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Application of EU Legal Standards in Misdemeanour Proceedings Towards Juveniles in Croatia

Abstract

In Croatia, when a juvenile commits a misdemeanour, provisions of the Misdemeanour Act will be applied, as well as the subsidiary application of the Criminal Procedure Act (CPA) and the Youths Courts Act (YCA). In 2019, Croatia implemented Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings into YCA and introduced new procedural rights for juvenile offenders in criminal proceedings. Croatian legislators began the process of implementing EU legal standards into the Misdemeanour Act but stopped after the implementation of Directive 2010/64 and Directive 2012/13/EU. Directive 2016/800/EU, which refers to the position of juveniles in criminal proceedings, has not been implemented into the Misdemeanour Act. In the first part of the paper, current legislative provisions that refer to juvenile misdemeanour offenders in Croatia are analysed. The second part of the paper gives a theoretical and normative analysis of the position of juvenile offenders through the prism of possible application of Directive 2016/800/EU in misdemeanour proceedings in order to determine whether EU procedural legal standards defined by Directive 2016/800/EU can and to what extent be applied to juveniles in misdemeanour proceedings in Croatia. De lege ferenda proposals regarding the transposition of Directive 2016/800/EU into domestic misdemeanour legislation are given in the conclusion of the paper.

Keywords: *juveniles, misdemeanour, misdemeanour proceedings, Youth Courts Act, Directive 2016/800/EU.*

1. INTRODUCTION

In Croatian criminal legislation, juvenile offenders have had a special legal position for an extended period. Children are at greater risk of being discriminated against or deprived of their fundamental rights because of their age, unfinished physical and psychological development, lack of knowledge or ability to act with free will (Klimek, 2017: 650-651). In most cases, when international documents or research papers analyse the position of a juvenile offender in criminal legislation, they focus on their position in criminal procedure but rarely focus on the position of juveniles in other types of criminal proceedings.

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According to the statistics,[1] juveniles are more likely to be subject to misdemeanours than criminal proceedings. On the other hand, few papers or studies analyse their position in general misdemeanour proceedings in Croatian criminal law science.

Thus, this paper aims to get a more detailed insight into current legislation regarding the position of juvenile offenders in misdemeanour proceedings, taking into account the fact that in 2019, Croatia implemented Directive 2016/800/EU on procedural safeguards for children who are suspects or accused persons in criminal proceedings (hereinafter Directive 2016/800) into the Youth Courts Act (hereinafter: YCA) and introduced new procedural rights for juvenile offenders in criminal proceedings. On the other hand, the position of juvenile offenders in misdemeanour proceedings has not been changed, nor have the provisions of Directive 2016/800/EU has been implemented into the Misdemeanour Act (hereinafter: MA).

In 2013, Croatian legislators began the process of implementing EU legal standards into misdemeanour legislation, and two directives were implemented into the MA: Directive 2010/64/ EU on the right to interpretation and Directive 2012/13/EU on the right to information.[2] Other directives already implemented in the Croatian Criminal Procedure Act (hereinafter: CPA) have not been implemented in the MA.[3] In Croatian criminal law science, the implementation of EU legal standards has so far been focused exclusively on criminal proceedings. In contrast, the misdemeanour proceeding has been neglected in this regard. So far, the legislator, legal science, and the professional public have put this topic aside, and there has not been much discussion about the possibility of transporting EU legal standards determined by the directives into misdemeanour proceedings (Novokmet, 2024: 338-339).

This paper aims to give theoretical and normative analyses of the current Croatian legislation regarding the position of juvenile offenders in misdemeanour proceedings to establish whether the EU procedural standards from Directive 2016/800/EU can and to what extent be applied in misdemeanour proceedings towards juveniles, and whether there is a need for transposition of the Directive 2016/800/EU in the MA.

2. DEFINITION OF THE TERM JUVENILE IN DIFFERENT LEGISLATIONS

The Croatian legislation distinguishes between the terms *child* and *juvenile.* The term child has a different meaning in different branches of law, and it refers to a person under 18 years of age. The Convention on the Rights of the Child defines a child as a person under the age of 18 (Art. 1 of the CRC). In Croatia, the age of criminal liability is 14. This means that children under the age of 14 cannot be subject to criminal proceedings, and sanctions cannot be imposed against them (Art. 7 of the Criminal Act, hereinafter: CA). In cases when children under the age of 14 have committed an act with the elements of a criminal offence, they will be dealt with by the social welfare system (Art. 49 of the YCA).

