

COMPARATIVE ANALYSIS ON THE LEGISLATION PERTAINING TO PROTECTION FROM VIOLENCE AGAINST CHILDREN BETWEEN OUR AND COUNTRIES WITH CONTEXTUAL SIMILARITIES



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ABBREVIATIONS

LJC -Law on Justice for Children

LPPAD -Law on Prevention and Protection against discrimination

NGO – Nongovernmental organization

Law on Free Legal Aid -LFLA

ACCMIS–Advanced Court Case Management and Information System

LJCO -Law on Juvenile Criminal Offenders and Criminal-Legal Protection of Juveniles¹ from 2005

EI–Educational Institutions

JCA - Juvenile Courts Act

CPC - Code on Criminal Procedure

LPC - Law on Protection and Treating Children and Minors in Criminal Procedure

CPA – Criminal Procedure Act

PEA -Primary Education Act

CCP - Criminal Code of Procedure

CC- Criminal Code

¹Law on Juvenile Criminal Offenders and Criminal Legal Protection of Juveniles¹ (Закон о малолетним учиниоцима кривичних дела и кривично правној заштити малолетних лица), Official Gazette RS no. 85/2005.

EXECUTIVE SUMMARY

Raising children in a violence-free social environment where they have all prerequisites for normal childhood and proper development is one of the most essential societal questions. However, this question is often avoided by the authorities. The children, as most vulnerable group, are in a very unenviable situation. It is strikingly scary that regardless of the efforts put into enabling an international and national legal framework that will enhance the position of the children and allow them to grow in a healthy environment, they still face all types of violence on daily basis. History has shown that regardless of efforts made in an attempt to improve the national and international frameworks regarding legal protection of children, the general environments in which the average child finds themselves, is still one of violence and trauma. This trauma has reverberating effects beyond the children, effecting society on a larger scale, and dictating future trauma for generations to come. Once again, history shows that a generation raised in the crucible of violence will continue the sequence resulting in a never ending cycle of violence.

Primary, this analysis has been completed with a specific concentration on the detection of gaps within the national legal system in direct reference to the protection of children against violence. Additionally, this research has attempted to find mechanisms by which improvements can be made through identification of best practices in the legislation of other countries. By using several strategies and methods including desk research and a combination of descriptive and comparative methods, this analysis aims to bridge the gap between the current legislation and the desired functional system that will enable effective criminal justice protection of children victims of violence. The information used in the analysis was collected by conducting semi-structured interviews with relevant practitioners and through secondary sources of data (Available and published reports, statistical information etc.). Sectors on which the research was focused are: education, social work, criminal justice and health care.

The **general findings** from reviewing the national legislation demonstrate that: 1) there are divergent definitions in the legislation regarding what constitutes violence against children or children victims of violence; and 2) there is no definition or guidelines on how to interpret “the best interest of the child principle” within the national legislation.

In the **area of education**, the research team revealed that: 1) there is lack of a cooperation and coordination between the educational institutions and the centers for social work related to reporting of children victim of violence, as well as a lack of care and support for the victims who do find the means by which to report their distress. These problems arise due to ambiguities in the national legislation which act as an obstruction for the needed institution of aid; 2) there is lack of clear and precise criteria for assessing if a certain case requires referral to other institutions; and 3) there is lack of clear guidelines and criteria for identifying and addressing bullying and psychological violence, as well as a shocking lack of established criteria for how to handle the ever growing realm of online “cyber-bullying.”

In the **area of social work** the following issues were identified: 1) there are different protocols and competent bodies that regulate the procedure for addressing the different forms of violence against children however, the excessive number of regulatory instantiations within this field creates a confusion which often impedes the work of the social services.; 2) there is insufficient information flow amongst the Centers for Social Work and other institutions involved in the procedures for protection of child victims of violence; and 3) there is not always 24/7 availability

of the social workers, which in certain cases results in prolongation of the procedure in which the child victim should give a statement.

In the area of **health care** protection the following was identified: 1) insufficient coordination between the health care institutions and the other relevant sectors (centers for social work, police); 2) valid legislation (Laws, bylaws/soft laws) are rarely applied in practice; 3) required medical expertise in cases of violence against children is conducted by health care workers that lack experience in working with children that leads to multiple examination of the child victim; 4) the health care workers rarely report cases of violence due to the burden of responsibilities in their everyday work.

In the **criminal justice system** the research team detected that: 1) in the criminal cases where the victims of violence are children, the perpetrators are adults, and the cases are tried by general judges and panels, there is no special requirement for judges and panels to have any specialization in the area of rights of the child; 2) the access to legal counsel for the children victims of violence living in poverty is restricted in all phases of the procedure; 3) the overall level of awareness among the judges and prosecutors for the protection of children victims of violence, and child friendly justice system, is simply insufficient; 4) there is no separate registry for the cases related to violent criminal acts against children within the public prosecution; 5) the principle of only one hearing of the child victim of violence in the whole criminal procedure is not fully implemented in practice; 6) the right of the children victim of violence for indemnification claim is severely burdened in practice; 7) the vast majority of courts and public prosecution offices do not possess the necessary technical equipment, nor are their buildings properly adapted in accordance with the standards needed for full implementation of the special measures for procedural protection of the children victims and children witnesses; and 8) the same gender rule when child victims of specific violent acts are providing statements is not always strictly followed as it should be.

By assessing and comparing the legislation in six other jurisdictions – **Serbia, Croatia, Bosnia and Herzegovina, Slovenia, Netherlands and the United Kingdom** – the following recommendations were ascertained:

- The criminal cases where children are victims and/or injured parties of specific violent criminal acts should be processed and tried by a specialized juvenile judges and panels;

The Law on Justice for Children (hereinafter the LJC) must be aligned with the Law on Free Legal Aid with regards to the rights to free legal aid for children victims and/or injured parties of violent criminal act;

- There must be a full implementation and adherence to the *one hearing principle* when examining the children victims and injured parties of violent criminal acts;
- There needs to be a definition of the principle of “best interest of the child” and subsequently this principle must be included in all regulations relevant to child protection;
- Including a specific provision in the Criminal Procedure Code for establishing an obligation for the professionals to report a violent act to the public prosecutor, and avoiding to do so should be sanctioned;
- Amendments to the Laws on primary and secondary education where more provisions regarding protection of children against violence should be included;
- The option and availability of hiring expert advisors such as social workers, pedagogues and psychologist within the courts and public prosecutors should be made available to victims and their families; and

- The scope of the types of violence should be clearly and unambiguously defined.

The vulnerability of the children as a group and the seriousness of the problem that lays before us, urges that not another day should be wasted for taking a step for improving the system for protection of children against violence.

INTRODUCTION

The Constitution awards special protection to children. Stipulated clearly in Article 42, the State is bound to establish and maintain a system that protects and affirms the rights and interests of the children. The special status requires protection to the both physical and moral integrity of children. This protection includes but is not limited to protection from all forms of violence. Still, in day to day practice, children are exposed to violence in their family environment, at school, while engaging in sports, and even in online interaction. Violence can take various forms, from 'physical or mental violence, injury and abuse, neglect or negligent treatment, [to] maltreatment or exploitation, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child². In terms of consequences, maltreatment creates 'long-term physical, sexual, psychological, and behavioral effects and can delay or prevent a child's normal physical, psychological, emotional, and social development³.

The State protects children from violence by: prompt identification and sanction of perpetrators of crimes (through the criminal justice system) and protection and assistance to the victims (through the social welfare and the healthcare system). Given the interconnectedness of a variety of systems that provide children's protection from violence, there is an evident need for precise, applicable and harmonized legislation that ensures effective and apt fulfillment of the stated goals. The degree to which the national legislation deals with the challenge of coherence and consistency is well documented in UNICEF's 'Assessment of the legislation pertaining to violence against children' from 2013.⁴

Key problems that require a proper intervention include the following: (i) lack of clear distinction between all forms of violence and practice of inconsistent and confusing terminology (ii) lack of harmonization of the sanctions regarding different forms of violence (for ex. the Law on Primary Education and the Law on Secondary Education sanction physical and psychological violence against a student, but not sexual violence or neglect) (iii) lack of definitions that operationalize key principles such as 'in the best interest of the child', 'threshold of harm', 'inter-institutional cooperation and coordination'; (iv) inconsistent and unclear procedures for reporting violence (for ex. the Law on Social protection, the Law on Primary Education and the Law on Secondary Education require for a different procedure to be followed).

The obvious legislative shortcomings need to be promptly addressed if the State is truly committed in protecting one of its most vulnerable demographics. The initial step forward should be taken by amending or supplementing existing legislation and accordingly adopting any legislation which is deemed to be appropriate. Given the global prevalence of the phenomenon of

²Convention on the Rights of the Child

³Kydd J, 'Preventing Child Maltreatment: An Integrated, Multispectral Approach' (2003) 6 Health and Human Rights, p. 38.

⁴https://www.unicef.org/tfyr Macedonia/ASSESSMENT_OF_LEGISLATION_-_VaC_FINAL_.pdf

childhood trauma due to an exposure to violence, one should look for good legislative practices that are applicable to the local context.

METHODOLOGY

a. Purpose of the Analysis

While there are various studies that critically assess the national legislation pertaining to violence against children, there is little guidance on how to overcome detected challenges. By identifying positive comparative practices in the legislation regulating the system of protection of children from violence, this study seeks to provide the much-needed assistance in the process of reform. The analysis seeks to identify good practices in shaping the criminal justice approach to the problem; the role of the educational and health institutions in identifying and referring cases of suspected violence against children; effectiveness of measures of protection prescribed by law including those accessible to children under institutional protection; assessing if the system of inter-institutional cooperation is all-encompassing.

The comparative analysis will focus on countries that are comparable with our country given the similarity in the legal tradition, and countries recognized for their good practices. The conclusions from the analysis will be used as a baseline for further consultations with key stakeholder and preparation of recommendations and draft amendments to the legislation. If accepted, these practices will significantly improve the quality of the legal protection from violence against one of the most vulnerable groups in the society, the children.

b. Research question

How do Serbia, Croatia, Federation of Bosnia and Hercegovina, Slovenia, United Kingdom and Netherlands distinguish various forms of violence against children; harmonize the type and severity of sanctions for different forms of violence against children; define key principles such as ‘in the best interest of the child’, ‘threshold of harm’, ‘inter-institutional cooperation and coordination’; and provide consistent institutional procedures for reporting , referring and prosecuting cases of violence against children?

c. Used definitions

Violence: All forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.⁵

Children: Anyone under the age of 18.

d. Research Objectives

The analysis aims to achieve the following research objectives:

- (i) To critically assess the relevant national legislation pertaining to protection of children victims of violence, to identify ‘gaps’ and ‘ambiguities’ in the law/s and to examine consistency, coherence and stability of the law/s;
- (ii) To analyze relevant legislation pertaining to protection of children victims of violence from both, countries with contextual similarities with our country, and countries with well-developed system for protection of children victims of violence and to identify best practices applicable to the national context;

⁵<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, Article 19 from CRC

- (iii) To propose reforms in the national legal system regulating means and procedures for prevention and protection from violence against children based on the comparative analysis' conclusions.

e. Countries in focus of the comparative analysis

Given the historical, cultural and socio-economic commonalities that have significantly shaped the legal systems of the countries of ex-Yugoslavia the research team selected Slovenia, Croatia, Serbia and the Federation of Bosnia and Hercegovina. Two of these countries are already members of the European Union while the other two are applicants. The criminal justice and social welfare system of these countries have common history and their child justice system where subject to reforms. Therefore insight into their legislation could help us to identify legislative solutions that could be applicable in the country.

On the other hand, in order to identify best practices from the more advanced systems for protection of children victims of violence, the team selected United Kingdom and the Netherlands to be used as reference points in this analysis, as they are countries with good practices on the issues at hand. In comparative legal analysis, however, knowledge of the language is considered to be of paramount importance, so inclusion of the said countries (Netherlands) depends on the availability of documents on a language that is known to the research team.

f. Types of sources and data collection

Both primary and secondary sources will be used in the analysis, each of them described in further detail.

