

Judicial Approaches to Juvenile Crime: Explaining the Application of Educational Recommendations in Sarajevo

1. Introduction

Bosnia and Herzegovina (BiH) has been the country in a process of transition since early 1990-ties. Transition, whatever it means, brought a huge number of positive changes in the country but, unfortunately, some negative effects too. One of the most important positive changes that occurred in BiH since 1990 was almost complete reform of laws that were regulating all aspects of our environment. The reform that we, due to our professional interest, were particularly interested in was Criminal Law reform in BiH. The reform itself was not just a result of dissolution of ex-Yugoslavia and new socio-economic system, but also a result of a desperate need to achieve international standards currently existing in the field of criminal law, contained in various international legal instruments, primarily through a process of harmonization.

The reform of Criminal law legislation in BiH has not happened at once but it was conducted on a step by step basis. Therefore it could be easily divided into five clearly visible stages, or phases.¹ The intention of this paper is not explore how laws were changed in each particular phase. Rather, the paper is focused on a particular innovation defined within *Phase III* that is related to new, innovative, inspiring way of reacting to juvenile crime. Of course, those are educational recommendations as newly created sanctions for juvenile offenders. The main aim of introduction of these sanctions is to enable judges and prosecutors to divert

¹ Overview of these five phases of Criminal law reform can be found in Maljević, Almir, Punishment of juvenile offenders in Criminal Justice System in Bosnia and Herzegovina, in Meško, G., Pagon, M., Dobovšek, B., Policing in Central and Easter Europe, Dilemmas of Contemporary Criminal Justice, Maribor, 2004. pp. 529-534

juvenile offenders in alternative, more out-of-court, procedures of solving a problem of crime and therefore avoid some negative consequences that institutional criminal proceeding can have on a juvenile offender.²

This paper attempts to show how often judges and prosecutors decide to use this opportunity and impose an educational recommendation on a juvenile offender. It, also, attempts to explore what are the main factors, or limitations, causing this kind of sanction to be, or not to be, imposed on a juvenile offender. In other words it is the intention to try to identify possible problems representing obstacles for higher imposition rate of educational recommendations and to suggest some solutions to identified problems.

As the problem of imposition of educational recommendations on juvenile offenders is rather complex and multidimensional, several research methods had to be used. Due to the fact that our units of analysis were individuals, namely judges and prosecutors at the Municipality court Sarajevo, *questionnaires* were distributed to a judges and prosecutors working in the court.

Additionally, some *semi-structured interviews* were conducted with certain number of judges and prosecutors that, during their practice, are mostly dealing with juvenile offenders and, therefore, are mostly exposed to cases where educational recommendations could be applied.

² Alternative sanctions are widely used all around the World and in some countries (e.g. New Zeland) due to their effectiveness are being used not only for juvenile offenders but on adults too. For more see **McCOLLD, P., & WACHTEL, T.** (2002). Restorative justice theory validation. In E. Weitekamp and H-J. Kerner (Eds.), Restorative Justice: Theoretical Foundations (pp. 110-142). Devon, UK: Willan Publishing; **McCOLLD, P.** (1996). Restorative justice and the role of community. In B. Galaway & J. Hudson (Eds.), Restorative Justice: International Perspectives (pp. 85-102). Monsey, NY: Criminal Justice Press. **McCOLLD, P.**, Toward a holistic vision of restorative juvenile justice: a reply to the maximalist model, Contemporary Justice Review, 2000., Vol. 3 issue 4, p. 357-414; **DAY, T. and MALJEVIĆ, A.**, Teaching and Implementing Restorative Justice and its relevance for Criminal Justice System in Bosnia and Herzegovina in the 21st Century, Pravna misao, 2001., No.5-6, p. 5-13

Also, *content analysis* of decisions of judges and prosecutors was applied in order to better understand their criteria for imposition of an educational recommendation on a juvenile offender. This qualitative case study analysis allowed achieving an in-depth understanding of both, process of individualization of a sanction for a juvenile offender and social and legal context within which that individualization occurs. Content analysis was, also, used in order to identify and assess criminal legislation related to imposition of educational recommendations on juvenile offenders.

Furthermore, a quantitative analysis of a data contained in *data archives and official statistics of FBiH* was conducted in order to better understand the nature of criminal activities committed by juvenile offenders.

At the very end, *triangulation of applied methods* is applied in order to produce a thick description of the problem that allowed us to recommend the best possible and applicable solutions for specified problem.

2. Rationale for the research

Although it is hard to argue that juvenile crime rates in Federation of Bosnia and Herzegovina are increasing in past few years³, some authors argue that problems of juvenile delinquency and juvenile justice in Bosnia and Herzegovina are extremely expressed⁴, or in other words acute and visible. The same authors state that there are some clearly visible trends related to juvenile offending in BiH. Those trends include increased involvement of juveniles

³ Official statistics on both state and entity level do not provide us with a data that would allow us to take firm attitude on this issue. Overview of juvenile crime rates in Federation of Bosnia and Herzegovina for 1998-2003 period can be found in Maljević, Almir, National Report on Juvenile Delinquency and Juvenile Criminal Justice System of Bosnia and Herzegovina, at http://esc-eurocrim.org/workgroups.shtml#juvenile_justice, 20.11.2004.

⁴ Čolić-Sijerčić, Hajrija, Young People in Conflict with the Law in the Light of Topical Problems Related to Juvenile Criminal Justice in BiH, COMESGRAFIKA, Banja Luka, 2002., p. 42, also, Kosović, Jasmina, *ibid.*, p.

younger than 14⁵ in committing criminal offences, association of juveniles in more or less organized groups not only with peer juveniles but with adults too, number of criminal acts where juveniles expressed cruelty increases (crime against life and limb, violent behaviour), recidivism is more than evident, etc. There are a lot of causes that could have influence on above mentioned trends, including all-encompassing socio-economic factors, poverty and income inequality, experimentation with substances like drugs and alcohol, intensified migration processes, individual characteristics of a juvenile offenders, quality and intensity of implemented criminal policy, just to name a few. As it is not possible to explore them all within this policy research project, the research is focused on a policy of implementation of sanctions for juveniles, also known as a criminal policy, defined by criminal laws in BiH and, in this case, implemented by judges and prosecutors. In particular, the research does not intend to explore implementation of all sanctions for juveniles that are defined by criminal law, but only educational recommendations as newly introduced alternative, diversionary measures. It is because those represent clear intent of our lawmaker to reduce stigmatisation of juvenile offenders, and to increase their possibility for faster and more substantial social integration, to empower their protection, improve their care, and provide more substantial and intense assistance. Their introduction into criminal legislation of BiH is a result of implementation of rights of child defined by Convention on the rights of the child and other international legal instruments that seek for introduction of a new, alternative model of reaction on juvenile crime.⁶ In other words, every juvenile offender, under conditions prescribed by criminal law of BiH has, under conditions prescribed by law, a right to be sanctioned by an educational recommendation. Therefore, if criminal justice system, personified in an institution of a judge or a prosecutor, fails to impose an educational