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[1] 1885 juveniles in 2021 and 1982 juveniles in 2022 were either suspects or accused persons in misdemeanour proceedings, which is substantially greater than in criminal proceedings.

[2] For more on the transposition of the Directive 2012/13/EU in MA and criticism of the 2013 legislative reforms of the MA see: Novokmet, A., Pravo na obavijest u prekršajnom postupku – teorijski I normativni aspect, Zbornik radova Pravnog fakulteta u Splitu, year 61, no. 3, 2024, p. 337-366.

[3] For more information on the harmonisation of the Croatian criminal procedure with the EU legislation see: Ivičević Karas, E., Burić, Z., Bonačić, M., Unapređenje procesnih prava osumnjičenika i okrivljenika u kaznenom postupku: pogled kroz prizmu europskih pravnih standard, HLJKZP, vol. 23, No. 1, 2016, p. 11-58.

In Croatian criminal legislation, the term *juvenile* refers to children with criminal liability who, at the time of committing a criminal offence or misdemeanour, have reached the age of 14 but not yet 18 (Art. 2 of the YCA) and their position in criminal legislation is regulated with a special legislation act, YCA. YCA and MA define two groups of juveniles based on the age of the juvenile at the time of committing a criminal offence/misdemeanour: younger juveniles (14 until 16 years of age) and older juveniles (from 16 to 18 years of age). The main difference between these two age groups is the fact that juvenile imprisonment cannot be imposed on younger juveniles (Art. 5 para 2 and 3 of the YCA, Art. 65 of the MA). In Croatia, there is also a third group, young adult offenders. A young adult is a person who, at the time of committing a criminal offence, has reached the age of 18 but is still not 21 (Art. 2 of the YCA). This age group is not mentioned in the MA.

Since Directive 2016/800 and other international documents only use the term *child* and do not define the term *juvenile* or the minimum age of criminal liability, the Croatian CA only mentions the definition of the term *child* (Art. 87 para 1 of the CA). When implementing Directive 2016/800, the Croatian legislator did not change the definition of the term *juvenile* in the YCA (Radić, 2020).

The position of juveniles in Croatian criminal legislation is regulated with a special law, YCA. In 2011, Croatia adopted a new YCA in order to harmonise with the new 2008 CPA, and the most significant changes in the YCA were made in the procedural provisions.[4] From 2011 until today, the YCA has been amended four times. In the last amendment, the YCA implemented Directive EU 2016/800.

Although the YCA regulates the position of juveniles in criminal proceedings, it does not regulate all aspects of criminal proceedings towards them. It is important to describe the position of the YCA towards general criminal legislation, the CA and the CPA. In Croatian legislation, the YCA is considered *lex specialis* about the CA and the CPA (Art. 3 of the YCA). This means the YCA will be applied in criminal proceedings towards a juvenile. However, if the YCA does not regulate some aspects of the juvenile's position in criminal proceedings, the provisions of the CPA shall apply.

MA contains special provisions that regulate the position of juvenile offenders in misdemeanour proceedings. Art. 9 of the MA defines the liability of the child for a misdemeanour on the same basis as the CA, which means that a child under the age of 14 cannot be liable for a misdemeanour.

When a child under the age of 14 frequently behaves in such a way that his/her behaviour meets the elements of a more serious misdemeanour, the competent state authority for said misdemeanours must notify the child's parents or guardians and the Social Welfare Centre (hereinafter: SWC) of the child's place of residence about the child's behaviour. The MA does not define the term *serious misdemeanour,* so this provision has to be considered in conjunction with other provisions of the MA. Another issue is that it also does not define what the term *frequently behaves* refers to.[5]

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[4] For more information on the new YCA in 2011 see: Rittosa, D., Božićević, Grbić, M., Zakon o sudovima za mladež – reformski zahvati i praktične dileme, HLJKPP, vol. 19, no. 2/2012, p. 662-665.

[5] In practice, the frequency of behaviour is interpreted to mean that acts for the suppression of which the same administrative authority is responsible are repeated more than twice. These need not be offences covered by the same act, but they must be more serious offences. Veić, P., Gluščić, S., Prekršajno pravo, Opći dio, Narodne novine, Zagreb, 2013, p. 13-14, 32.