- **Primary Sources - Semi-structured Interviews with Practitioners**

The research team⁶ in the period between October 2016 and January 2017 conducted 11 in-depth interviews with practitioners from institutions mandated to provide detection, protection, and prosecution of cases of violence against children. More precisely, the team interviewed: two juvenile delinquency inspectors; one psychologist in a high school; one school counselor in primary school; one judge; one public prosecutor; two social workers; one psychologist working in social services; one social worker; and one head of department within the Institute for Social Activities. The research team used the general interview guide approach, as it gives freedom to explore, probe and ask questions deemed interesting to the researcher.

The topics covered revolved around recognizing different forms of violence against children, knowledge of legal procedures in processing such cases, and attitudes towards interagency cooperation. In terms of research limitations, one should be cautious in interpretation of the findings. They should serve as an indication rather than representation.

- **Secondary Sources**

Secondary sources further consulted include already published findings from relevant researches and analysis, reports from state institutions, civil society and international organizations. See bibliography list for further details.

g. Methods used in the analysis

Secondary (Desk) Research Method - This strategy is recognized as a practice in legal research as it builds on already available research, and other types of primary sources such as legal acts and strategic policy documents. In practical terms, secondary research 'involves the summary,

⁶The interviews were conducted by Marija Mirchevska. The interviewed practitioners signed a consent form for the conducted interview.

collection and/or synthesis of existing research for a literature review rather than primary research, where data is collected from research subjects or through the conduct of experiments⁷.

Descriptive Research -The descriptive research 'designates the state of affairs as it exists at present. It merely describes the phenomenon or situation under study and its characteristics⁸. This method does not get into the causes of the phenomenon or situation. The study will describe the institutional structure and competences of different levels of authority, as prescribed by law. Tools of visual representation such as organograms, schemes, and info-graphics are used for the purpose of illustrating the dynamics of the process. The descriptive research uses variety of methods including 'comparative and co-relational methods⁹.

Comparative Method - After describing the state of affairs, the study will use the comparative method to 'find parallels from other jurisdictions¹⁰. The comparative method will provide comparison between the previously identified and described laws in the countries of interest, and thus latterly compare these findings to the currently existing laws and regulations in the country. This study will use a combined approach utilizing both the functional and the structural method of legal comparative research. The functional method is used in an attempt to conduct comparative analysis looking at the actual social problem and the way this is solved in different jurisdictions among similar or different systems and with similar or different results¹¹. On the other hand, the structural method will provide an insight in the ways in which individual norms and laws are integrated in the broader system. Indicators for comparison might include the following, inter alia:

- the existence of a single law that regulates violence against children vis-a -vis multiple laws;
- prevalence of punishment over prevention as a criminal justice strategy; types of institutional competences;
- the level of regulation (laws or bylaws);
- The scope of regulation (broad or detailed) etc.

h. Applicability of the analysis

Looking across the border is a commonly used method whenever attempts are made to improve one's own domestic legal system in particular issues of interest. However, 'importing rules and solutions from other legal systems may not be applicable because of the different context. Hence, a more thorough contextual approach may be required¹². Contextual analysis can be done through historical, socio-economic, and cultural comparison between the countries at stake. Even if the contextual requirement is met, adoption of such legislation should not by definition be seen as desirable. One should assess how the particular rule works in practice, before making the conscious choice of adopting it.

i. Research Limitations

This analysis focuses on the legislative framework that regulates the legal approach in the treatment of violence against children. Factors that influence prevalence of violence as a wider societal phenomenon outside of the legal system shall not be addressed by this study.

⁷Watkins, D., Burton M. *Research Methods in Law* (Routledge 2013) p.13.

⁸Vibhute K, Aynalem F., *Legal Research Methods* (Justice and Legal System Research Institute 2009) p.16.

⁹Ibid.

¹⁰Ibid p. 32.

¹¹Hoecke, M. 'Methodology of Comparative Legal Research' (2015) *Law and Method*, p.28

¹²Ibid, p.3.

PART 1

Identification and overview of the legislative ‘gaps’ with regards to the protection of children victims of violence in the country

1.1 Overview of legislative acts pertaining to the protection of children victims of violence

Violence against children is addressed in several laws, directly or indirectly. With regard to children’s protection from ‘all forms of violence’, criminal responsibility is prescribed for a variety of acts as defined in the **Criminal Code**, that criminalizes variety of acts that refer to physical or mental violence and neglect in general.

Sexual abuse and exploitation is regulated in significant depth. The following acts are separately criminalized: rape; sexual assault; sexual assault upon a child who has not turned 14 years of age; incest; displaying pornographic material to a child; production and distribution of children pornography, and enticing a child who has not yet turned 14 to sexual assaults or other acts; and mediation in prostitution.

It is important to note that a person is subjected to criminal responsibility in cases of **false reporting of a crime** i.e. where the person reporting is aware that the person reported is not the offender; where the person reports himself/herself for a crime that he/she has not committed; when the person plants traces or objects of a crime as to initiate an investigation against a person who he/she knows is not the offender and for reporting a crime which he knows has not been committed.

In terms of the **penal policy**, domestic violence is considered an aggravating factor, which means that either a more severe punishment is prescribed when the criminal act is done in the course of domestic violence or the minimum sentence is higher. To illustrate the stated, for the act of murder, a person shall be sentenced to at least 5(five) years imprisonment. If an individual deprives another person of life by committing domestic violence, the length of the imprisonment shall be minimum of 10(ten) years. Additionally, in the case of the latter, for inflicting severe bodily injury, a person shall be sentenced to imprisonment of six months to three years. Again, if the act is done in the course of domestic violence the minimal length of imprisonment shall be one year.

Particularly significant is the **Law on justice for children**. According to this law a child at risk is considered ‘every child which turned 7, but not more than 18 years, with physical or mental disability; a victim of violence; socially or educationally neglected; which is in such state as to significantly weakens or prevents the educational role of parents or guardians; which is excluded from the education system; drawn into begging, straying or prostitution; which uses drugs or other psychotropic substances, precursors or alcohol, and as a result may come in contact with the law as a victim or witness of an misdemeanor or criminal act’. The definition of a child victim includes ‘every child which is no more than 18 years old, which was somehow damaged, including physical or mental injury, emotional suffering, material loss or other type of injury or violation of its rights and interests as a matter of consequence arising from a criminal act’.

The Ministry of Interior, schools or other institutions providing care, as well parents and guardians, have a responsibility to report cases of children at risk to the Centers for Social Work. The Centers for Social Work conversely needs to act upon reports coming from the Ministry of Interior, the Office of the Public Prosecutor, schools or other institutions providing care, parent/guardians or the victim itself. The Law prescribes a responsibility for the Center, the

Ministry of Interior, schools or other institutions providing care to engage in mutual exchange of information relating to the behavior of the child of interest.

The ***Law on Child Protection*** ‘prohibits any form of children’s sexual exploitation and abuse (distress, child pornography, child prostitution), forced enticement, sale or trade in children, psychological or physical violence and maltreatment, punishment or other type of inhuman treatment, all types of exploitation including commercial exploitation and child abuse that violates the basic human rights and freedoms and subsequently the rights of the child’. All forms of discrimination against children are forbidden. Child labor is prohibited, but the scope is only limited to the production and trade of narcotics, psychotropic substances, and precursors. A prohibition on political and religious exploitation of children is included as well.

The Law introduces an individual obligation to immediately report to the authorities any of the forms of discrimination, abuse and exploitation. In terms of implementing supervision, the Ministry of Labor and Social Protection is authorized to conduct inspection over state institutions, legal entities and individuals with authority to provide services related to child care. The authorized inspector may amongst the rest, close down an institution if determined it acted contrary to the provisions of the law or initiate a criminal or misdemeanor procedure if there is evidence suggesting that a criminal offence, a misdemeanor or a serious violation of the obligations occurred.

The ***Law on Family*** prohibits any type of violence in the family and violence is defined as ‘the use of force, threat or intimidation by a family member as to cause bodily injury, emotional, sexual abuse and material, sexual or labor exploitation to another family member’. In addition to the social care services, the Law introduces the possibility for temporary civil protection measures issued by a competent court in an urgent procedure.

The definition used in the ***Law on Prevention and Protection against Domestic Violence*** uses similar, albeit not identical language. Violence is defined as ‘maltreatment, insult, endangering the safety, physical injury, sexual or other type of psychological, physical or economic violence that results in a sense of insecurity, intimidation and fear, or threats of such acts’. The Law provides individual definitions on: *physical violence*, *psychological violence*, *stalking*, *sexual violence* and *economic violence*. The Law also defines when a child shall be treated as a victim of domestic violence: (i) when the child is subjected to direct violence (ii) when the child is witnessing violence between family members (iii) when a child lives in a violent environment. Individuals have an obligation to report knowledge of domestic violence to a police station, a center for social work, an NGO, or the national SOS line. The management of institutions that provide social and child protection, employment, internal affairs, health and education are obliged to report a domestic violence case to a police station or a center for social work.

The ***Law on Prevention and Protection against discrimination*** (LPPAD) prohibits ‘any direct or indirect discrimination, calls for and incitement to discrimination, and assistance in discriminatory treatment on the basis of sex, race, color, gender, belonging to a marginalized group, ethnic origin, language, nationality, social background, religion or religious beliefs, other types of beliefs, education, political affiliation, personal or social status, mental and physical impediment, age, family or marital status, property status, health condition or any other basis anticipated by a law or ratified international agreement.

Beside the imperative prohibition of discrimination provided with LPPAD, children are a group at high risk of intersectional discrimination. It has been noted that ‘for example, girls, children in poverty, children belonging to minority groups, to indigenous communities, or to lower castes, children with disabilities, migrant children, street children, children in conflict with the law, etc.,

are vulnerable to abuse and exploitation because they occupy a marginal position in society. Thus, there are strong indications showing that some children are more vulnerable to human rights violations because they are discriminated against not only on the basis of their age, but because this ground for discrimination interrelates with discrimination against them on other grounds, such as their ethnic origin, gender, disabilities, national status, economic status, etc'¹³.

Both, the *Law on Primary Education* and *the Law on Secondary Education* contain similar provision which stipulates that 'physical and emotional maltreatment of students is prohibited'. The Laws prescribe financial penalty if a 'student is physically or psychologically punished'. *The Law on State Educational Inspectorate* authorizes the inspector to file a formal proposition to the educational institution asking for a termination of employment for a person for which there is a reasonable confidence that he or she has committed physical or psychological abuse of children, pupils, and or students.

In terms of employment, the *Law on Labor Relations* allows for persons under the age of 18 to conclude employment contracts if conditions prescribed with this Law are fulfilled. It obliges the employer to 'provide young persons' protection against exploitation or any other type of work which may harm their safety, health, physical, mental, moral or social development or if the work activity endangers their education'. With regard to forced child begging, the *Law on Misdemeanors against the Public Order and Peace* financially sanctions anyone caught in the course of begging. Parents or guardians whose child due to negligent treatment commits any of the misdemeanors prescribed by the Law will also be financially sanctioned.

The *Law on Audio and Audiovisual Services* restricts broadcast of programs which 'may seriously damage the physical, psychological or moral development of minors, especially programs containing pornography or gratuitous violence' and also prohibits audiovisual commercial communications that may cause 'physical or moral damage to minors'.

1.2 Overview of the amendments of the primary and secondary legislation pertaining to violence against children adopted since 2013

In 2013, an in-depth analysis of the primary and secondary legislation pertaining to violence against children was prepared and published by UNICEF¹⁴. It encompassed a comprehensive assessment of all relevant legislation, both primary and secondary, that regulates and governs the instruments and procedures for legal, social and psychological protection of children victims of violence in the country. The comparative analysis builds upon its findings and conclusions, however, to secure an up to date assessment of the current legislation in force, the research team examined whether the laws and bylaws assessed in the analysis of 2013 were amended in the period 2013 - 2016, and whether new laws pertaining to this subject were adopted.