⁵ Juveniles who at the time of committing a crime were not 14 years old can not be considered criminally liable and therefore Criminal Justice System's provisions can not be applied on them

⁶ Simović, N., Miodrag, Krivični postupci u Bosni i Hercegovini, Privredna štampa d.d., Sarajevo, 2003., p. 111

recommendation on a juvenile offender, although all conditions are met, than, obviously, the rights of a juvenile offenders, defined not only in national legislation but in international treaties⁷ also, are infringed, and at the same time principle of legality and the rule of law in BiH are infringed.

When it comes to practical implementation of educational recommendations in FBiH,⁸ some previous research⁹ showed that judges and prosecutors have rarely been deciding to impose educational recommendations on juvenile offenders. More precisely, only 10% of judges and 33,33 % of prosecutors have been imposing educational recommendations on a juvenile offenders in their practice. If it is argued that crime rates of juvenile offenders are increasing on one hand and if a research shows that educational recommendations are rarely imposed on juvenile offenders on the other hand, it is reasonable to pose a certain questions in this regard. E.g.:

- Why judges and prosecutors do not impose educational recommendations on juvenile offenders more often?
- What causes that juvenile offenders are not able to exercise their right to principle of individualization of their sanction?
- What causes that juveniles are deprived of their right to alternative, out-of-court procedure, as one of the strongest interest on the part of a juvenile offender?

In order to provide answers to these questions, or to discover the most important reasons for low imposition rate of these sanctions, it is absolutely necessary to analyse both

⁷ Other international legal instruments related to juvenile offenders include, amongst others, Standard Minimum Rules For administration of Juvenile Justice (Beijing Rules) of 1985, United Nations Guidelines for the prevention of Juvenile Delinquency (Riyadh guidelines) of 1990, United Nations Rules for the Protection of Juvenile Detainees of 1990, etc.

⁸ Educational recommendations exist in Criminal Law of FBiH since November 1998!

⁹ Research was conducted in 2000-june 2001 by two expert teams in both BiH entities. It was financed by Open Society Found BiH and UNICEF and resulted with publication “Young People in Conflict with the Law in the Light of Topical Problems Related to Juvenile Criminal Justice in BiH”

provisions of substantive and procedural criminal law, but also to assess judges' and prosecutors' perceptions of the problem. Such approach will allow us to evaluate both the level of harmonization of criminal law provisions of FBH on alternative measures with respective provisions contained in international legal instruments and to identify some obstacles that are most commonly identified as such by judges and prosecutors in practice.

3. Legal provisions on alternative measures

3.1. International standards on alternative measures

There are a huge number of international legal instruments that are regulating juvenile criminal justice system and rights of a juvenile offender within it. Still, only few of them are presented as instruments containing key international rules and directives for administration of juvenile criminal justice. Those are:

- UN Convention on Rights of a Child (1989)
- UN Standard Minimal Rules for Administration of Juvenile Criminal Justice (Beijing rules) (1985)
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh guidelines) (1990)
- UN Standard Minimal Rules for Non-custodial Measures (Tokyo rules) (1990)
- Recommendation Rec (87) 20 of the Council of Europe Committee of Ministers to member states on social reactions to juvenile delinquency

- Recommendation Rec (2003) 20 of the Council of Europe Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

UN convention on rights of a child, amongst other very important provisions related to rights of a juvenile offender, stresses the importance of the establishment and promotion of measures that would be alternative to formal judicial reaction to juvenile crime:

"1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."¹⁰

Appropriate reflection on alternative measures for juvenile offenders is also provided in Beijing rules on administration of juvenile justice:

1. Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below (art. 14.1. defines **Adjudication and disposition**)

2. The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

3. Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

¹⁰ UN convention on rights of a child, art. 40.

4. In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programs, such as temporary supervision and guidance, restitution, and compensation of victims."¹¹

Riyadh guidelines also recommend extensive use of alternative and diversionary measures:

"Law enforcement and other relevant personnel, of both sexes, should be trained to respond to the special needs of young persons and should be familiar with and use, to the maximum extent possible, programmes and referral possibilities for the diversion of young persons from the justice system."¹²

Apart from UN, it must be said that Council of Europe significantly contributed to the development of international standards defining use of alternative measures for juvenile offenders. Although the number of recommendations developed by Committee of ministers is huge, it seems that two recommendations had the strongest impact in regard to alternative measures. Those are Rec (87) 20 of the Council of Europe Committee of Ministers on social reactions to juvenile delinquency and more recent one Rec (2003) 20 of the Council of Europe Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice.

Rec (87) 20 required that Member states of Council of Europe review, if necessary, their legislation and practice with a view "to encouraging the development of diversion and mediation procedures at public prosecutor level (discontinuation of proceedings) or at police level, in countries where the police has prosecuting functions, in order to prevent minors from entering into the criminal justice system and suffering the ensuing consequences; to associating Child Protection Boards or services to the application of these procedures; and to taking the necessary measures to ensure that in such procedures: a) the consent of the minor to

¹¹ Beijing rules, art. 11.

¹² Riyadh guidelines, art. 58.

the measures on which the diversion is conditional and, if necessary, the co-operation of his family are secured; b) appropriate attention is paid to the rights and interests of the minor as well as to those of the victim;

Due to the fact that Rec (87)20 was out of date in some respects, Committee of Ministers adopted Rec (2003)20. Although focused on broader principles of dealing with juvenile delinquency, Rec (2003)20 contains several provisions related to development and use of alternative measures. First, it requires more strategic approach by stressing the need for establishing following principal aims of juveniles justice system and associated measures:

- a) to prevent offending and re-offending;
- b) to (re)socialize and (re)integrate offenders and
- c) to address the needs and interests of victims.

Furthermore, it requires that juvenile justice system should only be seen as a part, or as a component, of a broader community-based strategy for preventing juvenile delinquency that involves family, schools, neighbourhood and peer group context within which offending occurs.

More specific reflection regarding alternative measures is contained in article 7 within which it is stated that expansion of the range of suitable alternatives to formal prosecution should continue. They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, apply only in cases where responsibility is freely accepted.