In cases when the child's behaviour meets the elements of a misdemeanour, the parent or the other supervisor shall be punished if the offence is directly related to the failed supervision of the parent or the other supervisor (Art. 9 para 3 of the MA).[6] It is not unusual for parents to be responsible for their child's behaviour; in some countries, the parent can be held criminally liable, although in most cases, parents are the ones who pay the fine or compensate for the damage caused by their child's behaviour (Radić, 2016).

3. RELATIONSHIP BETWEEN THE MISDEMEANOUR ACT AND THE YOUTH COURTS ACT

Two concepts cover the legal nature of misdemeanours in Croatia today. Misdemeanours are considered a part of administrative criminal law within the first concept. However, another concept prevails in Croatian theory, whereby misdemeanours are considered part of criminal law in the broader sense of the word (Herceg Pakšić, 2022, p. 1077).

Criminal and misdemeanour proceedings in Croatia have a similar structure, use the same methods, and facts are established in the same way. Offenders in both types of proceedings can be sanctioned. Despite the similarities, there are also significant differences between them; different bodies are responsible for conducting these proceedings, and there is a difference in the legal regulation of these proceedings (Tomašević, 2011:18-19).

Misdemeanour proceedings should not be viewed only as small-scale criminal proceedings but as an independent type of procedure with its forms of action aligned with the objectives of misdemeanour proceedings. Considering the significance of misdemeanour proceedings in practice, keeping them fast, efficient and economical is important.

In Croatia, criminal and misdemeanour laws exist side by side, each applied in its respective area. However, if the regulations of each legislation should be applied to the same event, the resulting collision is resolved in such a way that criminal law takes precedence (Art. 10 of the MA). However, the issue of the relationship between these two types of proceedings became more complex. In its case law, the ECtHR adopted the autonomous notion of „criminal charge" used in Art. 6 of the ECHR.

According to the criteria used in the *Engle case*, proceedings which are classified as administrative under national legislation may nevertheless be considered criminal under the ECHR, meaning that all protection under Art. 6 can also be used in misdemeanour proceedings (Burić, 2019:508). Hence, according to the Engle criteria,[7] Croatian misdemeanour proceedings in the sense of the Convention have a penal nature and should consider all aspects and protection under Art. 6 of the ECHR. The Maresti judgment (Maresti v. Croatia, No. 55759/07) raised the issue of parallel liability and violation of the *ne bis in the idem principle.* After the Maresti judgment, there were many problems in judicial practice, which resulted in numerous changes in the Croatian legislation (Martinović, 2019).

[6] Asimilar provision can be found in the Act on Misdemeanours against Public Order and Peace (Art. 27).

[7] Engel and Others v. the Netherlands, 1976 (§§ 82-83). Criteria mentioned in the Engle case: 1. classification in domestic law; 2. nature of the offence; 3. severity of the penalty that the person concerned risks incurring.

The new direction in the relationship between criminal and misdemeanour proceedings took place after the judgments A and B v. Norway, in which the ECtHR took a more lenient position regarding the violation of the *ne bis in idem* principle. The Court decided that with the condition of „close connection in nature and time", it is allowed to conduct criminal proceedings for the same criminal offence after the legally concluded misdemeanour proceedings (Martinović, 2019). ECtHR also stated in their judgment in Jussila v. Finland that not all criminal proceedings are equal and that procedural guarantees from the ECHR in cases that do not belong to the core of criminal law will not necessarily be applied to their full extent (Vojvoda, 2024:75).

After this new direction in the ECtHR case law, the Croatian judicial practice also adjusted accordingly, and the example of good practice is evident from the case Bajčić (Bajčić v. Croatia, No. 67334/13).[8]

4. POSITION OF JUVENILES IN THE MISDEMEANOUR ACT

The MA has been in force since January 1, 2008, and has since been amended a total of 14 times.[9] It contains substantive and procedural provisions regarding the position of juveniles who have committed a misdemeanour. Substantive legal provisions of the MA shall apply to juvenile perpetrators of misdemeanours unless its provisions prescribe otherwise (Art. 63 of the MA).