- **The Law on Prevention and Protection from Family Violence¹⁵** was adopted in 2014 and amended twice in 2015. The Law governs the actions of the relevant institutions and organizations in coordination with the conjunctive cooperation of all parties involved with the ultimate goal of advancing the means of protection and prevention from domestic violence. The Law is relevant for this analysis due to the fact that it regulates the protection of the children victims of domestic violence and the actions by multi-sector professional teams when the health and the life of a child are endangered. The first

¹³ Intersectional discrimination against children: discrimination against romani children and anti-discrimination measures to address child trafficking, UNICEF Innocenti Research Centre, June 2009 p. 1.

¹⁴Assessment of legislation pertaining to violence against children, UNICEF, Skopje 2013 available at: https://www.unicef.org/tfyr Macedonia/ASSESSMENT_OF_LEGISLATION_-_VaC_FINAL_.pdf

¹⁵Published in the Official Gazette No: 138/2014; 33/2015; and 150/2015.

amendment from 2015 included the following novelties: **(i)** It stipulated an obligation for the social workers for an immediate notification to the police if they have information that domestic violence is committed by perpetrator in possession of firearms (no later than 24 hours in written notice); **(ii)** obligation for immediate notification to the employer if the perpetrators possess firearms provided by their service; **(iii)** prolongation of the special measure dislocation from the home and restraining order until completion of the pending judicial procedure. The second amendment increased the fines for the perpetrators of domestic violence.

- **Law on Social Protection**¹⁶ was amended 15 times since 2013. In terms relevant to the subject of this analysis there were amendments on the criteria for becoming a foster parent, the categories of foster families and the responsibilities of each category, especially when it comes to cases of violence against children, the rights and responsibilities of foster families in general, on setting the victims of domestic violence eligible for receiving financial aid. The Law refers to the Law on prevention and protection from domestic violence instead of the Law on family. Among the categories for which records are kept the victims of domestic violence and child protection were added.
- **Law on Family**¹⁷ was amended four times since 2013. In terms of violence against children, the adjustments refer to: stipulating the *begging* as an abuse or severe neglect of parental responsibilities; detailed regulation of the conditions when the institutions must remove the children from the care of their parents when guidelines were given to the abusive parent and he/she did not act in compliance with them; and regulating the duration of the measure for depriving the child from the parent.
- **Law on police**¹⁸ was amended five times since 2013. The amendment related to violence against children is the obligation for the police officer that committed domestic violence to be sent for psychiatric and psychological examination.
- The most significant reform that has happened since 2013 was the adoption of the entirely new **Law on Justice for the Children**¹⁹. This Law introduced a new concept in the criminal justice system for children, replacing the previous Law on Juvenile Justice. This legislative action codified all relevant material, procedural and statutory provisions from the Criminal Code and the Criminal Procedure Code related to children as perpetrators or children victims of criminal acts. The law also introduced the concept of “children at risk”. With relation to the children victims of violence the Law stipulates special rights for procedural protection for children victims and witnesses.
- In 2015, the Government adopted **the Protocol on mutual cooperation between the competent institutions and associations** for protection and prevention from family violence (Official Gazette 143/2015). This Protocol aims at establishing effective mutual cooperation of the competent institutions and organizations in provision of immediate and efficient protection and support to the victims of domestic violence, prevention of future violence and prosecution of the perpetrators of the violence. The Protocol as a form of *soft law* establishes procedures for: reporting and referring cases of domestic violence, sharing information and joint undertaking of measures for promotion and prevention of domestic violence. With regards to the children victims of domestic violence the Protocol

¹⁶Published in the Official Gazette No: 79/2009; 51/2010; 36/2011; 51/2011; 166/2012; 15/2013; 79/2013; 164/2013; 187/2013; 38/2014; 44/2014; 116/2014; 180/2014; 33/2015; 72/2015; 104/2015; 150/2015; 173/2015; 192/2015; 30/2016.

¹⁷Published in the Official Gazette No: 80/1992; 9/1996; 19/2000; 79/2001; 38/2004; 60/2005; 33/2006; 84/2008; 117/2009; 67/2010; 156/2010; 39/2012; 44/2012; 38/2014; 115/2014; 104/2015; 150/2015.

¹⁸Published in the Official Gazette No: 114/2006; 148/2008; 6/2009; 145/2012; 41/2014; 33/2015; 31/2016; 106/2016; 120/2016.

¹⁹Published in the Official Gazette No: 148/2013.

foresees the following special measures: (1) In cases where children are victims of domestic violence the social worker notifies the police without prior consent of the parent or legal guardian; (2) Mandatory presence of police officer from the criminalist unit when children are present on a place where act domestic violence has been done; (3) If restraining order is rendered the police officer communicates with the school and the kinder garden respectively; (4) If the health care worker after taking anamnesis and examining children have doubts that the domestic violence has been done it immediacy notifies the Center for Social Work; (5) Cooperation between the institution in the educational process for children victims of domestic violence.

- Additional rulebooks emanating from the Law on Prevention and Protection from Domestic Violence encompassing provisions for protection of children victims of domestic violence are:
 - Rulebook on implementation and monitoring of the measures for protection of victims of family violence, undertaken by the Centre for Social Work, and methods of monitoring the declared temporary measures for protection(Official Gazette17/2015);
 - Rulebook on Execution of Temporary Measures of Protection – Compulsory counseling for domestic violence offenders (Official Gazette 17/2015);
 - Rulebook on the means of enforcement of the sentenced special measures for protection of the victim of family violence and the members of its family (Official Gazette 28/2015);
- **Framework Protocol for taking action concerning the Protection of Children from Abuse and Neglect**

1.3 General research findings with relation to the concept of a child victim of violence in the national legislation.

1.3.1 There is absence of clear definitions in the legislation regarding what constitute an act of violence against children and what children are considered victims of violence

The violence against children as a term is defined in several laws. The **Law on Prevention and Protection against Family Violence** defines violence as: *maltreatment, insult, endangering the safety, physical injury, sexual or other type of psychological, physical or economic violence that results in a sense of insecurity, intimidation and fear, or threats of such acts* (Article 3 from the Law).

The **Law on Justice for the Children** defines “child victim” as: *every child less than 18 years old, who somehow suffered damage including physical or mental injury, emotional suffering, material loss or other type of injury or violation of its rights and interests as a matter of consequence arising from a criminal act* (Article 19 from the Law). This definition is broader and it encompasses children victims of all criminal acts, not only those constituting an act of violence.

According to the **Criminal Code** *crime victim is any person who has suffered damage, including physical or mental injuries, emotional suffering, material loss or other injury or threat of their basic freedoms and rights as a consequence of a committed crime. A child – crime victim shall refer to a juvenile person, younger than the age of 18 (Article 122 (22)).* Again, this definition encompass victims of all criminal acts.

The current concept of victim is too broad, because not all crimes which one may categorize someone as a victim meet the threshold of severity for which these laws aim to appease. In the case of property crimes that were not violent, there are no consequences upon one's physical or psychological health, so there is a need for redefinition as a victim of a violent criminal act. The Laws that are related to violence over children should be harmonized and define the violence against children in compliance with the definition of crime victim included in the Criminal code, but not limited solely to the consequences of a committed crime.

The following definition has been proposed at the 1999 WHO's Consultation on Child Abuse Prevention: *'Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power'*²⁰.

1.3.2 There is no definition or guidelines on how to interpret "the best interest of the child principle" within the national legislation

The existing laws don't define "best interest of the child," nor are there guidelines on interpreting the best interest. As a result of this lack of foresight, the institutions involved act upon their own interpretation when overtaking action in cases that concern the rights of the children. According to the police officials, it's up to the police inspector to determine what the best interest of the child is. Still, there is no single method for what is the best interest for a child at a given moment. The current method of interpretation relies upon a case by case assessment based upon an individual's skills, knowledge, and current understanding of the incident.

Even though the approach to child victims cannot be identical for each child, the Law/Laws should include a provision that **defines the best interest of the child** or at least prescribe **minimum general standards and guidelines on overtaking action in cases of violence against children**.

1.4 Findings with relation to the responsibilities of educational institutions in protection of children victims of violence

1.4.1 There is lack of a cooperation and coordination between the educational institutions and the centers for social work related to reporting of children victim of violence, as well the care and support for the victims due to ambiguities in the national legislation

According to the interviewed secondary school representatives there is lack of cooperation between the schools and the centers for social work. Their direct involvement and communication usually occurs when certain case gains particular media coverage. With regards to the cooperation with the police, the schools pointed out that one of the causes for lack of proper communication is the fact that the team of juvenile delinquency inspectors changes every year, and thus there is no constant cooperation based on previous experiences with continuously engaged professionals in the process. Just seven years prior it was standard practice for there to be designated inspector for each school for a minimum of five years.

This practice has since been changed. The Laws on primary and secondary education lack provisions regarding violence against children. There is no precise definition on violence, the types of violence, responsible person or body entitled for receiving information and further

²⁰Report of the Consultation on Child Abuse Prevention, 29-31 March 1999, WHO, Geneva p. 15, Available at: <http://apps.who.int/iris/handle/10665/65900>

reporting cases on violence. The only procedure prescribed with the laws refers to counseling parents in cases of violent behavior of students.

1.4.2 There is lack of clear and precise criteria for assessing whether certain case requires referral to other institutions

Since there is no clear procedure, schools inform other institutions on cases of violence based on arbitrary assessment on the gravity of the situation. Due to legal inconsistency, the secondary school representatives that deal with reporting indications of violence in secondary education act on personal assessment of the situation. Beside the fact there are no clear and precise criteria [for assessing if a case requires referral to other institutions], when there are indications, for a case of domestic violence, the secondary school reports to the center for social work, and the police. One secondary school representative quoted “The question is what I understand under domestic violence, serious psychological maltreatment can also be considered an act of violence”.

Educational institutions are aware predominantly of the laws regulating education, however, these same institutions showed little knowledge in the procedure as prescribed by other relevant laws. The primary school employees are not aware of other regulations, except the Law on primary education and duty to report a case according to this Law. The Law on primary and secondary education vaguely defines the prohibitions pertaining to violence and the procedure the school needs to follow in such cases. The legal responsibilities pertaining to violence are too general as there is nothing concrete in them.

1.4.3 Lack of clear guidelines and criteria for identifying and addressing bullying, psychological violence especially those acts when done through internet and social networks

There are no specific regulations referring bullying or violent behavior among students, nor is there an established multidisciplinary approach form that relevant actors can use as a guideline when action is necessary. According to the laws on primary and secondary education, in cases of violent behavior (participation in fights or antisocial behavior of a student) only the parents of the students are summoned for a counseling session that is guided by the psychologist or pedagogue of the school. In case the parents are not responding to the invitations for counseling, then the school is entitled to contact the Centers for social work.

If the absence of the parents is not justified, the competent school body will submit proposal for initiating misdemeanor procedure before the State Educational Inspectorate. Considering the fact that bullying has a much broader scope of unacceptable actions and behavior there is lack of regulations that include guide lines or criteria for the involved actors how to proceed in these cases. When being able to identify it, teachers and schools refer each case as they consider is appropriate.

1.5 Findings with relation to the responsibilities of Centers for Social Work and the social workers

1.5.1 There are different protocols and competent bodies that regulate the procedure for addressing the different forms of violence against children however this multitude in certain cases is impeding the work of the social services

There are numerous protocols for different forms of violence that regulate the work of the centers for social work addressing the treatment of child victims (Procedure for access to justice for children; Multidisciplinary protocol for identification and referral of children on the street; Procedure for dealing with children victims of sexual abuse and pedophilia; Procedure for

dealing with victims of human trafficking, Joint protocol for dealing with cases of domestic violence; Framework Protocol for Taking Action concerning the Protection of Children from Abuse and Neglect)²¹. Beside the existing Framework protocol that provides guidelines on how to act in cases where the child is a victim, regardless of the form of violence, *the interviewed social workers consider that* sole general protocol with chapters that regulate the specificities in the procedure for all existing forms of violence that might serve a better purpose [compared to numerous different protocols]. It was also pointed out by the social workers, that the existence of numerous protocols impede the work of the center and even are contrary to the national legislation.