Although above mentioned legal instruments do represent very important tools for setting up the core legal standards for the development and use of alternative measures, the most valuable instrument in this regard are United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). Within the Tokyo rules it is clearly stated that UN are

convinced that alternatives to imprisonment can be an effective means of treating offenders¹³ within the community to the best advantage of both the offenders and society and therefore states should, taking into account the political, economic, social and cultural circumstances and traditions of countries, be implemented not only on national but also on regional, interregional and international level.

When discussing the scope of non-custodial measures, the Tokyo rules, within the article 2.3. define that, in order to provide greater flexibility consistent with the *nature and gravity of the offence*, with the *personality and background of the offender* and with the *protection of society* and in order to avoid unnecessary use of imprisonment, the criminal justice system should provide a *wide range of non-custodial measures*, from pre-trial to post-sentencing dispositions. The number and types of non-custodial measures available should be determined in such a way that consistent sentencing remains possible.

The Tokyo rules do require that states define the possibility for imposition of non-custodial measures *in all stages of a criminal procedure*, but due to the fact that imposition of those in BiH is allowed only prior to initiation of criminal proceeding we will analyse the Tokyo rules from that perspective only.

In that regard, the Tokyo rules define that, where appropriate, and compatible with the legal system, the *police, the prosecution service or other agencies* dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a *set of established criteria should be developed* within each legal system and for minor cases the prosecutor may impose suitable non-custodial measures, as appropriate.

¹³ The Tokyo rules do not make difference between juveniles and adult offenders

When it comes to legal preconditions for imposition of non-custodial measures, both the *needs of society* and the *needs and rights of the offender* and the *victim* should be taken into account. The conditions to be observed should be *practical, precise and as few as possible*, and should be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender's chances of social integration, always taking into account the needs of the victim. Therefore, alternative measures could be applied only with prior *consent of the offender*.

Special attention is given to instructions on *supervision*. According to the Tokyo rules, the purpose of supervision is to reduce re-offending and to assist the offender's integration into society in a way which *minimizes the likelihood of a return to crime*. The most suitable type of supervision and treatment should be determined for each individual case and it should be *carried out by a competent authority* under specific conditions prescribed by law and *periodically reviewed and adjusted if necessary*. In case it is needed, an offender should be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and their reintegration into society should be facilitated.

The duration of a non-custodial measure should not exceed the period established by the competent authority in accordance with the law. If an offender responded to some non-custodial measure favourably, *early termination of that measure should be allowed*.

3.2. Criminal justice system in Federation of Bosnia and Herzegovina and solving a problem of juvenile crime

Federation of Bosnia and Herzegovina does not have criminal code that would exclusively be applied on juvenile offenders. Still, it does have special provisions within the

CC FBH that are being applied on juvenile offenders. Having in mind the fact that juvenile crime can be dealt within or outside of formal criminal justice system those two reactions will be presented separately.

3.2.1. Formal reactions to juvenile crime in Federation of Bosnia and Herzegovina

When it comes to sanctions that could possibly be imposed on juvenile offenders, the CCFBH, as most of criminal laws in the world, makes a distinction between different categories of offenders. Namely, CCFBH makes a distinction between *younger minors* (14-16), *older minors* (16-18) and *young adult* offenders (18-23). Consequently, criminal proceedings in FBiH can not be initiated against a person who, at the time of committing an offence, was not older than 14.

Having in mind the nature of juvenile delinquency and personality of juvenile offenders, it is understandable that CCFBH provides different types of responses towards committed crimes. There are four different types of sanctions prescribed for juvenile offenders and those are:

- a) Educational recommendations;
- b) Educational measures;
- c) Juvenile imprisonment;
- d) Security measures.

Educational recommendations and educational measures¹⁴ can be imposed on all juvenile offenders, whereas juvenile imprisonment can be imposed only, and exceptionally, on older minors. Security measures can be imposed only in addition to juvenile imprisonment

¹⁴ Educational measures are more severe sanctions for juvenile offenders than educational recommendations. Educational measures include: a) disciplinary measures, b) measures of intensified supervision and c) custodial measures.

and to some educational measures. Due to the fact that this research is primarily related to educational recommendations, further discussions will be focused only on those.

3.2.2. Educational recommendations for juvenile offenders in Federation of Bosnia and Herzegovina¹⁵

Educational recommendations are recent novelty in criminal justice system of BH. Those were firstly introduced in FBH back in November 1998, as a result of a necessity to harmonize criminal law provisions in FBH both with the European Convention for Human Rights and the UN Convention on the Rights of Child.

Apart from general purpose of all sanctions defined by the CCFBH¹⁶, the specific purpose of educational recommendations is to avoid initiation of criminal procedures against juvenile offenders and to influence the juvenile offender not to commit a criminal offence again. These recommendations can be imposed on a juvenile offender only by a competent prosecutor or a judge for juveniles. As for any other sanction for any offender, there are certain number of preconditions that need to be fulfilled in order a judge or a prosecutor can be eligible to impose these sanctions. Educational recommendations can be imposed on a juvenile offender only if:

- The offence s/he committed is punishable by imprisonment not exceeding 3 years or by fine;

¹⁵ Legal definitions of educational recommendations, their purpose and conditions for imposition are defined in art. 80. – 83. CCFBH. Analysis in this part of the paper is based on Maljević, A., Punishment of juvenile offenders in Criminal Justice System in Bosnia and Herzegovina, op. cit.,

¹⁶ Article 7 of CCFBH: The purpose of criminal sanctions is:

- a) A preventive influence on others to honour the legal system and not to perpetrate a criminal offence;
- b) Preventing perpetrators from perpetrating criminal offences and encouraging their rehabilitation.

- The offender admits s/he has committed the crime and expresses willingness to make amends with an injured party.

If these conditions are fulfilled, and competent prosecutor, bearing in mind nature of the crime, circumstances under which it was committed, previous life of the offender and his/her personal characteristics, feels that it would not be expedient to conduct criminal procedure, s/he has to consider possibility and justification of imposition of educational recommendations on that particular juvenile offender. If, regardless to the fact that all preconditions are met, a prosecutor does not think that any of educational recommendations can achieve the purpose of the punishment, s/he will initiate criminal proceedings by bringing the indictment to a juvenile judge. Before accepting the indictment, a juvenile judge has to reconsider the possibility of imposition of educational recommendations on that particular offender for that particular offence.