Since this paper deals with the position of juveniles in misdemeanour proceedings, it will only mention the differences in juvenile misdemeanour sanctions concerning criminal juvenile sanctions. One of the main differences between criminal and misdemeanour juvenile sanctions is that a fine can be imposed on juvenile offenders in misdemeanour proceedings (Art. 71 of the MA). In the current MA, a fine can be imposed only in cases of older juvenile offenders, which was not the case in previous legal solutions. Older judicial practice has demonstrated that neither the purpose of the punishment nor the purpose of education is achieved by imposing a fine on a juvenile (Veić, 2013: 108). Another difference is the fact that in misdemeanour proceedings, an older juvenile can only be sentenced to unconditional imprisonment (Art. 72 of the MA). This means that in misdemeanour proceedings, considered less strict and less formal compared to criminal proceedings, a suspended prison sentence cannot be imposed on an older juvenile (Veić, 2013: 110).

4.1. Procedural provisions for juvenile offenders in the MA

The MA also contains procedural provisions that regulate the position of juveniles in misdemeanour proceedings. When the MA does not contain specific procedure issues, the CPA and the YCA's provisions shall be applied appropriately and follow the purpose of misdemeanour proceedings (Art. 223 para 1 of the MA). Some provisions of the MA can be implemented only for juvenile offenders (Art. 223-227 of the MA). Those articles contain special provisions regarding the position of a juvenile in misdemeanour proceedings. Most of

[8] Analysis of the Bajčić v. Croatia case can be found at: https://uredzastupnika.gov.hr/analize-presuda-i-odluka/ne-bis-in-idem/563, 16 May 2024

[9] For more information on the changes in the MA see: Bonačić, M., Rašo, M., Obilježja prekršajnog prava i sudovanja, aktualna pitanja i prioriteti, de lege ferenda, HLJKPP, Zagreb, vol. 19., No. 2/ 2012., p. 439-472.

the specifics of misdemeanour proceedings towards a juvenile have been adopted under the provisions of the YCA, which means that when defining the position of a juvenile in misdemeanour proceedings, the legislator took into account the provisions from *lex specialis* and the fact that juveniles require a different approach. In this paper, we will present the features of the treatment of juveniles in misdemeanour proceedings and analyse them using some of the provisions of Directive 2016/800 and the YCA as *lex specialis.*

In criminal proceedings towards juveniles, one of the basic principles, which is also stipulated in main international documents (CRC, Beijing Rules, Directive 2016/800), is that a juvenile cannot be judged in absence (Art. 53 para 1 of the YCA). This principle is also adopted in misdemeanour proceedings because the MA states that before reaching any decision about the juvenile, he/she has to be examined by the court, with the mandatory presence of his/her parents or guardians or SWC representative (Art. 223 para 2 of the MA). In juvenile criminal law, it is generally recognised that in order to make a final decision about a juvenile, the court must hear the juvenile directly (Veić, 2013:435).

During examination or other measures carried out in the presence of the juvenile, all bodies involved in the proceedings must treat the juvenile with care, taking into account his/her mental development and personal characteristics, in order to ensure that the misdemeanour proceedings do not harm his/her personal development (Art. 223 para 2 of the MA). This provision is identical to the provision of the YCA (Art. 53 para 2 of the YCA). Also, it represents one of the generally accepted postulates of the treatment of juveniles in criminal proceedings. Research has shown that conducting formal criminal proceedings can adversely affect the development of a young person's personality. At the same time, unfavourable treatment can permanently affect their further development (Radić, Puharić, 2015).

The involvement of the holder of parental responsibility (Article 3(1)(2) of the Directive) in the proceedings in which his or her child is the defendant is also one of the special features of the treatment of juveniles that have been transferred to misdemeanour proceedings. Juveniles are summoned, and all other written documents are delivered to them through their parents or legal guardians unless this is not possible due to the need for urgent action or other justified circumstances (Art. 223 and Art. 4 of the MA). This provision is similar to the one in the YCA (Art. 55 para 1 of the YCA). In misdemeanour proceedings, the holder of parental responsibility must always be informed about the arrest of the juvenile (Art. 134 para 2 of the MA). When the juvenile is arrested and taken to the police station, it is a standard procedure for the holder of parental responsibility to be informed about his/her arrest. If the police cannot reach the parent, they must inform the SWC about the arrest of the juvenile. When a juvenile is detained in misdemeanour proceedings to ensure his/her attendance in misdemeanour proceedings until judgment is reached, the juvenile can be detained only for 24 hours, counting from the moment of deprivation of liberty (Art. 135 para 2 MA). In other situations, juveniles can be sent to detention to ensure the execution of a juvenile prison sentence (Art. 135 para 3 MA). When the detention decision is ordered against the juvenile, the parents or guardians of the juvenile have to be informed about it, regardless of the juvenile's wishes (Art. 135 para 9). The MA does not specify in what way the parents will be informed, but this can be done by phone or, for example, by sending police officers to the home address (Veić, 2013:206).

