicial types of resolution of the conflict. They follow the tendency of giving a preference to correction of juvenile delinquents in family and wider social setting, and serve for the protection of interests, both of the community and the juvenile. Correctional recommendations in Bosnia and Herzegovina have a common, "umbrella" goal, which can be described like this: - avoidance of institution of criminal proceedings against juveniles having committed less serious crimes, - influencing a juvenile not to commit a new criminal offence, - respecting interests of juveniles, - avoidance of his

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<sup>15</sup> I have already written about an intention to address the matter of juvenile justice in a single law valid throughout Bosnia and Herzegovina: „ It is important to note that by this Law coming into force, certain provisions of criminal codes, criminal procedure codes and criminal sanctions laws of Bosnia and Herzegovina, the two federal entities, and the Brčko District of Bosnia and Herzegovina in respect of juvenile criminal justice will no longer apply. Consequently, the Law, which introduces a new way of regulating and reacting to juvenile delinquency, shall be enforced on the entire territory of Bosnia and Herzegovina”. See Sijerčić-Čolić, H., 2008: 12.

stigmatization, – respecting interests of the victim of criminal offence and – reducing caseload in juvenile justice.

Today criminal legislation in Bosnia and Herzegovina provides for correctional recommendations to be imposed for crimes punishable by a fine or imprisonment of up to three (or five) years.<sup>16</sup> A prosecutor **is obliged** to consider the possibility and justifiability of imposing correctional recommendations in accordance with the Criminal Code, before making a decision on filing a request for institution of criminal proceedings. After a request for institution of criminal proceedings is submitted to him, a juvenile judge **is obliged** to consider the possibility of imposing correctional recommendations for crimes punishable by a fine or imprisonment of up to three (or five) years. Finally, when a case is pending before court a juvenile judge has an option to terminate the criminal proceedings if imposing a sentence or correctional measure is not purposeful for the juvenile. Correctional recommendation can be imposed against those juveniles who are willing to cooperate and accept this form of social response to their delinquent behaviour. Besides, a requirement for imposition of correctional recommendation is his guilty plea and his willingness to reconcile with the injured party.

The great number and a variety of correctional recommendation call for their introduction as a necessary step that follows:

- Personal apology to the injured party;
- Compensation of damage to the injured party;
- Regular school attendance;
- Working for a humanitarian organisation or local community;
- Accepting a job suitable to the juvenile's skills and qualifications;
- Placement in another family, home or institution;
- Treatment in an appropriate health institution (e.g. quitting the habit of alcohol drinking or drugs abusing);
- Attending instructive, educational, psychological and other forms of counselling.

The Code provides that correctional recommendations are imposed according to a set scheme by the competent prosecutor (personal apology to the injured party; compensation of damage to the injured party; regular school attendance and attending instructive, educational, psychological and other forms of counselling) and the judge for juveniles (working for a humanitarian organisation or local community; accepting a job suitable to the juvenile's skills and qualifications; placement in another family, home or institution; treatment in an appropriate health institution). The selection and application of correctional recommendations is done in collaboration with the juvenile's parents or guardians and institutions of social welfare. In selecting a particular correctional recommendation the overall interests of the juvenile and the injured party have to be taken into consideration and a special attention will be paid not to jeopardise the juvenile's regular schooling or work. It is characteristics for all correctional recommendations that they may be cancelled or they may replace one another. When a correctional recommendation is cancelled it means that: the purpose for which it was

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<sup>16</sup> Late 2008 amendments to the Criminal Procedure Code of the Republika Srpska moved the bounders so that it is possible to impose correctional recommendation for crimes punishable by a fine or imprisonment of up to five years. This rule is better than the rule prescribed in the three remaining criminal procedure codes in Bosnia and Herzegovina.



imposed has been achieved or no positive results have been achieved (e.g. over the juvenile's failure to take part), which may be the grounds under certain statutory conditions for the institution of criminal proceedings. One correctional recommendation will be replaced by another when its purpose has not been achieved.