All educational recommendations defined by CCFBH can be divided into two groups regarding who (competent prosecutor or judge for juveniles) can pronounce those. Educational measures that can be pronounced by competent prosecutor are:

- Personal apology to the injured party;
- Compensation of the damage to the injured party;
- Regular school attendance;
- Attending instructive, educational, psychological and other forms of counselling.
- Education in traffic regulation

Educational measures that can be pronounced by a judge for juveniles are:

- Working for a humanitarian organization or local community;
- Accepting appropriate job;
- Being placed in another family, home or institution;
- Treatment in an adequate health institution.

If a prosecutor or a judge thinks that imposition of educational recommendation will lead to achievement of the purpose of punishment, specific one will be chosen in cooperation with juvenile offender's parents or guardians and institutions of social care. When deciding which educational recommendation to pronounce, a competent prosecutor or a judge for juveniles has to take into consideration all interests of a juvenile offender and an injured party. In this decision making process, special attention must be given to juvenile's regular school attendance or his/her work.

When it comes to the duration, it must be said that educational recommendations can be pronounced for the period not exceeding 1 year. During the defined period, upon becoming effective, pronounced educational recommendation can be replaced with another recommendation or cancelled.

3.3. Conclusion on level of harmonization of legal provisions on alternative measures

If we compare provisions contained in CCFBH related to implementation of alternative measures on juvenile offenders with above presented international standards, we can draw several general conclusions:

- a) CCFBH do contain provisions related to implementation of alternative measures on juvenile offenders;
- b) Alternative measures can be applied on all categories of juvenile offenders that were aged 14-18 at the time they committed an offence;
- c) Alternative measures can be applied on juvenile offenders only prior to formal criminal proceeding.

If provisions on alternative measures contained in CCFBH are subjected to an in depth analysis than it is possible to see that there are some provisions that might represent obstacles in terms of implementation of those measures. Namely, it has also been found that:

- a) Police forces can not implement alternative measures on juvenile offenders;
- b) List of possible alternatives is limited. In other words CCFBH does not contain "wide range of alternatives" that a judge or a prosecutor could implement in certain case;
- c) A judge/prosecutor can impose only one educational recommendation at the time;
- d) Judges and prosecutors can not impose all educational recommendations prescribed by CCFBH but only some of them;
- e) When deciding on which educational recommendation to impose a judge/prosecutor has to take into account interests of the offender and a victim only and not interests of the society (community);
- f) Procedure on imposition of educational recommendations is not clearly defined;
- g) No procedure for supervision of implementation of educational recommendation is prescribed;
- h) Authorities for supervisions are not defined;
- i) It is not clear how a judge or a prosecutor should proceed in case that educational recommendation is not effective or is not being applied;
- j) Duration of all educational recommendations is limited to one year, which applies to apology just as to restitution or counselling or work for some local community or humanitarian organisation.

4. Practical implementation of educational recommendations in Municipality court Sarajevo

In order to assess the level of practical implementation of educational recommendations during period 1999-2002, the questionnaire¹⁷ was distributed to 20 judges and 20 prosecutors currently working in the Municipality court Sarajevo. The intention was to better understand the way judges and prosecutors are handling juvenile cases, problems they are usually faced with and to assess the correlation between certain number of independent variables such as age, sex, marital status, parental status, working experience and level of education and certain number of independent variables primarily related to policy of imposition of educational recommendations. Unfortunately, absolutely contrary to expectations, only 12 (30%) questionnaires were returned and available for analysis. As we have only 6 (15%) usable questionnaires, it was not possible to conduct any serious form of quantitative analysis as it was planned.

The only distinction it was possible to make was the distinction between answers provided by judges and prosecutors and those relevant for the hypothesis of this research are presented in following discussions.

4.1. Policy of implementation of educational recommendations

When asked "Which educational recommendation have you imposed and how often?" judges and prosecutors responded as showed on Table 1.

¹⁷ See ANNEX 1.

Table 1.

	once	2-5 times	6-10 times	more than 10 times
Personal apology to the injured party				
Compensation of damage to the injured party				
Regular school attendance				
Working for a humanitarian organisation or local community	1 judge		1 judge	
Accepting an appropriate job			1 judge	
Being placed in another family, home or institution				
Treatment in an adequate health institution				
Attending instructive, educational, psychological and other forms of counselling				
Education in traffic regulation				

As we can see from the Table 1. judges were those who were implementing educational recommendations to some extent. It is even more interesting to note that the same judge implemented two different educational recommendations in 6-10 cases whereas the other judge implemented one and did it only once. On the other hand it is obvious that prosecutors do not implement educational recommendations on juvenile offenders, at all.

When asked to give reasons for not implementing educational recommendations prosecutors stated that they did not do it because:¹⁸

- Because there is no adequate procedure prescribed for imposition of these sanctions;
- Because there is no adequate procedure prescribed for supervision of implementation of these sanctions;
- Because no one of all prescribed recommendations was appropriate to address all the needs of the case;
- Because I had no counseling institution, local organization, humanitarian organization or families to send juvenile offender to;

When asked the same question judges stated:

- Because the offence that a juvenile committed was punishable by more than 3 years of imprisonment;
- Because I had no counseling institution, local organization, humanitarian organization or families to send juvenile offender to;
- Because single educational recommendation was not sufficient to serve the purpose of the punishment and the needs of the victim and I could not impose more than one educational recommendation;
- Because it was not in the interest of the victim.

The second conclusion, which can be drawn from the Table 1., is that only two educational recommendations, out of total of nine, are being implemented. As interviewees are stating, the nature of prescribed educational recommendations is of such nature that those simply can not be implemented in our socio-economic context. More precisely, it is impossible to impose compensation because a juvenile has no resources to do it; or, it is not possible to impose regular school attendance because a juvenile has finished primary school