Including parents when their child is the subject of proceedings is considered a standard practice today. According to Directive 2016/800, the states are obliged to enable the holders of parental responsibility to receive the same information in the shortest possible time as juveniles regarding the rights that the juvenile has during criminal proceedings (Art. 5 of the

Directive). The juvenile also has the right to be accompanied by a holder of parental responsibility or another appropriate adult during hearings before the court (Art. 15 of the Directive).[10]

In almost all EU member states, parents are involved in criminal proceedings conducted towards their children. They usually provide information regarding their child's personal life and family circumstances. However, they also serve as psychological and emotional support for the child, in which case they usually have a more active role (Dragičević Prtenjača, Radić, Rizvić, 2022: 383). In order to ensure that the parents fulfil their active role during misdemeanour proceedings and help their child, they first need to be fully informed about the main aspects of misdemeanour proceedings and the rights that their child has during proceedings. Therefore, it is necessary to implement the right to information to juvenile and their parents in more detail in the MA, by the solution from the YCA (Radić, 2020).

The Social Welfare Centre (SWC) also plays an important role in misdemeanour proceedings. The prosecutor must inform the SWC about initiating misdemeanour proceedings towards a juvenile. In cases where the claimant is the injured party, the court must inform the competent SWC. During misdemeanour proceedings, the SWC must be informed if the court has discovered the facts and circumstances indicating the need to take measures to protect the rights and well-being of the juvenile (Art. 223 para 5 of the MA). The same provision can be found in Art. 56 of the YCA. The SWC representative has the right to become familiar with the proceedings, make suggestions, and warn about the facts and documents, thus actively participating in the proceedings (Art. 223 para 5 of the MC).

The inclusion of the SWC in the proceedings where the juvenile acts as the offender is also considered a standard procedure in present-day criminal proceedings towards juveniles. SWC involvement during criminal and misdemeanour proceedings can be seen as a connection between the judiciary and the social welfare system because when the juvenile is the offender, all information about his personal life and family circumstances must be collected and considered. In practice, the SWC collects information on the juvenile and his/her family and provides the court with the necessary input about the juvenile's personal life, school, family situation and psychophysical development (Dragičević Prtenjača, Radić, Rizvić, 2023: 587-588).

In misdemeanour proceedings towards juveniles, same as in criminal proceedings (Art. 58 YCA), no one can be relieved of their duty to testify about the circumstances which are necessary to assess the mental development of the minor, get to know his/her personality and the circumstances in which he/she lives (Art. 223 para 8 of the MA). In order to determine the circumstances which are important for getting to know the juvenile's personality, his/her parents are called first. In practice, the courts require a report from the competent SWC. The court must obtain a report from the competent SWC when imposing a prison sentence on a juvenile (Art. 72 para 3 of the MA). This provision also follows the standards established in international documents (Rule 16 of the Beijing Rules, Art. 11 of the Directive 2016/800).

[10] The Directive and the YCA also state that the holder of parental responsibility will not be included during the proceedings when it is considered that is not in the best interest of a child (Art. 5 para 2 of the Directive, recital 22 and 23; Art. 53a para 4 of the YCA). The Directive also states the holder of parental responsibility can request for the child to have a medical examination during criminal proceedings (Art. 8 of the Directive).

One of the basic principles of misdemeanour proceedings towards juveniles is that they must be conducted in the shortest possible time (the principle of urgency), which means that all bodies partaking in proceedings and bodies and institutions required to provide notifications, reports or opinions must act The same provision can be found in Art. 4 of the YCA and Art. 13 of Directive 2016/800. In 2011, the principle of urgency in criminal proceedings towards juveniles was placed in the introductory provisions of the YCA in order to point out the necessity that everybody involved in criminal proceedings towards juveniles must act in the shortest possible timeframe (Radić, 2020: 596).