In these considerations it is very important to point out that in the selection and application of a particular correctional recommendation rights and freedoms of a juvenile might be violated. So it is not allowed that a correctional recommendation in manifestation be stricter than its legal framework. Accordingly, regardless of the clear-cut line between correctional recommendations as alternative measures and correctional measures as specific criminal sanctions for juvenile offenders,<sup>17</sup> enhancement of the rights and freedoms protection of juvenile delinquents<sup>18</sup> should always be insisted upon.

In the text below we will give statistics of reported juvenile offenders, juveniles against whom criminal proceedings have been instituted, juveniles against whom a request for imposition of a sanction has been filed and criminal sanctions imposed. Why are we presenting these statistics in the presentation of correctional recommendations as an alternative form of response to juvenile delinquency? This is necessary for a number of reasons. Firstly, all researches show that enough alternative measures **have not been used** in practice and they have been imposed in a very small number of cases since 1998, when they were introduced in the criminal codes. Secondly, the general juvenile delinquency situation, the number of reported juveniles having committed criminal offences and the number of criminal sanctions imposed show that a more intensive application of alternative measures is needed. Thirdly, juvenile delinquency documents in Bosnia and Herzegovina promote and encourage application of alternative measures in the practice.

A general assessment is that correctional recommendations as alternative measures for addressing the matter of juvenile delinquency have not taken roots in the practice! The researches that have been conducted over the 10-ish years in Bosnia and Herzegovina show the same picture – correctional recommendations are imposed rarely! The interviewed prosecutors and judges for juveniles most often cited the following as a reason for this:

- the law drafters did not determine in details the procedure of the implementation of correctional recommendations as an alternative method of addressing juvenile delinquency<sup>19</sup> and

– serious crimes that do not carry the possibility of imposing correctional recommendations are more often occurrence in reality<sup>20</sup>.

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<sup>17</sup> According to the criminal legislation of Bosnia and Herzegovina, correctional measures as specific sanctions imposed on a juvenile after finishing the criminal proceedings are: disciplinary measures (judicial admonishment and confinement to a disciplinary centre for juveniles; measures of intensified supervision (by the parents, adoptive parents or guardians, in a foster home, or by a competent social welfare body); institutional measures (confinement to an educational institution, to a corrective training home/an educational-reformatory home or some other rehabilitation institution).

<sup>18</sup> See Sijerčić-Čolić, H., 2001: 97–107.

<sup>19</sup> In this connection we should note that some activities have been done to draft regulations for the application and enforcement of correctional recommendations. An outcome of the activities is the Decree on Application of Correctional Recommendations against Juveniles in the Federation of Bosnia and Herzegovina, which came into effect in February 2009. This Decree provides for the method of application of correctional recommendations against juveniles having committed crimes, the types and conditions for the implementation, the goals to be achieved, deadlines for the application and enforcement and authorities taking part in the procedure.

<sup>20</sup> Maljević, A., 2006: 433.

This is confirmed by the following projects:

- a) A research under auspices of the Open Society Fund Bosnia and Herzegovina and UNICEF revealed that in the Federation of Bosnia and Herzegovina in the period between 1998 and 2001 only 10% of the interviewed judges for juveniles (30 ones were interviewed) and 29.4% of the interviewed prosecutors (34 ones were interviewed) had used alternative measures to close cases of less serious criminal offences perpetrated by juveniles.<sup>21</sup>
- b) Since December 2006 the Human Rights Department of OSCE Mission in Bosnia and Herzegovina has been monitoring the implementation of juvenile delinquency legislation, including diversion of juvenile offenders towards other, extra-judicial procedures.<sup>22</sup> Findings in this field indicate the cases where extra-judicial procedures of solving less serious criminal offences are not applied, not even in the most appropriate cases and when completely in compliance with the law. On the other hand, few cases where correctional recommendations were imposed show how alternative measures are a very good method of addressing juvenile delinquency. On the basis of findings from trail monitoring, prosecutors and judges for juveniles seem to be reluctant to close cases involving juveniles by imposing correctional measures. Therefore, the Mission recommended that prosecutors and judges for juveniles should use legal provisions allowing diversion of juvenile offenders and application of correctional recommendations before a decision on instituting criminal proceedings has been made.<sup>23</sup>
- c) Statistics for one of the ten cantons in the Federation of Bosnia and Herzegovina show that in 2004 correctional recommendations were imposed in 3.13 % cases; in 2005 the number of cases of correctional recommendations increased to 19.42 %; in 2006 they were applied in 12.10 % cases; in 2007 in 10.39 % cases; in 2008 they were applied only in 4.54 % cases.