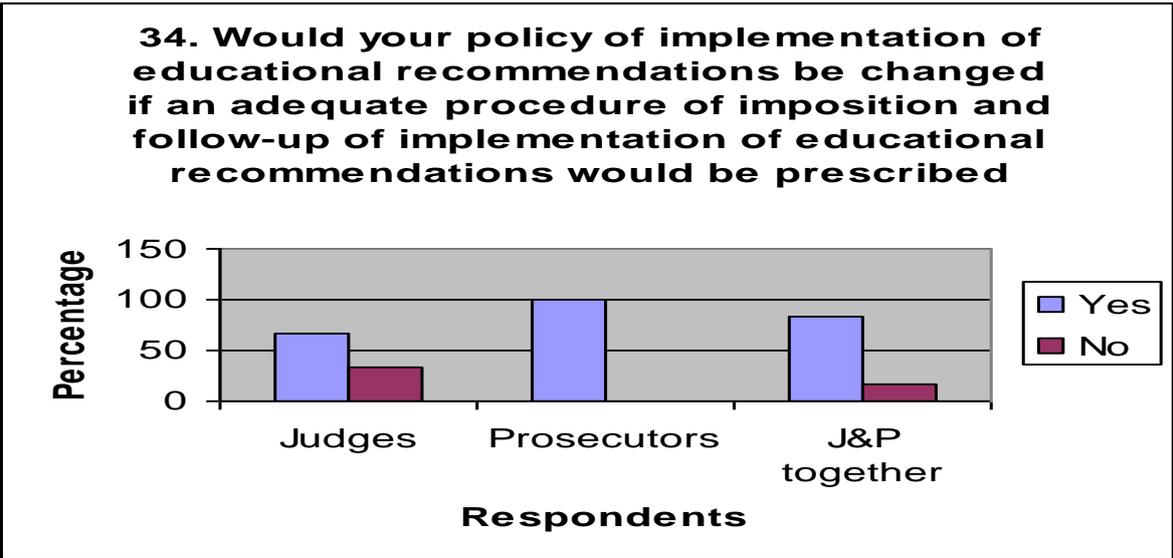
¹⁸ The exact same reasons were repeated during interviews

and, due to the fact that secondary education is not mandatory in Bosnia and Herzegovina, he was not attending a school at the time of committing an offence at all; or, due to a low socio-economic status of most families in Bosnia and Herzegovina, it is impossible to find a family that would be willing to accept a juvenile offender for parenting and educational purposes; or, institutions and other facilities for juvenile offenders are already working in full capacity so sending another juvenile (or more of them) might only cause more problems but also affect their human rights in terms of international standards related to number of persons in one room, or square meters of space per one person, volume of space per one person, etc.¹⁹

4.2. Possible changes in policy of implementation of educational recommendations

Judges and prosecutors were asked if their policy of implementation of educational recommendations would be changed if an adequate procedure of imposition and supervision of implementation would be prescribed. The answers are shown on Chart 1.

Chart 1.



¹⁹ Although I hoped for more detailed responses and explanations for low imposition rates through interviews, due to the fact that it seems I only managed to set up interviews with the same judges and prosecutors that filled the questionnaire in, semi-structured interviews, that followed the survey, did not offer any new result.

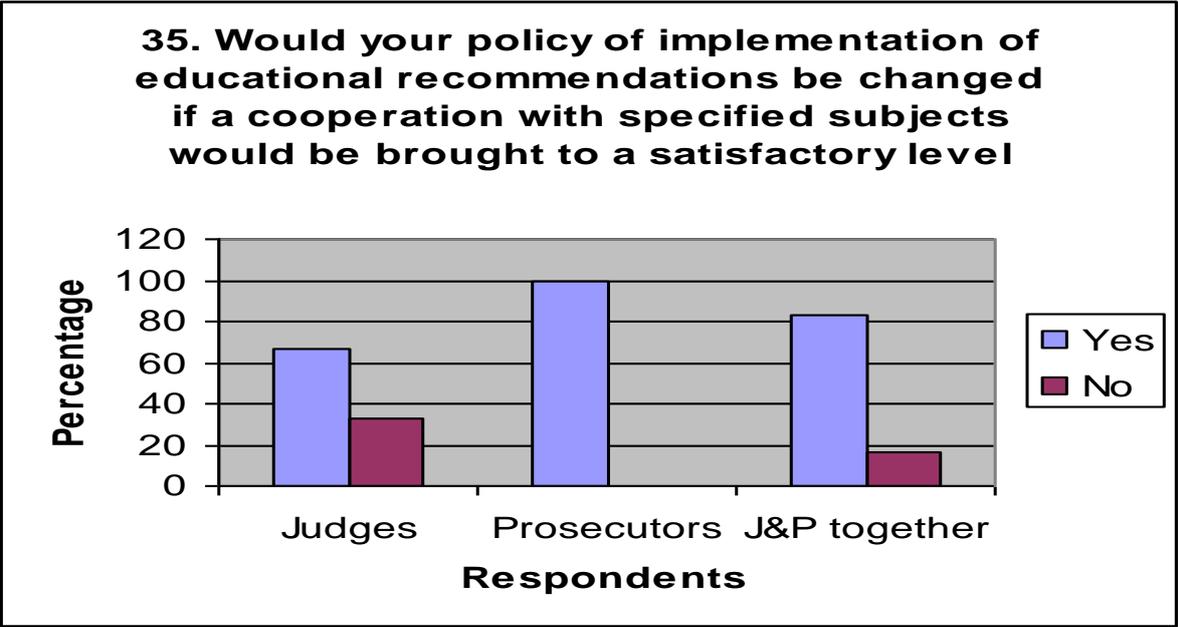
It is obvious that prosecutors would impose educational recommendations more often if the procedure would be prescribed. When it comes to judges, it should be noted that some judges would not change their policy of implementation of these measures and as they say it is because they do not believe that educational recommendations could be effective in BiH socio-economic context.²⁰

General conclusion here could be that almost all judges and prosecutors would change their policy of implementation of these alternative measures if adequate procedures of imposition and supervision would be prescribed. As our interviewees unanimously confirmed, it is due to the fact that they are all educated within traditional criminal justice system based on legitimacy, legality and rule of law. In other words, if judges and prosecutors are not absolutely sure who, when and how will be implementing, monitoring and following up any sanction they will be extremely reluctant to implement that sanction. When asked to explain the fact that some judges still implement educational recommendations, interviewees noted that it happens on rare occasions and in those cases where judges are most probably sure that a recommendation will be properly implemented even without (formally prescribed) monitoring. One judge said that s/he usually asks centre for social work to monitor a process of implementation and to report on progress on a regular basis. However, the same judge stressed that it is not centre's obligation defined by a law, but its employees do it as a display of good will.

²⁰ Although we hoped for clarification on the issue of non applicability of educational recommendations in socio-economic context in Bosnia and Herzegovina, interviews did not offer us any new insights. Most probably because we talked with judges that do not share the opinion that educational recommendations could not be effective in BiH socio-economic context.

When asked if their implementation policy would be changed if satisfactory level²¹ of cooperation²² with specified subjects²³ would be established judges and prosecutors responded as shown on Chart 2.

Chart 2.