Another burden noted by the interviewees is the multitude of bodies and interagency teams each addressing the different forms of violence against children (Ex. trafficking of children, domestic violence, interethnic violence, etc.). One of the interviewees stated that: "... a single person cannot effectively participate in all of them. I believe a single coordinative/ operative body that deals with all of these different issues [could be a better solution]. Dealing with all of these risks, that body should connect all of the institutions: centers for social work, police, the judiciary, representatives from the health and educational sector." The bodies overlap in competences and there is uncertainty which body should address the problem or the question imposed related to different type of violence. Having different bodies responsible for prevention and protection of violence against children can lead to less coordination among the relevant factors and ineffectiveness when conducting their work.

1.5.2 There is insufficient information flow amongst the Centers for Social Work and other institutions involved in the procedures for protection of child victims of violence

An act of violence committed against a child is in the overwhelming number of cases a criminal offence, and anyone who fails to report a criminal offence including officials could be held responsible, pursuant to the national Criminal Code²². The social services however, do not have unified approach towards the information sharing process in relation to the educational and health institutions. Some of the social work professionals have concerns that these institutions do not share information citing the responsibilities arising from the Law on Data Protection. Others expressed the opinion that a restrictive approach is better and people should not have an easy access to personal data. The social services usually receive information on juvenile perpetrators of criminal acts, but not the information of the victims of such crimes. Most of the individuals who were interviewed agreed that they lack capacities to provide assistance and protection to all the potential victims (broad definition of victim).

One interviewee argued that the centers ought to be informed (it refers to all institution that have information) for any case where a child is being victimized, and then armed with this information the responsibility of care lies with the center itself. The police informs the centers for social work in cases involving sexual delicts. There is no cooperation for the remaining cases of violence. Social services and the police do not inform schools of ongoing procedures that involve child victims nor ask for advisory opinions. The social services rarely obtain professional opinion or assistance from the primary schools when it comes to violence over children.

The social services make an individual assessment which institution should be included in their process of defining the appropriate amount and type of information they are willing to obtain and share. Lack of information flow among the institutions can lead to numerous unreported cases of

²¹<https://www.akademika.com.mk>

²²See article 364 from the Criminal Code.

violence against children in schools, health institutions, correction facilities etc. “...Still even if the criminal procedure is not initiated, it is in the interest of the child to receive counseling and other type of support from the centers for social work”.

The Law on Personal Data Protection regulates the protection of personal data as fundamental freedoms and rights of the *natural persons, and especially the rights to privacy as related to the personal data processing*. “Personal data subject” is any natural person to whom the processed data refer; User of personal data is a natural person or a legal entity, a state administration body or another body, to whom the data are disclosed. The bodies to which data may be disclosed as part of a special investigation shall not be considered users in terms of the Law on personal data protection.²³

The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice sets forth that the privacy and personal data of children who are or have been involved in judicial or non-judicial proceedings and other interventions should be protected in accordance with national law. This generally implies that no information or personal data may be made available or published, particularly in the **media**, which could reveal or indirectly enable the disclosure of the child’s identity, including images, detailed descriptions of the child or the child’s family, names or addresses, audio and video records, etc. Member states should stipulate limited access to all records or documents containing personal and sensitive data of children, in particular in proceedings involving them. If the transfer of personal and sensitive data is necessary, while taking into account the best interests of the child, member states should regulate this transfer in line with relevant data protection legislation. Professionals working with and for children should abide by the strict rules of confidentiality, except where there is a risk of harm to the child.²⁴

1.5.3 There is no 24/7 availability of the social workers which in certain cases results in prolongation of the procedure in which the child victim should give a statement

The working hours of the Centers for social protection and its employs, the social workers are determined by a decision of the Ministry of Labor and Social Protection to be from 8:30 to 16: 30 (Monday to Friday). There are no social workers on duty, available on call during the night and the weekends. On the other hand, the LJC requires the police officials to inform the local Center for Social Work as soon as possible about any child at risk including, juvenile victims of violence²⁵. The Law even gives the opportunity for informing the Center by phone in urgent cases²⁶. The intention of the legislator for the urgency of the procedure is perceptible by the short time limits in which the Center is obliged to summon the child and its parents, 15 days in regular cases and 36 hours where the personality rights and the interests of the child are at stake²⁷ (which is always the case when the child is victim of violence).

For example, if a certain child is at risk of becoming a victim of violence and the violent act is reported to the police, the police officers must postpone the notification of the child for as early as the Monday morning or more than 48 hours after the violent event has occurred. The presence of a social work professional in the earlier phases of the procedure is of crucial importance for proper identification of the needs of the child, the need for removal from the family, the social risks on which the child is subject, the need for social and psychological support. Failure to provide immediate access to a social worker could eventually further victimize the child and

²³See article 1 and 2 from The Law on Personal Data Protection

²⁴<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3>, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice - page 22,23

²⁵Art. 24 par. (1) LJC

²⁶Art. 24 par. (2) LJC

²⁷Art. 25 par. (1) from the Law on Justice for the Children

cause significant stress that will impede the ability of the child to give a sound testimony about the case and help in identifying and arresting the perpetrator. All other institutions included in the child justice system including the police, the courts²⁸, the prosecution²⁹ and the healthcare institutions are available 24/7 in order to facilitate smooth cooperation and coordination. Additionally, the centers for social work must have social workers *on call to ensure that the proper authorities are available whenever needed*.

In the past, the cooperation used to function better in an interrogative function as a precursor to the official police conducted and social work approved procedures. Even during night shifts, the inspectors used to provide transportation for the social workers so that the interrogation can commence as soon as possible. Today, the night shift is canceled, which led to poorer cooperation.” We used to try to contact them, calling their cell phones, but no response. Later they refuse to act, since they were included in the investigation when the case was reported. “The opinion of the social services regarding the night shift is that the child should not be subjected to interrogation at late hours, the child should be given a bit of time to deal with the trauma, eat and sleep’. A possible solution would be a dispatched team working within MOI.

1.6 Findings with relation to the criminal justice system

1.6.1 The criminal cases where the victims of violence are children and the perpetrators are adults are tried by general judges and panels, without any requirement for special judges and panels with specialization in the area of child justice system

The *Law on Justice for Children(hereinafter LJC)* from 2013 stipulates that all court cases where the indicted perpetrators are children will be processed and decided by a specialized juvenile judges (судии за деца) and juvenile panels (совети за деца). The juvenile judges are obliged to attend at least five days of specialized training for the rights of the child per year. The jurors’ members of the juvenile panels, are elected from professions that should secure in-depth understanding of the children rights from sources such as teachers, school counselors, psychologists, social workers and others experienced in the education and upbringing of children³⁰. The juvenile judges and panels are working within the specialized court departments of the courts with expanded competence. This solution is justified with the need of special knowledge and skills that are required by the international standards for the judges and jurors, and indispensable prerequisite for a child friendly justice system.

The competence of the juvenile judges and panels is solely focused on hearing criminal cases where the indicted perpetrators are children. The cases where the children are victims of violent criminal acts conducted by adult perpetrators are heard and tried by the general judges and panels working on criminal matters. In those cases, the judges are deciding in a regular criminal procedure with inclusion of the procedural guaranties stipulated in articles 145 - 153 from the Law on Justice for Children.

The judges do not have any additional specialized training in the area of the rights of the child and the protection of children victims of violence beside the basic training (which as bellow is explained in details is far from sufficient). Such solution differs significantly from the regional trend (Croatia, Bosnia, Serbia) where juvenile judges are deciding in all criminal cases where children are victims of a violent criminal acts.

²⁸Art. 96 par. (1) Law on Courts

²⁹Art. 27 par (1) Law on Public prosecutors

³⁰Art. 101 from the Law on Justice for the Children

The experience and the practice have shown that the general judges deciding in such cases, although most of them outstanding as criminal lawyers, are much less aware about the children's rights and they lack knowledge in the specifics of juvenile criminology, social pathology, and the fundamentals for the proper trial of a case where the victim of a violent act is a child. The lack of training is particularly noticeable during the interrogation of the victim and children witnesses. There are special measures for procedural protection of children victims and witnesses, however their proper implementation and effects is highly dependable from the knowledge and the skills of the presiding judge.

1.6.2 The access to legal counsel and attorney for the children victims of violence living in poverty is restricted in all phases of the procedure

The LJC recognizes the right of the children victim of violence to a legal counsel from an attorney during the police and criminal procedure and the procedure for indemnification claim³¹. Additionally, in order to secure high quality legal aid the Law stipulates that as a rule only attorneys that have attended specialized training for children rights can provide the legal aid to a children victim of violence³². The Law does not however, contain any provisions that are enabling access to an attorney in the cases where the children (its parents or guardians) are living in poverty and are not able to privately hire an attorney. The Law solely provides free legal aid for indigent children defendants not for the victims. In such circumstances the children living in poverty and substandard conditions (which according to the available researches are most vulnerable to violence) are left without proper legal counsel. The lack of legal representation in some cases could result with acquittal of the defendant and no indemnification for the victim.

The only possibility for a counsel for these children and their families is to apply for legal aid pursuant to the Law on Free Legal Aid (hereinafter LFLA) to the Ministry of Justice. The law stipulates that legal aid could be obtained for: *protection of children and minors* and *protection of victims of crimes*³³. This law however, has very restrictive criteria with regards to the income and property that the applicant should possess. For example, only beneficiaries of social welfare who are not possessing any real property are entitled to request free legal aid³⁴. On the other hand, the process of approval is very long and the legal aid does not exempt the payment for court fees (especially important for indemnification) and does not cover the costs for expert witnesses. Correspondingly, as a result of the different criteria for the attorneys, the Ministry of Justice could appoint an attorney that does not have the required training. Having in mind the abovementioned, the children victim of violence who are living in poverty do not have access to any suitable legal counselor.

1.6.3 The overall level of awareness among the judges and prosecutors for the protection of children victims of violence and child friendly justice system is insufficient

The interviews conducted with representatives of the judicial and prosecution profession indicated that there is need for training for judges and prosecution with relation to the LJC in general, but with special consideration in reference to the protection of children victims of violence. The most urgent issue for which training is needed is proper implementation of the special measures for procedural protection. In the **Program for Initial Training of the Academy for Judges and Prosecutors** for the year 2017/19 the Law on Justice for Children is covered with seven hours for the theoretical part, and eight hours for the practical part. Within the designated seven hours of theoretical training, less than one sixth of that time is spent in relation to children

³¹Art. 145 par. (4) LJC.

³²Art. 145 par. (5) LJC.

³³Art. 8 Law on Free Legal Aid

³⁴Art. 12 LFLA

victims³⁵. The Academy has shown efforts however, and in the **Program for Continuous Training** for 2017/18 one whole module is planned for trainings related to the Children's rights in which significant part is related to the protection of children victims of violence³⁶. One thing that should be taken into consideration is the selection of the participants from this module to be done from judges and prosecutors working on cases where children are victims of violent criminal acts.

1.6.4 There is no separate registry for the cases related to violent criminal acts against children within the public prosecution

The criminal cases related to violent criminal acts for which the prosecution is done by the public prosecutor are registered in separate registers in accordance with the Rules for Internal Management of the Public Prosecution³⁷. There is a registry for children perpetrators of criminal acts (KOM)³⁸, however there is no separate registry for cases of violence against children. All these cases are registered within the general (KO & KOH) registers. As a result of this, there is an inability to formulate accurate statistical analysis on the numbers of prosecutions in cases which involve violence against children. Beside the problem of statistics, the lack of separate registry enables the possibility for such case to be prosecuted by a prosecutor that does not have any training about the special measures for procedural protection of the children victims and children witnesses. Despite these problems within the court system, the ACCMIS do provides the opportunity for marking the criminal cases in which juveniles are the victims.