**Table 1** Application of correctional recommendation in the Cantonal Prosecutor's Office of Tuzla

Canton in the period 2004-2008.<sup>24</sup>

Year	Total number of juvenile cases	Total number of juveniles	Number of cases carrying sentences of up to 3 years	Number of juveniles in cases carrying sentences of up to 3 years	Correctional recommendation (in the case)	Correctional recommendation (by juveniles)
2004	282	417	144	223	4	7
2005	163	228	99	139	11	27
2006	219	296	143	190	16	23
2007	371	479	219	279	21	29

<sup>21</sup> The Young People in Conflict ..., 2002: 22-25.

<sup>22</sup> This exercise includes an analysis of cooperation among these authorities as a key factor in the prevention of juvenile delinquency, besides monitoring the performance and role of judges for juveniles, prosecutors, police and centres of social welfare.

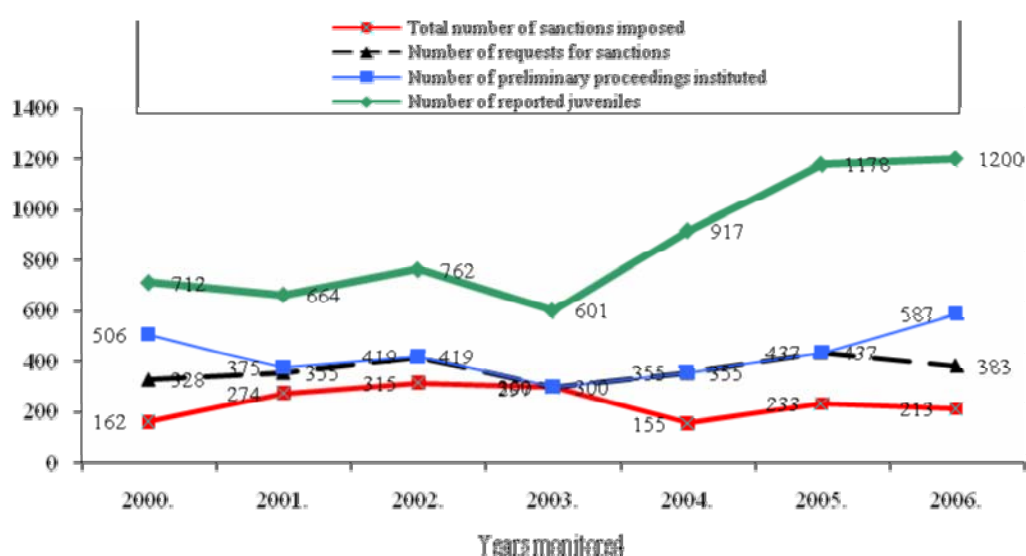
<sup>23</sup> OSCE Mission to Bosnia and Herzegovina, 2009: 3-5.

<sup>24</sup> Data cited according to Gurda V. , 2009: 137-138.