Again, just as it was the case with lacking procedure, judges and prosecutors responded with the same attitude. Speaking about cooperation with the specified subjects, it should be noted that all judges and all prosecutors clearly stated that level of cooperation is not on a satisfactory level. When asked who should be in charged of improving the existing level of cooperation, all judges and prosecutors stated that it should be improved as the result of joint work of judges, prosecutors, lawyers (attorneys), Ministry of Justice, Ministry of Work, Social Policy, Displaced persons and Refugees, Government of the Canton Sarajevo, local community, humanitarian organizations, institutions for psychological or educational

²¹ “Satisfactory level” means that there are resources and infrastructure available and imposition of educational recommendation depend on the nature of the crime and characteristics of a juvenile offender.

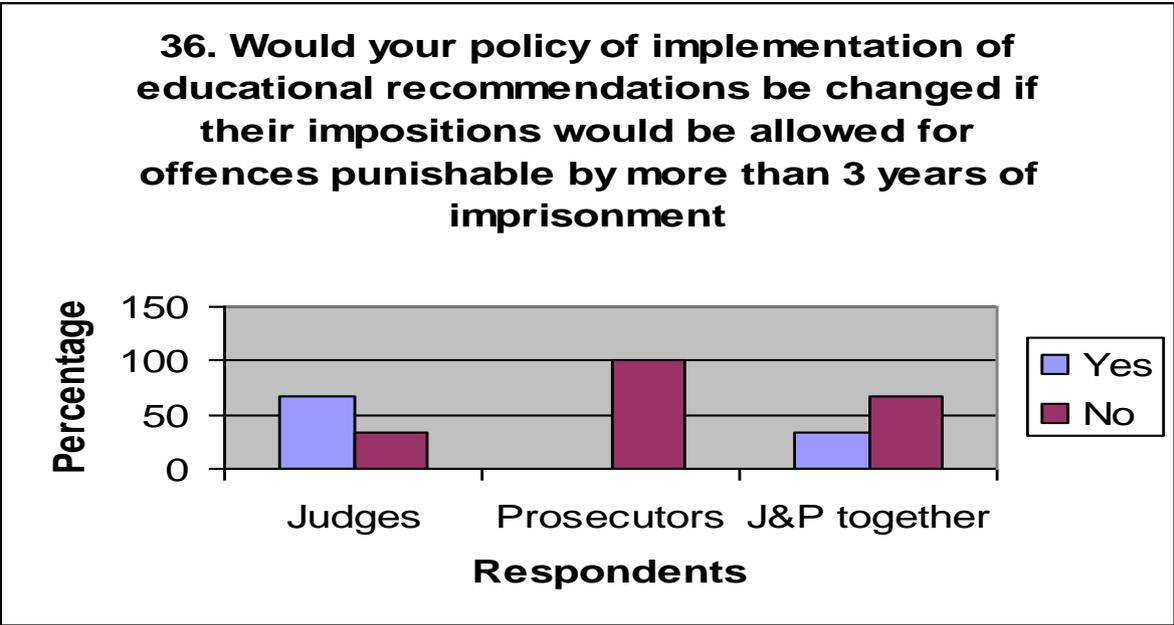
²² “Cooperation” means any form of joint work on solving a problem of juvenile crime

²³ Local community, humanitarian organizations, institutions for psychological counselling, institutions for educational counselling, schools, juvenile offenders, juveniles' parents/guardians, victims

counselling, schools, etc. which shows that they do understand that response to juvenile crime should be much more coordinated and should involve all members of a broader community and not just institutions of criminal justice system.

When asked if their implementation policy would have been changed if imposition of alternative measures would not be limited only to offences punishable by fine or up to three years of imprisonment judges and prosecutors responded as shown on Chart 3.

Chart 3.



As we can see from the Chart 3. it seems that two thirds of all judges and prosecutors think that alternative measures should be applied only in exceptional cases when an offence punishable by fine or up to three years of imprisonment is committed. Unfortunately, this attitude is contrary to standards contained in international legal instruments which require that alternative measures should be used in all cases where it is appropriate or better to say where custodial sentences are not necessary. In other words, it seems that judges and prosecutors that are dealing with juvenile offenders do need some additional education on principles and philosophy related to implementation of alternative (diversionary) sanctions embodied within the international legal framework that regulates this issue.

5. Recommendations and possible solutions to identified problems

The research I conducted showed that there are quite a few problems that influence the rate of imposition of educational recommendations in Sarajevo. Although those problems are multidimensional and complex, it is my opinion that they all can be divided into three main categories, namely:

- problems related to legal provisions;
- problems related to the lack of cooperation between various stakeholders in juvenile crime;
- problems related to specific education of those in charge of implementation educational recommendations.

In further discussions I will present detailed recommendations for overcoming these problems.

5.1. Recommendations and possible solutions for legislative changes

The analysis of international standards related to implementation of alternative sanctions on juvenile offenders and its comparison to existing criminal code and criminal procedure code in Federation of Bosnia and Herzegovina showed that there are some inconsistencies between them that have to be harmonized. Therefore we deem that CCFBH and CPCFBH should be amended as to accomplish standards contained in international legal instruments related to alternative measures in order to:

- a. Clearly define the purpose of educational recommendations;

- b. Allow imposition of educational recommendations for more severe offences if the case is of a such nature and gravity that alternative measure will improve likeliness of juvenile not re-offending;
- c. Define a wider list of alternative measures and make possible for both a judge and a prosecutor to impose any of them;
- d. Allow imposition of more than one educational recommendation if needs of a case require so;
- e. Clearly define procedure for imposition of educational recommendations;
- f. Clearly define procedure of supervision of implementation of educational recommendations;
- g. Clearly define authorities in charge of supervision and their powers
- h. Clearly define procedures in case that imposed educational recommendation did or did not become effective (implemented).

5.2. Recommendations and possible solutions for problems related to the lack of cooperation between various stakeholders in juvenile crime

Apart from legislation related problems, the research identified that low imposition rate of educational recommendations is also due to considerable lack of cooperation between some of the most important stakeholders in juvenile crime. In this respect, local community, humanitarian organizations, institutions for psychological counselling, institutions for educational counselling, schools, juvenile offenders, juveniles' parents/guardians and victims are considered to be stakeholders. It is my opinion that cooperation between all stakeholders should be initiated through public awareness campaigns about problems of juvenile delinquency in the first place. Than, assuming that public appreciates complexity of the

problem and the need for its immediate solving, some formal group of representatives of all stakeholders would be established. The mandate of the group would be to screen possibilities of all stakeholders and their capacities to get involved in implementation of educational recommendations by simple use of existing resources without additional investments. Once the capacities are discovered, judges, prosecutors and social workers would be informed and those capacities would be adequately used.