1.6.5 The principle of only one hearing of the child victim of violence in the whole criminal procedure is hardly fully implemented in practice

The *Criminal Procedure Code* recognizes special measures for procedural protection for the children victims of violence when providing a statement and during the hearing in all stages of the procedure³⁹. The child victim should ideally provide statement only once. Nevertheless in certain cases of exemption a second statement may be provided. These exemptions are triggered by circumstances of the case in which a singular statement become ineffective⁴⁰. It is discouraging that this Safeguard is not always followed in practice. The children victims of violence are often required to provide statements in front of the police, the public prosecutors, and the social workers and at last before the court. The reasons for such practice are different. In some cases, the police or the public prosecutors do not possess the necessary equipment for proper recording of the statement. In other cases, the victim especially in the first statement is still under great stress and not able to provide clear and concise statement.

Additionally, it is imperative that a full adherence to the *equality of arms* principle is understood and followed. Among other elements, the *equality of arms* requires that the defendant must have the right to examine the witnesses just like the prosecutor. If these criteria are not met it can result insignificant numbers of revoked judgments in the appeal process due to failures of the procedure with regards to the statement of the victim.

³⁵Program for Initial Training of the Academy for Judges and Prosecutors for the year 2017/19, page 29, available at: <http://www.jpacademy.gov.mk/upload/Pocetna%202015-2017/Programa%20za%20teoretska%20nastava%202017-2019.pdf>

³⁶Program for Continuous Training for Judges and Prosecutors for the year 2017/19, page 13, available at: <https://goo.gl/Zi2SUH>

³⁷Official Gazette No.45/2010

³⁸Article 72 of the Rules

³⁹Art. 54, par. (1) – 1 & par. (4) – 2 CPC

⁴⁰Art. 54, par. (5) CPC

1.6.6 The right of the children victim of violence for indemnification claim is severely burdened in practice

The LJC recognizes the right of the children which with final court criminal decision are determined as victims of criminal act for an indemnification⁴¹. The Law even stipulates that the indemnification will be done from the budgetary funds in case where it cannot be realized from the property of the convicted⁴². There is only one precondition, and that is that the indemnification claim must be accepted by a court in proper procedure,⁴³ as to avoid problems which often arise for the victim during this stage. The Criminal Procedure Code states that the Court should decide upon the indemnification claim if submitted in the criminal procedure⁴⁴, in the majority of the cases, the victims are directed to a civil litigation. The reasons for such action are sometimes related to the need of proper expertise and monetary estimates of the damages that can be triggered with the criminal fact which could significantly prolong and/or complicate the criminal procedure. There is also a general hesitation among the criminal judges, to decide upon the indemnification claims.

As a result, the victims and their families, after the rendering of the final decision in criminal procedure (1 do 3 years), should initiate a civil litigation against the convicted. The civil litigation rules require the payment of court fees, which in the cases where there is physical injury of greater mental pain, could go up to 48.000 MKD⁴⁵. The victim should also pay for expert witnesses. After the final decision in the civil litigation that could be rendered in one to three years the victim should attempt to enforce the claim from the defendant's property⁴⁶. If there is no property, the victim should initiate another judicial procedure for recognition of the claim and only after that decision the victim could be compensated from the budgetary funds⁴⁷.

1.6.7 The vast majority of courts and public prosecution offices do not possess the necessary technical equipment nor are their buildings properly adapted in accordance with the standards needed for full implementation of the special measures for procedural protection of the children victims and children witnesses

The LJC provides a wide list of "so called" special measures for procedural protection of child victims and witnesses⁴⁸. The special measures for procedural protection according to LJC are: use of monitors for protection of the child victim or witness from the sight of the accused; concealment of the identity or the appearance; giving statement through videoconference; removal of the uniforms and hats; excluding the public; video and audio record of the statement that will be used as evidence; video and audio record of the interrogation that will be used as evidence; taking statement by mediation of a professional; use of special technical equipment for communication; protection of the privacy of the child and his/her family. Those procedural guarantees are necessary to avoid secondary victimization of the children and to make the testimonials as least stressful for the children as possible. There are exemptions „of the *removal of the formal togas* and *exclusion of the public* from the hearing. For all other special measures, the proper equipment and adaptation of the court building is necessary. The clear majority of courts with expanded competence and almost all basic public prosecution offices do not possess the necessary equipment such as: screens for protection of the identity, equipment for video

⁴¹Art. 145 par. (1)-5 LJC

⁴²Art. 151 par. (1) LJC

⁴³Art. 152 par. (1) LJC

⁴⁴Art. 110 par. (1) from the Criminal Procedure Code

⁴⁵Law on Court Fees

⁴⁶Art. 152 par. (1) LJC

⁴⁷Art. 152 par. (2), (3), (4) LJC

⁴⁸Art. 147 from the LJC

conference, special technical means for communication and video and audio recorders and players. Also, significant number of court buildings do not possess separate entrees for the indicted and the victim nor separate waiting rooms. Almost no attention is given to securing child friendly conditions in the court rooms and the interrogation rooms at the public prosecution offices. The unpreparedness of the institutions to implement a Law that was passed in 2013 points out to the need for prolongation of the *vacation legis* or the entering into force for laws which require proper equipping of the institutions necessary for full implementation of the provisions. Otherwise such provisions are only décor without any real effect.

1.6.8 The same gender rule when child victims of specific violent acts are providing statements is not always strictly followed as it should be

The Criminal Procedure Code stipulates an additional measure for procedural protection of the child victims of specific criminal acts (Crimes against sexual freedom, sexual morality, humanity and sexual morality). In such cases the victim should give statement to an official of the same gender. The specific of these crimes (statutory rape, mediation in prostitution, human trafficking etc.) requires a careful approach to the victim which is always highly traumatized by the event. The same gender rule facilitates the communication between the victim and the official. Unfortunately, in practice this principle is not always respected and it is not uncommon for the interrogation to be done by an official with different gender from the victim.

PART 2

Comparative assessment of the legislation pertaining to the criminal-law protection of children victims of violence

I. Assessment of the legislation

1. Republic of Serbia

1.1 General introduction

The Serbian legislation pertaining to violence against children consists of Laws, bylaws, and relevant documents that regulate the matter in similar manners and legal solutions to that of our country. The primary legislation that refers to violence against children consists of the following laws: Family Act, Law on Police, Law on Social Protection, Law on Juvenile Criminal Offences and Criminal Protection of Juveniles, Criminal Procedure Code and Criminal Code, Law on the Fundamentals of the Educational System, the Law on prevention of family violence (enacted in 2016 and will enter into force in June 2017)⁴⁹. Certain Serbian laws comply with the national primary legislation with certain identical solutions due to the same legal roots as Ex-Yugoslavian countries and their post development. Serbia has prepared a Draft Child Rights Act but has not been adopted.

1.2. What are their protocols, guidance's and other *soft law* regulations related to protection of children victims of violence?

The relevant documents related to violence against children are systematically organized as General Protocol on Protection of Children from Abuse and Neglect with several Special

⁴⁹ Source: <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2016/2675-16.pdf>

Protocols: Special Protocol for Protection of Children under Institutional Care from Neglect and Abuse; Special Protocol for Protection of Children and Students from Violence Abuse and Neglect in the Educational Institutions; Special Protocol for the Health Care System Special Protocol for Judicial Organs in Protection of Minors from Abuse and Neglect and Special Protocol on the Action of Police Officials for Protection of Minors from Abuse and Neglect⁵⁰. The respectable practice of adopting these separate protocols should be that each sector involved in the prevention and protection from violence against children dispose with available document that precisely defines and distinguishes the competencies and sets forth each institution with its curtail role in the proceedings.

1.3 Is there a definition of “the best interest of the child” principle within the domestic legislation?

The General Protocol relays on the UN Convention on the rights of the child, defining all forms of violence, neglect and abuse of children and setting the basic principles 1. Right of life, survival and development of the child; 2. Non-discrimination; 3. Best interest of the child and 4. Participation of the child. *The best interest of the child is defined as prevalence over the interest of the parents, guardians, institutions or communities in situations where these interests differ from the interest of the child.*

In the Civil procedure, the Judge determines the best interest of the child taking into consideration the following elements:

- Characteristics of the minor (age, gender, disability, irrational social behavior and other);
- The safety of the child/risk from injury;
- Desires/wishes and feelings of the minor (according to the age and maturity);
- Physical, emotional, health, educational needs and needs related to accommodation, nutrition, clothing of the minor;
- Capacity/Ability of the parents / other persons to respond to the needs of the minor;
- Useful resources for securing growth and development;
- Expected influence of eventual changes;
- Time needed for adjustment to new environment or elimination of the effects of abuse and neglect⁵¹;

1.4 Are there definitions on the different form and types of violence against children within the domestic legislation?

All Special protocols are set in compliance with the general protocol and enclose provisions on each type of abuse (physical, emotional, sexual, neglect, and exploitation of children). 1. *The Special protocol for Protection of Children and Students from Violence Abuse and Neglect in the Educational Institutions* comprises all educational institutions starting from preschool. It prescribes in detail how to prevent and identify violence, how to investigate on violence, to whom to report, distinguishing the violence among children, violence committed from adult employees or others (adults not employed in the educational institutions). The protocol outlines: 1. **social violence** as exclusion from group and discrimination expressed through separation of the child/student from the others because of diversity, inequality, isolation, ignorance, and non acceptance on any ground; 2. **electronic violence** as violence resulting from the usage of

⁵⁰ Source: <http://www.minrzs.gov.rs/cir/dokumenti/briga-o-porodici/zastita-dece-od-zlostavljanja-i-zanemarivanja>

⁵¹Source: <http://www.minrzs.gov.rs/files/doc/porodica/zlostavljanje/Posebni%20protokol%20pravda.pdf>

electronic devices that can be conducted through messages send via e-mail, sms, mms web sites, chats, blogs etc.⁵²

1.5 Is there a clear requirement for the educational, health and social institutions to report act of violence against children to the police and the public prosecution? Is the omitting to report such act a criminal act *per se*.

According to all protocols every person is obliged to react upon violence against children, to notify the competent authority, and to undertake mutual action with the other sectors. There are internal regulations for all institutions that determine the procedure within each institution when dealing with cases of violence and regulations and subsequently when to report to the police. According to the Criminal Procedure Code, all state authorities, the authorities of the autonomies; the local self-government public enterprises and institutions are obliged to report on the criminal acts that are prosecuted *ex officio*.

1.6 Does the legislation governing the education contain provisions related to the violence against children?

The Law on Fundamentals of the Educational system of Serbia includes provisions that prohibit violence, abuse and neglect against children determining what is considered as violence within the educational institutions. The law distinguishes verbal from nonverbal violence and defines several forms of violence: physical; psychological and social. The Law invokes on misdemeanor or criminal procedure for infringement of the prohibition of such (Art 45)⁵³.

1.7 Is there a requirement for joint teams composed of all relevant institutions when protecting children victims of violence?

The General Protocol on abuse and neglect of children emphasizes the importance of multi-sector cooperation and the necessity for the Ministries of education and sports, health, interior, labor, employment and social policies to adopt special protocols for the purpose of detailed regulation of the internal procedures of each sector.⁵⁴

1.8 Is there a special law that governs the juvenile justice system and the criminal law protection of children?

The juvenile justice system in Republic of Serbia is governed by the *Law on Juvenile Criminal Offenders and Criminal-Legal Protection of Juveniles*⁵⁵ from 2005 (Hereinafter LJCO). This Law contains provisions governing the substantive law, institutions, procedure and execution of sanction for juvenile perpetrators of criminal acts. The law also contains special provisions on protection of children and minors as injured parties (and victims) in the criminal procedure [Art. 1 from the LJCO]. The provisions of the *Criminal Code*, *Criminal Procedure Code* and the *Law on Execution of Sanctions* are applied if are not contrary to the provisions of this Law [Art.4 from the LJCO]. The protection of children and minors as injured parties is regulated in Section 3 from the Law titled *Special Provisions on the Protection of Juveniles as Injured Parties in Criminal Procedure*.