2008	355	425	182	242	9	11
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d) Other instances are no better! Namely, in the context of non-application of correctional recommendations as alternative measures, the actual situation of the number of reported juvenile offenders and the number of juveniles treated in the system of juvenile justice is as follows:<sup>25</sup>

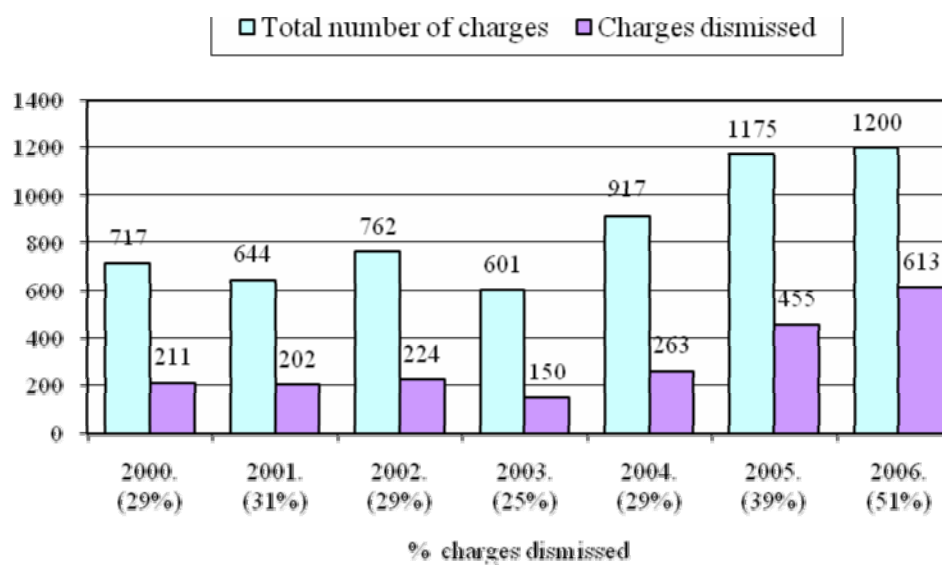
**Table 2** The number of reported juvenile offenders in comparison with the number of preliminary proceedings against juveniles, the number of juveniles against whom a request for imposition of a sanction has been filed and criminal sanctions imposed in the Federation of Bosnia and Herzegovina in the period between 2000 and 2006



An analysis of Table 2 shows that in 2004 the number of reported juvenile increased significantly in comparison with 2003 and the upward trend, although much slower, continues in 2005 in comparison with 2004. However, the number of preliminary proceedings in 2004 in comparison with 2003 rose much slower. From 2003 to 2005 the number of requests for sanctions was absolutely identical to the number of preliminary proceedings. However, in 2006 a significant discrepancy was seen between the number of requests for sanctions and the number of preliminary proceedings. Namely, there were only 383 or 65% requests for sanctions in 587 preliminary proceedings in the year. The greatest numbers of sanctions were imposed in 2002 (315) and 2003 (297), and in 2004 the number of sanctions fell to 155, then rose to 233 sanction in 2005 and again fell to 213 sanctions in 2006. It can be concluded that in the second half of reporting period criminal sanctions were imposed upon every second juvenile against whom such a request was made. On the contrary, in the first half of the reporting period, the number of criminal sanctions imposed was the same as the number of requests for the sanctions.

<sup>25</sup> Data cited according to Vranj, V. , 2008: 731-734.

**Table 3** The number of reported juveniles and the number of dismissed charges in the Federation of Bosnia and Herzegovina in the period between 2000 and 2006



According to the total number of reported juveniles this graph shows that in 2005 and 2006 the number increased significantly. As the number of reported juveniles grew the number of dismissed charges grew: in 2005 there were 39% dismissed charges registered in the number of reported juveniles, while in 2006 the number is higher and rose to 51%, meaning that every second charge against a juvenile was dismissed. With regard to the statistics, some authors conclude that the high increase in dismissed charges against juveniles was caused by higher tolerance of the circumstances under which the juveniles committed criminal offences. They point out that this is not socially acceptable neither does this have deterrent effect on the juveniles. They conclude that adequate application of correctional recommendations as alternative measures in the practice will reduce the number of dismissed charges or slow down the upward trend in the coming period.<sup>26</sup>

#### **4. Bill on Juvenile Offenders and Protection and Treatment of Children and Juveniles in Criminal Proceedings (2008)**