5.3. Recommendations and possible solutions to problems related to specific education of those in charge of implementation educational recommendations

Although some of respondents said they did attend some additional education related to criminal law reforms related to new approaches to solving a problem of juvenile delinquency, I can not help noticing that most of them do not understand the philosophy that is behind educational recommendations which can be summarised as “away from exclusionary punitive justice towards inclusionary restorative justice capable of recognising the social context in which crime occurs and should be dealt with”.²⁴ Therefore, it is my opinion that acting judges and prosecutors should be attending additional education on psychology and sociology of juveniles and juvenile crimes but also on on-going developments and trends in solving the problem of juvenile crime. This kind of education could easily be organized through intensive cooperation between courts, prosecutors’ offices, or their respective professional association, and universities in Bosnia and Herzegovina by using experiences and professional knowledge of their colleagues from other countries that undergone the same reform some years ago.

²⁴ Muncie, J., *Youth and Crime: A Critical Introduction*, London, SAGE, 2000, p. 14

ANNEX 1. Questionnaire



National Policy Fellowship Program

Research project

“Implementation of educational recommendations on juvenile offenders by judges and prosecutors of the Municipality court Sarajevo during period 1999-2003”

funded by Open Society Fund Bosnia and Herzegovina

QUESTIONNAIRE

Dear Participant,

with your participation you are becoming a part of a Research project on practical implementation of educational recommendations on juvenile offenders. This questionnaire is being distributed to your colleagues judges and prosecutors currently working in Municipality Court Sarajevo. In order to enhance discussion on problems related to practical implementation of these alternative sanctions for juvenile offenders we need to know more about legal preconditions and prescribed procedures for imposition of these measures.

Your answers will be considered confidential and will be treated as such. Your participation in this project will also be treated as confidential.

In order to answer to most of questions, in most cases, it is enough to write "x" in little circle next to an answer. You are not obliged to answer to all questions. However, in order to improve the quality of this research project, we kindly ask you to answer to as many questions as possible. Filling this questionnaire will take you approximately 15 minutes.

We are very grateful for willingly taking part in this research project.

1. *Sex of a judge/prosecutor*
 - male
 - female

2. *Age of a judge/prosecutor;*
_____ (please write your ages)

3. *Marital status of a judge/prosecutor;*
 - married
 - not married
 - divorced
 - separated

4. *Parental status of a judge/prosecutor;*
 - Do not have kids
 - have kids, at least one of them a juvenile
 - have adult kids

5. *Years of working experience of a judge/prosecutor;*
_____ (please specify years of working experience as a judge/prosecutor)

6. *Years of working experience with juvenile offenders of a judge/prosecutor;*
 - I have no experience in working with juvenile offenders
 - Yes, I work(ed) with juvenile offenders for _____ years (please specify years of working experience with juvenile offenders as a judge/prosecutor)

7. *Education of a judge/prosecutor;*

- finished school of law only
- finished school of law and started/finished master studies
- finished school of law and attended additional education on criminal law reforms related to juveniles (seminars, workshops, conferences, specific training, etc)
- finished school of law and attended additional education on criminal law reforms related to juveniles (seminars, workshops, conferences, specific training, etc) and started/finished master studies

8. *Active (reading, writing and active communication skills) knowledge of foreign languages (English, French, German) by a judge/prosecutor;*

- yes
- no

A few questions about juveniles' crime

9. What types of criminal offences are usually committed by juveniles?

- Criminal offences against public order and legal transactions
- Criminal offences against administration of justice
- Criminal offences against property
- Criminal offences against safety of public transportation;
- Criminal offences against life and limb

10. What category of offences are usually committed by juvenile offenders

- Offences punishable by fine or up to 1 year of imprisonment
- Offences punishable by up to 3 years of imprisonment
- Offences punishable by more than 3 years of imprisonment

11. How often juveniles commit following criminal offences:

	never	rarely	often	very often
Murder				
Heavily bodily injury				
Light bodily injury				
Participation in a fight				
Violent behaviour				
Theft				
Aggravated theft				
Robbery				
Burglary				
Extortion				
Damaging other's property				

12. Have you ever had the opportunity to work on a case where a juvenile offender was recidivist?

- No
- Yes, in less than five cases
- Yes, in five to ten cases
- Yes, in more than ten cases

13. Have you ever had the opportunity to work on a case that involved more than one juvenile offender?

- No
- Yes, in less than five cases
- Yes, in five to ten cases

- Yes, in more than ten cases

14. Have you ever had the opportunity to work on a juvenile case that involved violent behaviour of a juvenile offender?

- No
- Yes, in less than five cases
- Yes, in five to ten cases
- Yes, in more than ten cases

15. During period 1999-2003, have you ever had a case suitable for imposition of an educational recommendation on a juvenile offender?

- No (go to the question No. ____)
- Yes, in less than five cases
- Yes, in five to ten cases
- Yes, in more than ten cases

16. During period 1999-2003, have you ever imposed an educational recommendation on a juvenile offender?

- No (go to question No. 17)
- Yes, in less than five cases (go to question No. 18)
- Yes, in five to ten cases (go to question No. 18)
- Yes, in more than ten cases (go to question No. 18)

17. Why didn't you impose an educational recommendation on a juvenile offender although you had a suitable case? (multiple answers possible)

- Because the offence that a juvenile committed was punishable by more than 3 years of imprisonment;
- Because the offender did not want to admit that s/he committed the offence
- Because the offender did not express his willingness to make amends with the victim
- Because no one of the prescribed recommendations was appropriate to address all the needs of the case
- Because I had no counseling institution, local organization, humanitarian organization or families to send juvenile offender to
- Because I do not believe that educational recommendations are soft on juveniles and they can not serve the purpose of the punishment (they are missing retributive elements)
- Because there is no adequate procedure prescribed for imposition of these sanctions
- Because single educational recommendation was not sufficient to serve the purpose of the punishment and the needs of the victim and I could not impose more than one educational recommendation
- Because the offender was not able to pay restitution to the victim.

18. Which educational recommendation have you imposed and how often?

	once	2-5 times	6-9 times	more than 10 times
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 an appropriate job				
Being placed in another family, home or institution				
Treatment in an adequate health institution				
Attending instructive, educational, psychological and other forms of counselling				
Education in traffic regulation				

19. Have you ever imposed more than one educational recommendation on the same offender for the same offence?

- Yes
- No, because it was not necessary;
- No, because it is not allowed by the Criminal Code;

20. When it comes to imposition of educational recommendations in Canton Sarajevo, do you think that there is a satisfactory level²⁵ of cooperation²⁶ between a criminal justice system and a local community?
- Yes (go to question No. 22);
 - No.
21. Who should be in charged of improving existing level of cooperation with local community;
- Judges;
 - Prosecutors;
 - Lawyers (attorneys)
 - Ministry of Justice
 - Ministry of Work, Social Policy, Displaced persons and Refugees
 - Government of the Canton Sarajevo
 - All together
22. When it comes to imposition of educational recommendations in Canton Sarajevo, do you think that there is a satisfactory level²⁷ of cooperation²⁸ between a criminal justice system and humanitarian organizations?
- Yes (go to question No. ____);
 - No (go to question No. ____)

²⁵ “Satisfactory level” means that there are resources and infrastructure available and imposition of educational recommendation depend on the nature of the crime and characteristics of a juvenile offender.