As in criminal proceedings, misdemeanour proceedings towards juveniles are closed to the general public in accordance with the principle of protection of privacy. This means that the course of misdemeanour proceedings towards juveniles and the decisions made in those proceedings may not be published without the court's approval and that the general public is excluded during the hearing. The court may allow the presence of persons dealing with the protection and education of juveniles and researchers (Art. 223, paras 10 and 11 of the MA). One of the generally accepted situations when the trial is closed to the public are cases when a juvenile is the subject of the proceedings. The aim is to prevent the public disclosure of information about the juvenile and his/her family and to avoid stigmatisation (Radić, 2017).

In cases when the juvenile is the offender, the court of the juvenile's place of residence is competent for proceedings towards the juvenile. If the juvenile does not have a place of residence or if it is unknown, the competent court is that of the juvenile's place of domicile.The proceedings can be carried out before the court of the juvenile's place of domicile or before the court of the place where the misdemeanour was committed if it is clear that the proceedings will be carried out more easily before that court (Art. 224 of the MA). The main reason the legislator opted for this solution again lies in the fact that the information about the juvenile's family and personal life needs to be determined in addition to the circumstances related to the committed misdemeanour. The mentioned data will be collected most easily by the court located in the juvenile's place of residence. In cases when the juvenile does not have a permanent residence or place of residence in the Republic of Croatia, the general provisions on jurisdiction in misdemeanour proceedings shall be applied. The YCA contains the same provision in Art. 47 for all the same reasons (Veić, 2013: 439). Juvenile judges specialising in juvenile cases deal with juveniles in criminal proceedings (Art. 37-44 of the YCA). as soon as possible in order to complete the proceedings in the shortest possible time (Art. 223 para 9 of the MA).

A similar provision does not exist in the misdemeanour legislation. In the future, it might be necessary to discuss the possibility of specialising a certain number of judges in the misdemeanour court system who would deal exclusively with juvenile cases in the same way it has been done in criminal proceedings.

In misdemeanour proceedings towards juveniles, the judge or the authorised prosecutor can make a decision based on the principle of opportunity. The court can make such a decision before or during misdemeanour proceedings in cases when it finds that the initiation and conduct of proceedings would not be justified considering the juvenile's personal circumstances and elements of the committed offence (Art. 226 para 1 of the MA).

The authorised prosecutor (state attorney, state administration body or legal entity with public authority) can make the same decision based on the same aforementioned elements before the beginning of misdemeanour proceedings. When the authorised prosecutor makes such a decision, they must inform the juvenile and his/her parents, adoptive parents, guardians

and other caretakers about his/her behaviour and actions. A broad application of the principle of opportunity as an exception to the principle of legality in criminal proceedings towards juveniles has become one of the fundamental determinants and ways of the state's response to juvenile delinquency. Data shows that the principle of opportunity in proceedings towards juveniles precedes the principle of legality (Puharić, Radić, 2015). In international documents, diversion is always mentioned as one of the best possible ways of dealing with juvenile delinquency. Juveniles' cases should be solved in the earliest possible stages of proceedings by imposing some form of caution or informal sanction (Puharić, Radić, 2015:639-648).

5. SCOPE OF APPLICATION OF DIRECTIVE 2016/800/EU

As mentioned earlier, one of the aims of this paper is to establish whether there is a need for the implementation of Directive 206/800/EU in the MA. In order to answer this question, we have to determine the scope of application of Directive 2016/800/EU regarding the type of proceedings to which this Directive can be applied and to determine if that includes misdemeanour proceedings in Croatia. Directive 2016/80/EU was the last to be adopted per the Roadmap, which refers to measure E (Radić, 2020). The Commission decided that measure E would apply only to one category of vulnerable persons that could be easily defined, namely suspected or accused children (Cras, 2016:110). The Directive aims to „establish procedural safeguard for children who are suspects or accused persons in criminal proceedings in order to ensure that they can understand and follow the proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration“ (§ 1 Directive). Directive 2016/800 states that it applies to children who are suspects or accused persons in criminal proceedings (Art. 5(1) of the Directive). This raises the question of how Directive 2016/800 defines the term „criminal proceedings“ and whether the criminal nature of proceedings should be considered formally or substantially (de Vocht, Panzavolta, Vanderhalen, Van Oosterhout, 2014:485). The EU procedural rights directives declare that they apply in criminal proceedings but give no clear definition of this term. As a rule, the preambles, the recitals of which serve as an aid to interpretation in the EU legal order, contain some explanations on the scope of application (Leenknecht, Put, 2020: 14). In its case law, the European Court of Justice has confirmed that recitals are not legally binding, but they can be used to explain the meaning of ambiguous legal provisions (Leenknecht, Put, 2020: 14). Recital 17 of Directive 2016/800/EU clearly states that the Directive should apply to criminal proceedings and not to other types of proceedings, in particular proceedings which are specially designed for children and which could lead to protective, corrective or educative measures. This would mean that Member States that do not label their juvenile justice system as criminal do not have to implement the Directive in their legislation (De Vocht, Panzavolta, Vanderhallen, Van Oosterhout, 2014:486). The EU countries have different systems of responding to juvenile delinquency; in many of them, educational measures prevail. However, even those types of measures and procedures often contain punitive elements that require respect for a fair trial (De Vocht, Panzavolta, Vanderhallen, Van Oosterhout 2014:485). If we accept this approach, it would mean that the application of the Directive is limited only to those Member States that have defined their juvenile system as criminal in their national legislation. At the same time, in other states the implementation of the Directive depends on their respective decision because they are not obligated to implement the Directive (Leenknecht, Put, 2020:15). This approach would lead to limited implementation of Directive 2016/800