##### **4. 1. Legal position of juvenile offenders – the current juvenile justice situation**

As stated above, in Bosnia and Herzegovina the position of a juvenile offender is still regulated in separate and specific legal provisions **within** substantive, procedural, enforcement and organizational criminal law. What does phrase “separate and specific legal provisions” mean? It means the following: in the applicable criminal (substantive and procedural) law and in the law on the execution of criminal sanctions and the laws on courts there are provisions concerning juvenile offenders, which are different from the provisions concerning adult offenders. They determine the position of a juvenile offender in the criminal

<sup>26</sup> See Vranj, V., 2008: 733.

law and criminal proceedings, giving preference to the measures of assistance, correction and social integration of juveniles. They emphasize a separation of juveniles from adult offenders in the execution of institutional measures in order to prevent negative influence of adult delinquents. Specific provisions of substantive, procedural and enforcement criminal law respecting juveniles are linked to the age of a juvenile both at the time of commission of the criminal offence and at the time of trial or the execution of criminal sanction.

The legal position of juvenile delinquents in Bosnia and Herzegovina has been viewed from the angle of international standards on the protection of the rights of a child and juvenile. In this sense we should particularly remember the international instruments that govern the position of a juvenile offender and express endeavours to ensure procedural safeguards and protect rights of juvenile. They are the following international instruments: the Convention on the Rights of a Child (1989), United Nations Standard Minimum Rules for the Administration of Juvenile Justice or the Beijing Rules (1985), United Nations Rules for the Protection of Juveniles Deprived of their Liberty or “Havana Rules” (1990), United Nations Guidelines for the Prevention of Juvenile Delinquency or the Riyadh Guidelines (1990), the European Convention on the Exercise of Children’s Rights (1996), Recommendations of the Council of Europe on juvenile delinquency (e.g. 1987, 1988 and 2003). Thus, in Bosnia and Herzegovina, in the normative aspect, building of a special attitude towards juveniles is being insisted upon. The principle of “the best interests of the child” is accepted as a fundamental principle in juvenile justice.

Among the juvenile justice treaties, Bosnia and Herzegovina (like other countries) is legally bound to apply the Convention on the Rights of a Child. The first report of Bosnia-Herzegovina was submitted to the Committee on the Rights of a Child in 2004. In the first five-year report submitted to the Committee on the Rights of a Child, Bosnia and Herzegovina presented legal arrangements for juvenile justice; limited an assessment of the practice to statements that the legislation was not fully implemented due to the lack of institutions; noted an increase in juvenile delinquency in the several previous years and emphasized the importance of juvenile justice law. The Shadow Report on the Situation of the Rights on a Child in Bosnia and Herzegovina (2004), which was also submitted to the Committee on the Rights of a Child as an addition to the state report, reported on the changes having been affected in the criminal legislation and indicated the non-implementation of correctional recommendations and poor effects of the application of correctional measures, which include confinement of juveniles in appropriate institutions, as difficulties in the enforcement of the law. The Committee on the Rights of a Child assessed harmonization of our juvenile justice system with the Convention on the Rights of a Child. The Committee gave some recommendations to Bosnia and Herzegovina in order to improve the position of juvenile delinquents. Among others, there is a recommendation respecting enactment of detailed regulations on alternative measures in extra-judicial treatment of juvenile delinquents.<sup>27</sup>

Regardless of the positive assessment of the criminal legislation respecting juveniles, we can say that Bosnia and Herzegovina competent authorities have not always conducted criminal proceedings involving juvenile offenders on the basis of the principle of the best interests of the child. This principle that reads: “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative

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<sup>27</sup> The remaining recommendations relate, inter alia, to: - detention and its duration, conditions of the execution of detention and alternative measures to replace it; - the lack of statistics about juvenile delinquency; - stigmatization of juveniles and - training of judges for juveniles.

bodies, **the best interests of the child shall be a primary consideration**“ (art. 3(1) of the Convention on the Rights of a Child) should be the basis of all aspects of work with juveniles that are in conflict with law!