⁵²Source: <http://www.minrzs.gov.rs/files/doc/porodica/zlostavljanje/Posebni%20protokol%20prosveta.pdf>

⁵³<http://www.mpn.gov.rs/dokumenta-i-propisi/zakonski-okvir/>

⁵⁴<http://www.minrzs.gov.rs/files/doc/porodica/zlostavljanje/Opsti%20protokol%20zlostavljanje%20i%20zanemavanje%20deca.pdf>

⁵⁵*Law on Juvenile Criminal Offenders and Criminal Legal Protection of Juveniles*⁵⁵ (Закон о малолетним учиниоцима кривичних дела и кривично правној заштити малолетних лица), Official Gazette RS no. 85/2005.

1.9 Are the criminal acts committed by adult perpetrators against children tried by general judges and panels for criminal procedure or by special juvenile judges and panels? Is there a requirement for specialization for the judges, prosecutors, police officers and other professions involved in the criminal procedures?

The LJCO stipulates a specific list of 27 criminal acts⁵⁶ which when committed against children by an adult perpetrator are tried by a panel chaired and by a judge that has acquired specific knowledge from the area of children's rights and criminal legal protection of juveniles **[Art.150(1) from the LJCO]**. The Law also stipulates that Public Prosecutor that has acquired specific knowledge from the area of children's rights and criminal legal protection of juveniles could charge adult perpetrators for other criminal acts if it assess that it is needed for special protection of the juveniles when they are injured parties in criminal procedure **[Art.150(2) from the LJCO]**.

With regards to the competence and the composition of the panels when presiding against adult perpetrator for a criminal act committed against minor, the Law stipulates subsidiary application of the Criminal Procedure Code if its provisions are not contrary to the provision of this Law. With regards to the need of acquiring special knowledge and professional development in the area of children's rights, the responsibility is vested in the Judicial Center for Training and Professional Development which is also in charge for issuing certificates to the judges and the prosecutors **[Art. 165 from the LJCO]**.

1.10 Do the children victims of violence have the right to a free legal counsel during the criminal procedure? Is there a requirement for specialization of the attorneys?

The LJCO requires that the child as an injured party in a criminal procedure must be represented by an attorney since the first interrogation of the defendant. In situation where the child does not have a legal representative, the President of the Court will appoint it from the list of attorneys that have acquired special knowledge in the area of the children's rights and the criminal law protection of the minors. The costs for the attorney will be covered by the courts budget **[Art. 154 from the LJCO]**.

1.11 Are the child victims of violence entitled to additional procedural rights and safeguards compared with the adult injured parties in criminal procedure?

The child victims of violent criminal acts as injured parties in criminal procedure beside the rights stipulated in Art. 50⁵⁷ from the *Code of Criminal Procedure*⁵⁸ are entitled to the following procedural safeguards for special protection:

- The public prosecutor, the investigative judge and the judges in the panel, when acting in a criminal procedure where the injured party is a minor, must treat the victim with special

⁵⁶Murder, murder of a child at birth, instigation to suicide and assistance in suicide, severe bodily injury, unlawful deprivation of liberty, kidnapping, rape, sexual assault of a helpless person, sexual assault by position abuse, sexual assault upon a child who has not turned 14 years of age, gratifying sexual urges in front of another, gratifying sexual urges in front of another, mediation in prostitution, enticing a child who has not turned 14 to sexual assault or to other sexual act, displaying pornographic material to a child, incest, unwed life with a child, taking away a child, change of family situation, neglecting and maltreating a child, abandoning a helpless child, domestic violence, not paying alimony, hindering and non-execution of protection measures for minors, enabling the use of narcotics, and precursors, armed robbery and robbery.

⁵⁷The provision outlining the rights of the injured parties in criminal procedure

⁵⁸Code of Criminal Procedure (*Законик о кривичном поступку*), Official Gazette RS No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 i 55/2014

care having into consideration its age, personality traits, education and other relevant circumstances in order to avoid eventual harmful consequences to the children's further life and development. The examination of the children and minors as a rule will be conducted with an assistance from psychologist, pedagogue or other professionals **[Art. 152 (1) from the LJCO]**.

- The examination of children and minor victims of criminal acts (listed in footnote 2) can be conducted only twice. Under exemption they can be examined more than twice if it is necessary for the criminal procedure. In such case, the Judge is obliged to give a special attention to the protection of the child **[Art. 152 (2) from the LJCO]**.
- If the judge assesses (after taking into consideration the specifics of the particular criminal act and the personality traits of the minor) that is necessary, they will order that the examination should be done through technical devices for transfer of picture and sound. The examination will be performed without participation of the parties of other persons in the room where the witness is located. The parties and other persons who have right to ask question to the victim as witness will examine him/her through the judge, psychologist, pedagogue or other professional **[Art. 152 (3) from the LJCO]**. Children as witnesses – injured parties could be examined in their own home, or another place or special institution qualified for examination of minors **[Art. 152 (4) from the LJCO]**. In cases where the minor is examined in accordance with the above specified procedural safeguards on the trial the transcript or recording of the examination will be read/played **[Art. 152 (5) from the LJCO]**.
- If the identification of the suspect or the defendant is done by the minor – injured party, the Court will act cautiously and such identification could only be done in a manner that the defendant will not be able to see or identify the minor **[Art. 155 from the LJCO]**.
- The procedure is urgent **[Art. 157 from the LJCO]**.
- The public could be excluded *ex officio* or upon request from the parties of the procedure **[Art. 363 from the Code on Criminal Procedure]**.

1.12 Are the children witnesses entitled to additional procedural rights and safeguards compared with the adult witnesses in criminal procedure?

In cases where children are examined as witnesses, who due to the nature of the criminal act face the consequences and other relevant circumstances (especially sensitive and in severe trauma) the confrontation with the defendant is not allowed **[Art. 153 from the LJCO]**.

1.13 Do the child victims of violence have the right for indemnification/compensation claim? Is there a right to a compensation from budgetary funds?

The LJCO does not contain any specific provisions with regards to the right of the child victims of criminal acts to seek compensation for the damages caused with the crime. Due to absence of provision on this issue and pursuant to Art. 4 from the LJCO (subsidiary application of law clause), the provisions of the Code on Criminal Procedure are applicable. The Court will decide upon it in the criminal procedure if that does not mean a significant delay of the procedure **[Art. 252 from the CCP]**. Otherwise it will forward the injured party to a civil litigation. The child victims of violence are realizing their indemnification claim in identical procedure as all other injured parties from all criminal acts. The legislation does not grant the right to the child victims of crime on state funded compensation.

1.14 Does the legislation require employing expert advisors in the areas of pedagogy, psychology and social work in the courts and the public prosecutor?

The LJCO does not require explicitly mandatory employment of such professionals in the courts and at the public prosecutors, however, in several provisions it indicates that such employment is possible. The public prosecutors and the courts during the preliminary phases of the criminal procedure can delegate gathering information about the minor, their family, personality traits, the conditions for living to a professional (social worker, psychologist, pedagogue and social pedagogue) **if such professional is employed in the Public Prosecutor Office and the Courts** respectively [Art 58 (1) & Art. 64 (2) from the LJCO]. Identically, if such a professional is present, the Court could give him/her a responsibility to draft the reports about the results of the sentenced correctional measures to a certain minor [Art. 84 (1) from the LJCO]. The conditional clause “*if such professional is present*” indicates that the Court and Public Prosecutors Offices may employ professionals in child care but they are not obliged to it. The absence of such professionals is covered with professionals from the Centers for Social Affairs.

2. Republic of Croatia

2.1 General introduction

The Croatian legislation pertaining to violence against children consists of primary legislation that is related to violence against children: The Criminal Code; The Protection against Domestic Violence Act; The Youth Courts Act; The Criminal Procedure Act; The Police Powers and Responsibilities Act, Social Welfare Act; the Law on the Execution of Sanctions Imposed on Juveniles Convicted of Crimes and Misdemeanors; The Act Confirming the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse; the Law on the Ombudsman for Children and the Law on Primary and Secondary education.⁵⁹ The secondary legislation consists of certain rules and procedures: Rulebook on the manner of Police Officials Action; Rulebook on the manner of execution of educational measures (odgojnih mjera); Rulebook on the content of the educational measures related to the implementation of the Protection against Domestic Violence Act and similar.

2.2 Are there protocols, guidance's and other *soft law* regulations related to protection of children victims of violence?

The documents related to violence against children are the Protocol on Treatment of Domestic Violence Cases; Protocol on Treatment of Cases of Violence between Children and Young People; and the Protocol on Treatment of Cases of Sexual Violence, The Protocol on Treatment of Cases of abuse and neglect of children.

2.3 Is there a definition of “the best interest of the child” principle within the domestic legislation?

The Protocol on Treatment of Cases of abuse and neglect of children refers to children in cases of proved or suspected neglect in families and institutions where the children stay temporary or permanently (schools, preschool institutions, summer camps, foster homes and other social care

⁵⁹<http://www.sabor.hr/hrvatske-drzavne-i-politicke-institucije>
http://narodne-novine.nn.hr/clanci/sluzbeni/2009_11_137_3314.html

institutions). The Basic principles are: 1. Right of life, survival and development of the child; 2. Non-discrimination; 3. Best interest of the child and 4. Participation of the child. The *best interest of the child must have priority in all matters that concern the child over the interest of the parents, guardians, institutions or communities in situations where these interests differ from the interest of the child.*

2.4 Are there definitions on the different form and types of violence against children within the domestic legislation?

The Protocol on Treatment of Cases of Violence between Children and Young People defines the violence among children and young people, the obligations of the competent state bodies and other relevant actors, their mutual cooperation, and the remaining activities and obligations. *Violence between children and young people is any physical or psychological violent behavior directed towards children and young people and conducted by their coevals.* The psychological and emotional violence can be caused by repetitive negative action such as gossiping, mockery, ignorance, exclusion from the group, destroying personal belongings, and humiliation or similar behavior. i.e. Bullying is the intentionally causing of physical or emotional pain and /or shame to a child victim.

The Protection against Domestic Violence Act defines the types and forms of domestic violence in similar manner as the Law on Prevention and Protection from family violence: physical; verbal; psychological; sexual harassment; stalking; illegal isolation and limitation of the freedom of movement or communication with third persons; damage of property. The Law goes further defining economic violence and gender based violence.

2.5 Is there a clear requirement for the educational, health and social institutions to report act of violence against children to the police and the public prosecution? Is the omitting to report such act a criminal act *per se*.

The main actors in the process for protection of children from abuse and neglect are: police, centers for social work, educational institutions, health care institutions and judicial institutions.

The Centers for social work act on prevention and protection of abuse and neglect of children, leading ex-officio procedures in cases where the Centers suspect an abuse and or neglect of a child. The Centers must also act when they receive a notice from another institution, parent, child or any citizen suggesting abuse or neglect towards a juvenile. When there is reasonable doubt that a crime of neglect and abuse was committed the Centers for social work will promptly notify the Police. When needed, the Centers will collect all the relevant data from the Educational Institutions the child is attending, the medical doctor, or other services.

The cases that the Center is leading upon a notice of another institution, member of a family, the child victim or citizen the Center for social work is obliged to: deliver to the Police and the Judicial Organs all the requested data and documents related to the determined facts; to notify in written the institution that reported the case; when needed - to notify the medical (family) doctor on the necessity of medical intervention or to refer the child to suitable examination. The Centers for social work are obliged to cooperate with all the relevant factors involved in the procedures for protection of the child's wellbeing (Police, Educational Institutions, Health care institutions and other social services).