²⁶ “Cooperation” means any form of joint work on solving a problem of juvenile crime.

²⁷ “Satisfactory level” means that there are resources and infrastructure available and imposition of educational recommendation depend on the nature of the crime and characteristics of a juvenile offender.

²⁸ “Cooperation” means any form of joint work on solving a problem of juvenile crime.

23. Who should be in charged of improving existing level of cooperation with humanitarian organizations;

- Judges;
- Prosecutors;
- Lawyers (attorneys)
- Ministry of Justice
- Ministry of Work, Social Policy, Displaced persons and Refugees
- Government of the Canton Sarajevo
- All together.

24. When it comes to imposition of educational recommendations in Canton Sarajevo, do you think that there is a satisfactory level²⁹ of cooperation³⁰ between a criminal justice system and a *institutions or organizations for psychological counselling*?

- Yes (go to question No. ____);
- No (go to question No. ____)

25. Who should be in charged of improving existing level of cooperation with *institutions or organizations for psychological counselling*;

- Judges;
- Prosecutors;
- Lawyers (attorneys)
- Ministry of Justice
- Ministry of Work, Social Policy, Displaced persons and Refugees
- Government of the Canton Sarajevo
- All together.

²⁹ “Satisfactory level” means that there are resources and infrastructure available and imposition of educational recommendation depend on the nature of the crime and characteristics of a juvenile offender.

³⁰ “Cooperation” means any form of joint work on solving a problem of juvenile crime.

26. When it comes to imposition of educational recommendations in Canton Sarajevo, do you think that there is a satisfactory level³¹ of cooperation³² between a criminal justice system and a *institutions or organizations for educational counselling*?

- Yes (go to question No. ____);
- No (go to question No. ____)

27. Who should be in charged of improving existing level of cooperation with *institutions or organizations for educational counselling*;

- Judges;
- Prosecutors;
- Lawyers (attorneys)
- Ministry of Justice
- Ministry of Work, Social Policy, Displaced persons and Refugees
- Government of the Canton Sarajevo
- All together.

28. When it comes to imposition of educational recommendations, do you think that there is a satisfactory level³³ of cooperation³⁴ between a criminal justice system and a *schools*?

- Yes (go to question No. ____);
- No (go to question No. ____)

³¹ “Satisfactory level” means that there are resources and infrastructure available and imposition of educational recommendation depend on the nature of the crime and characteristics of a juvenile offender.

³² “Cooperation” means any form of joint work on solving a problem of juvenile crime.

³³ “Satisfactory level” means that there are resources and infrastructure available and imposition of educational recommendation depend on the nature of the crime and characteristics of a juvenile offender.

³⁴ “Cooperation” means any form of joint work on solving a problem of juvenile crime.

29. Who should be in charged of improving existing level of cooperation with *schools*;

- Judges;
- Prosecutors;
- Lawyers (attorneys)
- Ministry of Justice
- Ministry of Work, Social Policy, Displaced persons and Refugees
- Government of the Canton Sarajevo
- All together.

30. When it comes to imposition of educational recommendations, do you think that there is a satisfactory level of cooperation³⁵ between a criminal justice system and offenders

- Yes (go to question No. _____)
- No (go to question No. ____)

31. When it comes to imposition of educational recommendations, where do you see the reason for the satisfactory level of cooperation on the side of juvenile offenders

- to avoid more severe penalties
- To honestly do something in order to make amends with an injured party
- Both

³⁵ “cooperation” means that juvenile offender expressed interest for the participation in solving a problem created by a criminal offence s/he committed.

32. When it comes to imposition of educational recommendations, do you think that there is a satisfactory level³⁶ of cooperation³⁷ between a criminal justice system and a *parents or guardians of a juvenile offender*?

- Yes (go to question No. ____);
- No (go to question No. ____)

33. When it comes to imposition of educational recommendations, do you think that there is a satisfactory level³⁸ of cooperation³⁹ between a criminal justice system and victims (injured parties)?

- Yes;
- No

34. Would your policy of implementation of educational recommendations be changed if an adequate procedure of imposition and follow-up of implementation of educational recommendations would be prescribed;

- No, because I do not think that better procedure is needed;
- No, because I do not believe that educational recommendations can be effective in B&H context;
- No, because I think that educational recommendations are not punitive enough;
- Yes, I think that I would probably impose educational recommendations more often;
- Yes, I would definitely impose educational recommendations more often.

³⁶ “Satisfactory level” means that there are resources and infrastructure available and imposition of educational recommendation depend on the nature of the crime and characteristics of a juvenile offender.

³⁷ “Cooperation” means any form of joint work on solving a problem of juvenile crime.

³⁸ “Satisfactory level” means that there are resources and infrastructure available and imposition of educational recommendation depend on the nature of the crime and characteristics of a juvenile offender.

³⁹ “Cooperation” means any form of joint work on solving a problem of juvenile crime.

35. Would your policy of implementation of educational recommendations be changed if a cooperation with all above stated subjects⁴⁰ would be brought to a satisfactory level?

- no, because I think that there is a satisfactory level of cooperation
- No, because I do not believe that educational recommendations can be effective in B&H context;
- No, because I think that educational recommendations are not punitive enough;
- Yes, I think that I would probably impose educational recommendations more often;
- Yes, I would definitely impose educational recommendations more often.

36. Would your policy of implementation of educational recommendations be changed if their impositions would be allowed for offences punishable by more than 3 years of imprisonment;

- No, because I think that educational recommendations should be imposed only if minor offence (fine or up to 3 years of imprisonment) is committed;
- No, because I do not believe that educational recommendations can be effective in B&H context;
- No, because I think that educational recommendations are not punitive enough;
- Yes, I think that I would probably impose educational recommendations more often;
- Yes, I would definitely impose educational recommendations more often.

⁴⁰ Local community, humanitarian organizations, institutions for psychological counselling, institutions for educational counselling, schools, juvenile offenders, juveniles' parents/guardians, victims

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