because many Member States do not follow a purely criminal approach when responding to delinquent behaviour of minors, or even formally place youth justice outside the realm of criminal justice (Leenknecht, Put, 2020: 15).

On the other hand, as mentioned earlier, the case law of the ECtHR takes a different approach and has established that the criminal nature of the criminal charge should be considered substantially. In several cases, the Court has recognised that the safeguards provided for in Article 6 also apply to, for instance, administrative proceedings towards juveniles, following the widely known 'Engel' criteria. The relevant examples can be found in the case of Adamkiewicz v. Poland (De Vocht, Panzavolta, Vanderhallen, Van Oosterhout, 2014: 485).

Considering the Lisbon Treaty, judicial cooperation in criminal matters is communitarised by the Lisbon Treaty. Some authors believe that since there is no clear definition as to what the term „criminal matter" refers to, it is unclear whether or not instruments adopted under its criminal law competence also apply to juvenile offenders (Leenknecht, Put, 2020: 15). On the other hand, it can be argued that the competence in youth justice matters is part of the EU's competence in criminal matters contained in Articles 82 and 83 of the TFEU (Leenknecht, Put, 2020:16). Another aspect to consider is the scope of application of Directive 2016/800 regarding the type of criminal offences. Recital 14 states that the Directive should not be applied to certain minor offences but only in cases when a child who is a suspect or accused person in those situations is deprived of liberty. We believe this recital could be used in the case of Croatian misdemeanours and could lead to a solution that could be easily adopted in practice. Safeguards from the Directive could be used only in situations when the juvenile who is a suspect or accused person in cases of misdemeanours is deprived of liberty, which in misdemeanour proceedings refers to arrest and pre-trial detention within the proceedings. The Directive also states that in cases of minor offences, except for cases prosecuted before the competent court in criminal matters, the Directive should not be applied because it would be unreasonable to expect that the competent authorities in the MS could ensure all the procedural safeguards and rights from the Directive (recital 15 and 16 of the Directive).[11] The Directive should be fully applied in situations when a suspect/ accused child is deprived of liberty, irrespective of the stage of criminal proceedings (Art. 2(6) of the Directive).

Regarding the temporal scope of application, the Directive states that it should be applied „...until the final determination of whether the suspect or accused person has committed the criminal offence, including where applicable, sentencing and the resolution of any appeal" (Art. 2 para 1 of the Directive). That means that the Directive should be applied until the final sentence has been brought, which includes the stage of the appeal process (Cras, 2016:112-113).

6. CONCLUSION

After analysing the provision of the MA regarding the position of juveniles in misdemeanour proceedings, we can conclude that when defining the legal position of juveniles in misdemeanour proceedings, Croatian legislators considered a different approach toward this vulnerable group of offenders.

[11] The Directive mentions minor road traffic offences or minor public order offences as an example (recital 16).

As a result, most of the provisions from the MA that refer to juveniles are formulated similar or even the same as the provisions from the YCA, aim to ensure them a better position in misdemeanour proceedings and are in accordance with generally accepted principles determined in international documents in order to achieve child-friendly justice. Thus, all special features of criminal proceedings towards juveniles have been adopted in misdemeanour proceedings.