The Health Care Institutions are obliged to provide urgent and comprehensive examination of the children victims of abuse and neglect. The child victim may enter the health care institution alone, with the parent/s, accompanied by the police or a person of trust. In case the child is alone the Health care workers are obliged to call the police, the parents/legal representatives or the Center for social work. During regular working hours, the health care institution will call the competent Center for Social Work and after regular working hours, the night shift worker in the Center would be alerted. The Health Care Institutions are obliged to: provide qualified staff for conducting examination in cases of abuse and neglect of children *24 hours a day*; to organize continuous education on abuse and neglect of children for the professional staff; appoint person/s that coordinates the protection and help of children victims; ensure cooperation of multidisciplinary team work (pediatrician, family doctor, gynecologist, psychologist, social services, police and others). The Health Care Institutions are obliged to be in constant contact with the police and the Centers for social work, and to attend the scheduled conciliar meetings.

The **Educational Institutions** (EI) in cooperation with the other institutions, in cases of alleged abuse and neglect of children are obliged to initiate procedure for protection of the children's rights. In case of action against the wellbeing of a child, the Educational workers will immediately report to the Manager or the professional coworker. The Educational institution is obliged to notify the other competent institutions that will give feedback regarding further proceedings for protection of the rights and interests of the child. In case of a violent act upon a child, the educational workers will take measures to restrain the violent treatment and provide assistance in compliance with their competencies.

If medical attention is needed the educational worker or the School Manager will call the Emergency Medical Service, contact the police if needed, and notify the Center for Social Work. In case of severe violence in which trauma for the child victim or to the other children is possible, the EI will report to the Ministry of science and education and other ministries that can provide suitable professional socio- psychological assistance for the effected children.

2.6 Does the legislation governing the education contain provisions related to the violence against children?

According to the *Law on Primary and Secondary education* the teachers, educators, the professional staff and the remaining employees of the educational institutions are obliged to undertake measures to protect the rights of the students, particularly in cases of physical and psychological violence, sexual abuse, or neglect of students. The employees must take immediate action and notify the Manager of the educational institution who report further to the competent center for social work or other competent body.

2.7 Is there a requirement for joint teams composed of all relevant institutions when protecting children victims of violence?

According to the Protocol on Treatment of Cases of abuse and neglect of children, all responsible bodies and professionals that work on protection of children are obliged to act as partners, implementing effective methods of cooperation and exchange as to receive all important data. In urgent cases, the data exchange must be conducted immediately for the purpose of taking coordinate necessary measures and actions. The exchange of data is conducted in compliance with the Law on Personal Data protection.

2.8 Is there a special Law that governs the child justice system and the criminal law protection of children?

The Juvenile Courts Act⁶⁰ (Hereinafter referred to it as JCA) was adopted in 2011 and was amended three times after entering into practice. It represents the core legislation regulating the criminal law for protection of child victims of violence in Croatia. The JCA contains provisions regulating two main subject matters, the young perpetrators of criminal acts (minors and young adults) and the criminal-law protection of children. The JCA regulates provisions on substantive criminal-law, the courts, the procedure and the enforcement of sanctions **[Art. 1 from the JCA]**. As a member state of the EU, the Republic of Croatia with the JPA transposes the relevant EU legislation on this issue⁶¹. The JCA operates with the term *minor* for children between the age of 14 and 18 years **[Art. 2 from the JCA]**. The provisions of the Criminal Code, Criminal Procedure Code and other relevant legislation are applied if not contrary to the provisions of this Law **[Art. 3 from the JCA]**.

2.9 Are the criminal acts committed by adult perpetrators against children tried by general judges and panels for criminal procedure or by special juvenile judges and panels? Is there a requirement for specialization for the judges, prosecutors, police officers and other professions involved in the criminal procedures?

The adult perpetrators of violent criminal acts against children are tried by special **Juvenile Courts [Art.113 (3) from the JCA]**. The Law enumerates extensive list of criminal acts (from the *Criminal Code*⁶²) which are considered as violent acts against children and tried by the **Juvenile Courts**. The list includes all criminal acts against asexual freedom and sexual morality, b. marriage, family and youth, c. life and body and other acts of violence against the children⁶³. In case of a concurrence of two criminal acts, where one of the acts is enlisted in this Law, the Juvenile Courts will have the jurisdiction over the case **[Art.113 (4) from the JCA]**.

The Juvenile Courts are established as Juvenile Divisions, within the municipal courts, located where the county courts are seated, and within the county courts. The Juvenile Divisions are composed from Juvenile Panels and Juvenile Judges **[Art. 37(1) from the JCA]**. **There is also a Juvenile Panel** which has been established within the Supreme Court of Republic of Croatia **[Art. 37(3) from the JCA]**.

The Juvenile Judges and Public Prosecutors for Juveniles must have strong inclinations towards upbringing, needs and benefits of the youth, and shall have basic knowledge of criminology, social pedagogy, psychology of children and adolescent and the social welfare for youth **[Art.38 from the JCA]**. The Juvenile Judges/Prosecutors that fulfill these criteria are appointed for a term of office of five years by the President of the Supreme Court of Republic of Croatia/Public Prosecutor respectively **[Art.39 (1&2) from the JCA]**. In the Juvenile Panels, lay judges participate in the trials. Lay judges for juveniles shall be appointed from among high school and primary school

⁶⁰The Juvenile Courts Act (*Zakon o sudovima za mladež*), Official Gazette n.84/11, 143/12, 148/13, 56/15

⁶¹Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA) and the DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

⁶²Criminal Code (*Kaznenog zakona*) Official Gazette n. br. 110/97., 27/98., 50/00., 129/00., 51/01., 111/03., 190/03., 105/04., 84/05., 71/06., 110/07., 152/08. i 57/11.

⁶³Crime acts against sexual freedom and morality, Crime acts against marriage, family and youth, aggravated murder, murder of a child at birth, instigation to suicide and assistance in suicide, unlawful deprivation of liberty, kidnapping, harassment while performing a duty, human trafficking and slavery, international prostitution, transmission of an sexual infection diseases, violent behavior, Crime acts again the life and the body, crimes of sexual abuse of children, torture and other inhuman and degrading treatment etc.

teachers, youth counselors, and other persons having experience in the upbringing of young people **[Art. 41 from the JCA]**. In the Juvenile Divisions, an investigatory judge is also appointed for the fulfillment of the criteria stipulated in Art. 38.

The Juvenile Panels are composed by one juvenile judge and two lay judges. In cases when a panel of five members is required in accordance with the *Code on Criminal Procedure*⁶⁴, the panel is composed by two judges and three lay judges where at least there is one juvenile judge, and three juvenile lay judges. The Juvenile Panel in second degree is composed of three judges with at least one juvenile judge **[Art. 121 (1) & (2) from the JCA]**. The Ministry of Judiciary and the Judicial Academy are responsible for training and professional advancement of the professionals working in the area of juvenile delinquency **[Art. 126 from the JCA]**.

2.10 Do the child victims of violence have the right to a free legal counsel during the criminal procedure? Is there a requirement for specialization of the attorneys?

The JCA recognizes the right to legal counsel to the child victims of criminal acts. The investigative judge or the president of the juvenile panel may request an appointment of a legal representative from the president of the court, if he/she finds that it is necessary for the protection of the rights and interest of the child victim of criminal act. The legal representative is appointed by the list of attorneys who have strong inclinations for upbringing and wellbeing of young persons, and possess basic knowledge from the areas of criminology, social pedagogy, psychology of youths, and social work for youth. The list is created by the Croatian Bar Chamber.

The appointed attorney cannot be substituted by an apprentice **[Art. 116 (1) from the JCA]**. For crimes which entails prison sentence of 5 years and more, and in cases when the perpetrator of crime against sexual freedom and morality is close relative to the child victim, legal representation is mandatory. In those cases, the court will *ex officio* appoint attorney from the above-mentioned list **[Art. 116 (2) from the JCA]**. The costs for the attorney are covered by the state's budget **[Art. 44 from the CPC]**.

2.11 Are the child victims of violence entitled to additional procedural rights and safeguards compared with the adult injured parties in criminal procedure?

The children victims of violence beside the rights that they are entitled to as an injured party (Art. 43 from the CPC) are also entitled to the following specific rights and procedural safeguards:

- State funded legal representation, escort by a close relative in the procedural acts, secrecy of personal data and exemption of the public **[Art. 44 (1) from the CPC]**.
- The court, the public prosecutors, the investigators, and the police officials must treat the child victim of criminal act with special care taking into consideration the age, the personality and other relevant circumstances in order to avoid negative consequences. When proceeding, the competent institution must be guided from the best interest of the child **[Art. 44 (2) from the CPC]**.
- The cases where children are victims of the *violent criminal acts*, should be proceeded by Public Prosecutors for Juveniles, police officials for juveniles, and investigators for juveniles. Only in case of an exemption may other police officials or investigators proceed in these cases **[Art. 114 (2) from the JCA]**.

⁶⁴Code on Criminal Procedure(*Zakon o kaznenom postupku*), Official Gazette n. 76/09, 80/11, 121/11, 9152/081/12, 143/12, 56/13, 145/13, 152/14)

- When the police are informed that *violent criminal acts* occurred against children they must immediately notify the Public Prosecutor for Juveniles. The Prosecutor will, in a time limit of three days, submit a proposal for evidence hearing for examination of the child as a witness **[Art. 115(1) from the JCA]**.
- When the child victim of criminal act is below the age of 16, and they need to be examined as a witness, the examination will be performed in accordance with the provisions of the Criminal Procedures Code. The examination is conducted by a judge of the investigation through the use of technical devices for transfer of picture and sound, without presence of the judge in the examination room. The examination is performed with assistance from psychologist, pedagogue or other professional. The parent or legal guardian could be present during the interrogation if such is not contrary to the interests of the procedure and the child. The parties of the procedure could ask question upon approval from the judge through professional. **Only under exemption the child could be examined again. [Art. 292 (1) from the CPC]. [Art. 115(2) from the JCA].**The juvenile victims of violence could be examined as a witnesses in their own home or in other appropriate facility **[Art. 115(3) from the JCA]**. The recording of the examination will be reproduced during the main hearing and, a transcript may be produced **for later use. [Art. 115 (4 &5) from the JCA]**.
- The procedure is closed for public **[Art. 115 (7) from the JCA]**.
- **The procedure is urgent [Art 59 from the CPC and Art. 120 from the JCA]**.

2.12 Are the child witnesses entitled to additional procedural rights and safeguards compared with the adult witnesses in criminal procedure?

Child witness cannot be confronted with the defendant **[Art. 278 (1) from the CPC]**. Child witness cannot be forcefully brought for testimony, and cannot be fined nor imprisoned for refusal to give a testimony **[Art. 115 (8) from the CPC]**.

2.13 Do the child victims of violence have the right for indemnification/compensation claim? Is there a possibility for compensation from budgetary funds?

The JCA does not contain any specific provision on the right of the children as injured parties in criminal procedures to seek indemnification for damages. Therefore, pursuant to Art. 3 (subsidiary application of law clause), the provisions of the CPC are applicable in the procedure for realization of a compensation claim. The children who are injured parties of criminal act can file an indemnification claim within the criminal procedure as all injured parties. The Court will decide upon it if it does not significantly delay the procedure **[Art. 153 (1) from the CPC]**. There are no provisions for indemnification from the state budget.

2.14 Does the legislation require employing expert advisors in the areas of pedagogy, psychology and social work in the courts and the public prosecutor?