4. 2. Bill on Juvenile Offenders and Protection and Treatment of Children and Juveniles in Criminal Proceedings

Regardless of the uncertain fate of this Bill (see the text about the fourth stage), it is necessary to present some of its rules/provisions as their quality is such that they can improve the position of juveniles in criminal law and, on the other hand, have an effect on the level of harmonization of national laws with the international juvenile justice instruments.

The Bill on Protection and Treatment of Children and Juveniles in Criminal Proceedings contains provisions aimed **at creating a more efficient system of juvenile justice in Bosnia and Herzegovina both with regard to the legal framework and its practical application with a view to better harmonizing it with international standards. The Bill also takes into account recommendations and activities set forth in the Strategy against Juvenile Offending for Bosnia and Herzegovina (2006-2010), which was adopted by the Council of Ministers of Bosnia and Herzegovina in July 2006. Actually, the first strategic goal in this document is the passage and implementation of such a law.** Taking into account the obligations Bosnia and Herzegovina has under the Convention on the Rights of a Child which requires a specialized system of juvenile justice), this Bill is the first step and indispensable requirement for a comprehensive reform. The Bill respects also recommendations given by the Committee on the Rights of a Child in the concluding findings for Bosnia and Herzegovina (see above).

In the continuation an overview of the most important specific characteristics of the Bill on Protection and Treatment of Children and Juveniles in Criminal Proceedings will follow. These are summarized specific characteristics:<sup>28</sup>

- 1) A high degree of harmonization with international standards in order to meet needs of juvenile delinquents and the community together with respect of fundamental rights,
- 2) Respecting economic and social circumstances, the Bill espouses a streamlined approach policy promoting alternative arrangements that bring about a short and cost-effective proceedings in judicial treatment of a juvenile,
- 3) The Bill includes the entire society in addressing the issue of juvenile delinquency,

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<sup>28</sup> The overview was prepared by Ms. Kosović Jasmina, Judge of the Court of Bosnia and Herzegovina. The overview was presented at the Ministerial conference held on 9 June 2009. The Conference was organized with a view to securing political will for the implementation of activities under the Strategy against Juvenile Offending for Bosnia and Herzegovina (2006-2010).

- 4) The Bill is a separate, special law concerning juveniles with provisions of substantive and procedural criminal law and provisions respecting the execution of criminal sanctions and criminal offences against children and juveniles,
- 5) Mandatory specialization and training of all actors involved in juvenile justice,
- 6) Juvenile chamber is introduced in the structure of prosecutor's offices and courts, which will include advisors – professionals with specific tasks in the proceedings conducted against a juvenile,
- 7) Preliminary proceedings (investigation) is shifted to the competence of a prosecutor (according to the currently valid law the preliminary proceedings are conducted by a judge for juveniles),
- 8) Elaborated and amended provisions respecting correctional recommendations as an alternative form of addressing juvenile delinquency; the Bill provides that they will be imposed not only for crimes punishable by a fine or imprisonment of up to five years but also for more serious crimes if this meets the principle of proportionality,<sup>29</sup>
- 9) A new correctional measure called „special obligations“ is introduced; the punishment of juvenile imprisonment is modified; security measures of „forfeiture of motor car“ and „mandatory ambulatory treatment“ are introduced,
- 10) The Bill provides for a number of flexible measures as an alternative to costly institutional confinement of juveniles, which include both the measures applied in the course of the proceedings and the measures that are applied after the verdict has been pronounced (e.g. postponed imposition of juvenile imprisonment; release on parole from juvenile imprisonment).

##### **5. The Strategy against Juvenile Offending for Bosnia and Herzegovina (2006-2010)<sup>30</sup> – a key element of national human rights policy within juvenile justice**

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<sup>29</sup> Insisting on wellbeing of juveniles in conflict with law, the Bill provides for a possibility of choosing and applying a statutory sanction and measure that is suitable to personality traits, community and circumstances in which a juvenile lives and which are proportional to circumstances and gravity of the criminal offence committed and respecting the rights of injured party.