In addition, we sought to determine whether there is a need for the transposition of Directive 20167800/EU into the MA. Taking into account all elements regarding the scope of application of the Directive, it is derived from the EU legislator's inability to clearly define the type of criminal proceedings that the Directive could apply to in the Member State's legislation. When looking at Art. 2 and recitals 14-17 of the Directive, it derives that the Directive cannot be implemented in cases of minor offences, except for cases prosecuted before the competent court in criminal matters, because it would be unreasonable to expect that the competent authorities in the MS could ensure all procedural safeguards and rights from the Directive in those types of cases. There is only one exception mentioned, the situation when the child who is a suspect or accused person is deprived of liberty. Misdemeanour proceedings refer to situations when the juvenile has been arrested or detained within the proceedings in accordance with the Art. 134 and 135 MA. We believe that in these two aforementioned situations when juveniles are being deprived of liberty, EU procedural standards from the Directive have to be implemented into misdemeanour proceedings towards juveniles.

Analysing the provisions from the MA, we can conclude that the majority of the procedural rights defined in the Directive have already been incorporated into the MA. However, two extremely important rights are under-regulated in the MA: the right to information and the right to legal counsel. These rights have been successfully transferred to the YCA. We propose that the right to information (art. 4) and the right to assistance by a lawyer (art. 6) from the Directive should be implemented into MA, but only in situations when a juvenile is being arrested or detained in a misdemeanour proceeding, which means that legislator has to expand Art. 134 MA and 135 by adding a new paragraph that would improve the position of juveniles in cases of arrest and detention.

De lege ferenda, the juvenile should be informed about his/her rights during misdemeanour proceedings both orally and in writing (Letter of rights) upon arrest or when the judge decides for detention in misdemeanour proceedings. It should state that when a juvenile is being arrested or detained, he/she has the right to be informed about the charges against him/her in a simple and accessible language, the right to have the assistance of a lawyer, the right to have a lawyer present during questioning after arrest and before a judge decides about detention and that parents have to be informed about all of these rights in the same way. Regarding the right to assistance of a lawyer, we believe that when the juvenile has been arrested or detained, he/she must have the right to legal assistance. When a juvenile has been deprived of liberty, he/she is in a very vulnerable position. Although his/her parents must be informed about it, we believe it is necessary for him/her also to receive professional assistance from an attorney.

Looking at the provisions of the MA that refer to juveniles in misdemeanour proceedings in general, we can conclude that extensive interventions in the legislative text are not necessary but only minimum intervention that would improve the safeguards of juveniles during a situation when they are deprived of liberty.

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Sažetak

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Primjena EU pravnih standarda u prekršajnom postupku prema maloljetnicima u Hrvatskoj

U slučaju kada maloljetnik počini prekršaj u Hrvatskoj, prema njemu će se primijeniti odredbe Prekršajnog zakona, uz supsidijarnu primjenu Zakona o kaznenom postupku (ZKP) i Zakona o sudovima za mladež (ZSM). Hrvatska je 2019. u ZSM implementirala Direktivu 2016/800/EU o postupovnim jamstvima za djecu koja su osumnjičenici ili optuženici u kaznenom postupku i time proširila krug procesnih prava za maloljetne počinitelje u kaznenom postupku. Hrvatski zakonodavac počeo je proces transponiranja EU pravnih standarda u Prekršajni zakon, ali je stao nakon implementacije Direktive o pravu na tumačenje i Direktive o pravu na informaciju. Direktiva 2016/800/EU koja se odnosi na položaj maloljetnika u kaznenom postupku nije implementirana u Prekršajni zakon. U prvom dijelu rada analiziraju se važeće zakonske odredbe koje se odnose na maloljetne počinitelje prekršaja u Hrvatskoj. U drugom dijelu rada daje se teorijska i normativna analiza položaja maloljetnih počinitelja prekršaja kroz prizmu moguće primjene Direktive 2016/800/EU u prekršajnom postupku kako bi se utvrdilo mogu li se i u kojoj mjeri EU pravni standardi utvrđeni u Direktivi 2016/800/EU primijeniti u prekršajnom postupku prema maloljetnicima. U zaključku rada dani su *de lege ferenda* prijedlozi vezani uz transponiranje Direktive 2016/800/EU u domaće prekršajno zakonodavstvo.

Ključne riječi: maloljetnici, prekršaj, prekršajni postupak, Prekršajni zakon, Direktiva 2016/800/EU.

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