<sup>30</sup> The Strategy was adopted as a response to juvenile delinquency and an expression of responsibility of Bosnia and Herzegovina authorities and institutions for the execution of international human rights obligations, especially those under the instruments respecting juvenile delinquency. The Strategy envisages such measures and actions that will bring the valid legal and institutional provisions in line with international standards in this matter, which are set forth in the UN Convention on the Rights of a Child, UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), UN Resolution for the Administration of Juvenile Justice (Vienna Guidelines), UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), UN Rules for the Protection of Juveniles

The discussions above can confirm the statement that juvenile criminal legislation and justice in Bosnia and Herzegovina are modern enough because they respect the development of the position of juvenile offenders in other countries, follow the development of criminology, penology and other researchers studying a human and his psychological and physical development and that they respect international standards in social response to juvenile delinquency. The discussions above can also confirm that the matter of juvenile delinquency in Bosnia and Herzegovina is dealt with by many actors who shape their proposals for the fight against increasing juvenile delinquency and for more efficient juvenile justice. The discussions above can confirm the generally accepted position that criminal system and criminal legislation are the last recourse in fighting against and control of crime, and the fighting against and control of crime are one of segments of social development and social control. Transposing this into the topic being discussed, juvenile criminal legislation and juvenile justice are *ultima ratio societatis* in the fight against and control of juvenile delinquency, i.e. the fighting against and control of juvenile delinquency is one of segments of social prosperity and social control. Finally, the discussions above can confirm that the issues in juvenile delinquency are issues not only in the field of crime in general but also the issues that in every society have economic, social, cultural, legal, political and other roots and consequences.

At the end of the discussion I would like to point out the key points from the state strategy that was designed with an aim to fight juvenile delinquency, and the key segments of Revised Action plan for children of Bosnia and Herzegovina 2002-2010 (July 2008). They will be interpreted just in the context of the protection of juvenile delinquents' rights and promotion of correctional recommendations as specific measures of restorative justice. Thus, understanding the complex phenomenon of juvenile delinquency and the need for an adequate response to the phenomenon in order to prevent its destructive results in the long run is indispensable! And the criminal sanctions are the last recourse in the fight and have a limited range, used only when a juvenile's behaviour jeopardize the fundamental values of the society!

Let's start from the beginning:

Bosnia and Herzegovina is still addressing numerous post-war difficulties, which bring about a low economic growth and a high rate of poverty. For these reasons, the activities that are aimed at the identification of difficulties and monitoring of the situation of the protection of children and juveniles are of particular importance for the children and juveniles of Bosnia and Herzegovina.

As a member state of United Nations, Bosnia and Herzegovina transposed the Convention on the Rights of a Child in the legal system and in 2000 signed the Optional Protocols to the Convention on the Rights of a Child on the Involvement of Children in Armed Conflicts and

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Deprived of Their Liberty etc. Activities set forth in the Strategy, which require a revision and improvement of the state of affairs, relate to imposition and implementation of correctional recommendations; involvement of civil society in prevention programmes; clear defining the situations for detention of juveniles and the use of this measure as the last recourse; defining conditions for supervision of juvenile detainees by a judge for juveniles; defining duration of custodial measures; permanent training of those dealing with juvenile delinquents.



Sale of Children, Child Prostitution and Child Pornography. As a party to this international instrument and protocols thereto, Bosnia and Herzegovina took over the obligation to apply measures required by the Convention, and to regularly report to the Committee on the Rights of a Child and other treaty bodies.

The key activities have to include **alternative methods of addressing juvenile delinquency**, which are applied very rarely in the practice and still recognized and accepted in Bosnia and Herzegovina, as they allow for diversion of formal criminal proceedings, and show how information and knowledge of new-old approaches to juvenile delinquency and restorative justice are penetrating.

It should be insured that in the treatment of juvenile delinquents, at any stage – from the moment of conflict with law, through preparatory proceedings and trial and after the verdict, the possibilities of application of alternative models of community work intended for rehabilitation and reintegration of a juvenile exist.

**Higher protection of the rights of juvenile offenders** and higher quality of practical application through specialization of those working with the young, better working conditions and higher level of coordination of police, prosecutor's offices, courts, the bar and centres of social welfare should be attained.

A debate by professions should be launched; researches should be encouraged and developed with a view not to leaving juvenile delinquency neglected in the reform processes in Bosnia and Herzegovina. Namely, in Bosnia and Herzegovina a host of parallel processes is going on, which are characteristic for countries in transition which, directly or indirectly, have an enormous influence upon children and juveniles. Adjusting to the market economy along with reform processes in the rule of law and the reform of social sector and varying development of the civil sector create the situation where the society cannot adequately take care of children and juveniles. On the other hand, economic poverty of the population, the change of the system of values, with increasing aspiration for material values and the changed traditional role of the family, are increasing risk factors for juvenile delinquency.

Crimes committed by juveniles are on constant increase in Bosnia and Herzegovina. On the other hand, the response of the society to the phenomenon is conditional upon diminished resources of institutions in charge of children in conflict with law. The reforms in the justice sector that brought about changes in the legislation and organization of judiciary are still not followed by investments or adjustment of the existing infrastructure for the implantation of juvenile delinquency legislation. Besides, projects and initiatives taken by international and national organizations in juvenile justice have resulted neither in substantial changes nor in an approach to the matter or in prevailing practice in the work with juveniles.

To this end it is necessary to achieve a particular goal: **reduce the rate of juvenile delinquency and ensure humane treatment of juvenile offenders.**

On the basis of an approach that for the most part respects the rights of a child in conflict with law, it is necessary to improve activities in the area of juvenile delinquency bringing them to the most possible extent in line with the international standards. At the same time, the state-of-the-art types of response of the society to juvenile delinquency should be broadly accepted by the public, while their realization should take into account developmental potentials at the state, entity and local level.

Conditions for passage and implementation of the Bill on Protection and Treatment of Children and Juveniles in Criminal Proceedings should be created, because it unifies substantive, procedural and enforcement legal aspects, being based on international standards and results of good practices in other countries and respecting legal, social and cultural context of Bosnia and Herzegovina.

Make an intervention for transformation of institutions where custodial measures are executed in the sense that they should become more human and the treatment of juveniles should be made modern, following international standards for deprivation of liberty and for conditions in correctional institutions.

Ensure the realization of activities intended for the prevention promotion and parallel design and adoption of the Juvenile Delinquency Prevention Programme for Bosnia and Herzegovina, which would make a framework for preventive activities at the entity, cantonal and municipal levels.

A reform of juvenile justice is one of the key requirements for the integration of Bosnia and Herzegovina in European Union. In accordance with this Strategy, at the entity, cantonal and municipal levels, it is necessary to ensure: - improvement of statistics, - inter-ministerial approach and close cooperation of professionals and institutions, - financial and professional assistance to the organizations involved in the implementation of Strategy, - operational teams for juvenile delinquency prevention at the local level, - providing financial assistance for researches, - necessary priority investments in human resources and infrastructure for the implementation of correctional recommendations, - adequate application of correctional recommendations and - juvenile delinquency awareness raising in the public

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We will conclude by reiterating what I have pointed out earlier: the matter of juvenile delinquency has to be addressed in a multidisciplinary approach. It is the only way for the broader community to find out solutions that will reduce the socially unacceptable and deviant behaviour of young people to behaviour in acceptable boundaries. It is necessary to develop a joint plan to fight juvenile delinquency<sup>31</sup> on the basis of good practices and lessons learned and with application of international standards on the protection of children and juveniles. The State Strategy against Juvenile Offending for Bosnia and Herzegovina rightly insists on the **best interests of the child** as a fundamental principle in achieving the goals set forth in it. In 2005 the Committee on the Rights of a Child found limited application of this principle in the practice and recommended that Bosnia and Herzegovina should intensify its activities with a view to ensuring this principle to be accepted in an adequate manner, to be incorporated and implemented in the activities for fighting against and addressing of juvenile delinquency. We do not have any time to waste on pondering and waiting!

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