The municipal courts are located where the county courts are seated, and within the county courts. (Courts competent for cases against minors) The public prosecutors who appear in front of said courts shall have expert advisors (stručne suradnike): social pedagogues, social workers, and psychologists. The expert advisors in the court provide expert opinion on the type of sanction that will be justified to be sentenced, gather information on the success of the correctional measures, and conduct other tasks given by the juvenile judge. The expert advisors to the public prosecutor gives expert opinions needed for rendering decision from the competence of the

prosecution [Art. 43 from the JCA]. The expert advisors provide professional help and assistance to the child victim of violence. If the court does not have an expert advisor, such help and assistance will be provided by other experts and the costs will be covered by the state's budget [Art. 116 (3) from the JCA].

3. Federation of Bosnia and Hercegovina

3.1 General introduction

The Federation of Bosnia and Hercegovina is one of the two political entities that compose Bosnia and Hercegovina, the other being Republika Srpska. The primary legislation consists of a myriad of laws adopted by the parliamentary assembly of B&H, the Parliament of the FBiH, and the cantonal governments. The primary legislation regulating the protection of children consist of the Criminal Code, the Code of Criminal Procedure, the Law on Protection and Treating Children, and Minors in Criminal Procedure, the Law on Primary and Secondary education and the Law on Protection from Domestic Violence.

3.2 Are there protocols, guidance's and other *soft law* regulations related to protection of children victims of violence?

On the level of entity there are two regulations on this issue, the Guidance on Proceeding in Cases of Violence against Children⁶⁵ and the Framework Protocol on Proceeding in the Cases of Child Abuse. There are more protocols adopted on cantonal level. Each of the Bosnian cantons have adopted Protocol on Proceeding of the Competent Institutions in Cases of Domestic Violence where children are involved, and the Protocol on Proceedings in cases of Violence in Schools⁶⁶.

3.3 Is there a definition of "the best interest of the child" principle within the domestic legislation?

In the assessed legislation of FBiH no definition of the "*The principle of The Best Interest of The Child*" was found, although the principle is often mentioned in the LPC and in the Law on Family.

3.4 Are there definitions on the different form and types of violence against children within the domestic legislation?

The Guidance on Proceeding in Cases of Violence against Children⁶⁷ published by the Ministry of human rights and refugees of Bosnia and Hercegovina, includes precise and clear definition on four types of violence against children. **Physical violence** against children is defined as a relation or behavior where through using physical strength and with or without other means, wounds or injuries are inflicted to children. The physical violence is effectuated through: beating, spanking, pulling hair, inflicting burns, throwing to the floor or stairs, bonding, forceful starvation, alcohol etc. **Sexual violence** is a type of exploitation of the child with the aim of sexual pleasure and satisfaction of an adult person.

⁶⁵SMJERNICE za postupanje u slučaju nasilja nad djecom u Bosni i Hercegovini, Ministry of Human Rights and Refugees, 2013. Available at:

http://www.ombudsmen.gov.ba/documents/obudsmen_doc2013060612081065bos.pdf

⁶⁶Source: <http://oscitluk.com/ProtokolOPostupanju.pdf>

⁶⁷Smjernice za postupanje u slučaju nasilja nad djecom u Bosni i Hercegovini, Ministarstvo za ljudska prava i izbjeglice BiH, 2013.

Sexual molestation includes the dependable, immature child or/and adolescent in sexual activities which cannot be comprehended by him/her and a consent cannot be given. The most common types of sexual violence are: engaging children in sexual activities, watching sexual activities, exposure to pornographic materials, and inappropriate contact with child and verbally suggestive sexual comments. **Psychological violence** is a relation or behavior of neglecting, threatening, understating, insulting, and or verbally attacking the child. The types of psychological violence include: suppression of parental care and emotional support, rejection through indifference, rejection through shouting, guilt attribution for the problems of the family etc. The types of emotional abuse are: ignoring, rejection, terrorizing, isolation, disparaging and insults. **Neglect** is defined as carelessness and the failure to the parent to satisfy the emotional and developmental needs of the child including the need for proper nutrition, clothes, accommodation, healthcare, education, intellectual support and emotional understanding.

3.5 Is there a clear requirement for the educational, health and social institutions to report act of violence against children to the police and the public prosecution? Is the omitting to report such act a criminal act *per se*.

The CPC stipulates explicit obligation for reporting acts of violence and abuse of children. The obligation is for the health workers, teachers, educators, parents, legal guardians, adopters and other persons authorized or obliged to give care and assistance to children, to supervise or to raise and up bring children. Those who find out or assess that there is a doubt that certain child is victim of sexual, physical or other form of abuse are obliged immediately to notify the police or the public prosecutor [Art. 228 (2) from the CPC].

3.6 Does the legislation governing the education contain provisions related to the violence against children?

The laws on primary and secondary legislation do not contain provisions on the protection or prevention from violence against children.

3.7 Is there a requirement for joint teams composed of all relevant institutions when protecting children victims of violence?

The cooperation of the joint times is regulated with the protocols on cantonal levels.

3.8 Is there a special law that governs the child justice system and the criminal law protection of children?

The *Law on Protection and Treating Children and Minors in Criminal Procedure*⁶⁸(Hereinafter referred as LPC) is a special law that regulates the involvement of children in criminal procedures in the Federation of Bosnia and Hercegovina. This Law establishes special rules for treating children in conflict with the law, young adults, and children victims or witnesses. These rules are obligatory for the courts, prosecutors, other officials, custody institutions, families, schools, other institution, and all social levels. The Law stipulates several objectives such as: promotion of the dignity of the child, taking into consideration of the age, best interest of the child, etc.[Art 1 from the LPC]. The Law defines *child* as every individual bellow the age of 18, however, it also uses the terms *young minor* (14-16) and *older minor* (16-18) [Art. 2 & 3 from the LPC]].

⁶⁸Zakon o zaštiti i postupanju sa djecom i maloljetnicima u krivičnom postupkom, Sluzbene novine Federacije BiH», broj 7/14 /29.1.2014./

The Law contains provisions governing its basic principles (Art. 1 – 12), institutions involved in these procedures (Art. 13-22), substantive law provisions (Art. 23- 71), procedural law provisions (Art. 72 – 123), executions of correctional measures and sanctions (Art. 124 – 184) and criminal acts against children and minors (Art. 185 – 191). The last section of the law regulates certain procedural aspects for protection of child victims of criminal acts. The provisions of the *Criminal Code* and the *Criminal Procedures Code* are applicable in these procedures only if not regulated otherwise by *Law on Protection and Treating Children and Minors in Criminal Procedure* [Art. 11 from the LPC]. The provisions of *Criminal Procedures Code* regulating the penal warrant shall not be applicable in the procedures where the children are victims/injured parties of the criminal acts listed in Art. 185 from this Law [186 (1) from the LPC].

3.9 Are the criminal acts committed by adult perpetrators against children tried by general judges and panels for criminal procedure or by special juvenile judges and panels? Is there a requirement for specialization for the judges, prosecutors, police officers, and other professions involved in the criminal procedures?

Juvenile judge, panel presided by a Juvenile Judge, or a judge who has special knowledge in the area of children's rights, are judging in criminal cases against adult perpetrators of a specified list of criminal acts where the victim is a child. The Law stipulates 27 criminal acts of violent nature⁶⁹ when committed against children will be tried by a Juvenile Judge [Art.185 (1) from the LPC]. The prosecutor could also prosecute perpetrators of other criminal acts, not specified above if assessed that it is needed for special protection of the personality of children and minors participating in the criminal procedure as victims/injured parties [Art.185 (2) from the LPC]. The investigation in these cases are run by a prosecutor who has acquired special knowledge in the area of child rights and criminal legal protection of minors [Art. 186 (2) from the LPC].

The subject matter and inherent jurisdiction and the composition of the courts are governed by the Criminal Procedure Act and is not otherwise regulated by the Law [Art. 190 from the LPC]. The acquisition of knowledge, and the continuous training of judges and prosecutors, is responsibility of the Center for Education of Judges and Prosecutors⁷⁰. These institutions ensure that the judges and prosecutors possess the necessary certificates for work in the area of juvenile delinquency and criminal law with relation to the protection of children [Art. 198 (1) & (3) from the LPC]. The Law also explicitly identifies the responsible institution for the training and certification of police officers, attorneys, social workers [Art. 198 (2) from the LPC].

3.10 Do the child victims of violence have the right to a free legal counsel during the criminal procedure? Is there a requirement for specialization of the attorneys?

⁶⁹Murder, murder of a child at birth, instigation to suicide and assistance in suicide, severe bodily injury, unlawful deprivation of liberty, kidnapping, rape, sexual assault of a helpless person, sexual assault by position abuse, sexual assault upon a child who has not turned 14 years of age, gratifying sexual urges in front of another, gratifying sexual urges in front of another, mediation in prostitution, enticing a child who has not turned 14 to sexual assault or to other sexual act, displaying pornographic material to a child, incest, unwed life with a child, taking away a child, change of family situation, neglecting and maltreating a child, abandoning a helpless child, domestic violence, not paying alimony, hindering and non-execution of protection measures for minors, enabling the use of narcotics, and precursors, armed robbery and robbery.

⁷⁰<http://www.fbih.cest.gov.ba/>

The Law recognizes the right to a legal assistance by an attorney for a minor defendant as an element of the minimal procedural rights **[Art.5 from the LPC]**. There are no specific provisions regulating access to free of charge attorney nor referral to other law. With regards to the access to an attorney for the child victims or injured parties from criminal acts, the Law does not contain any direct provision on this issue. Despite the lack of direct reference to a provision on the issue of accessible legal representation, it cannot be concluded that the child victims of criminal acts do not have access to legal aid.

With regards to the procedural guaranties of child victims of criminal acts (listed above) the Law refers to provisions *the Law on Protection of Witnesses under threat and Vulnerable Witnesses*⁷¹ **[Art. 187 (5) from the LPC]**. This law, among other things, lays down specific procedural safeguards for vulnerable witnesses (including children) **[Art. 3 (3) from the Law on Protection of Witnesses...]**. One of the procedural safeguards is the right to a legal aid in accordance with the law **[Art. 5 (2)]**. The legal aid is realized through the *Law on Legal Aid*⁷²

3.11 Are the child victims of violence entitled to additional procedural rights and safeguards compared with the adult injured parties in criminal procedure?

The *Law on Protection and Treating Children and Minors in Criminal Procedure* includes the procedural safeguards established for protection of child victims/injured parties from criminal acts by the Criminal Procedure and it includes several new. The specific procedural safeguards are the following:

- The investigation is run by a prosecutor that has acquired knowledge in the area of child rights and criminal legal protection of juveniles. This is also a requirement for the other officials involved in the procedure (ex. Police inspectors) **[186 (2) & (3) from the LPC]**,
- During the carrying out of the procedural action the children and minor victims of the criminal act must be treated with special care taking into consideration their age, personality traits, education and other relevant circumstances in order to avoid eventual harmful consequences to the children's further life and development. The examination of the child and minor as a rule will be conducted with an assistance from pedagogue, psychologist and or other experts **[187 (1) from the LPC]**,
- The examination of children and minor victims of criminal acts (listed above) could be conducted only twice. The examination will be conducted through use of technical devices for transfer of picture and sound without presence of the prosecutor and other official person in the room where the witness is examined **[187 (2)]**. During the procedure in front of the Court, the examination will be conducted through the judge **[Art. 187(4) from the LPC]**,
- Child or young minor (14-16) could be examined in its own apartment, other place of residence or in the center for social work **[Art. 187 (3) from the LPC]**,
- Application of relevant provision of *the Law on Protection of Witnesses under threat and Vulnerable Witnesses* **[Art. 187 (5) from the LPC]**,
- The publicity in these procedure is restricted **[Art.187 (7) and Art. 84 from the LPC]**,
- If the identification of the suspect or the defendant is done by the child or minor victim of the criminal act, the identification is performed on such manner that the suspect or the defendant is not able to see the child **[Art. 189 from the LPC]** and

⁷¹Zakona o zaštiti svjedoka podprijetnjom i ugrozenih svjedoka ("Sluzbene novine Federacije BiH", broj 36/03

⁷²ZAKON O PRUŽANJU BESPLATNE PRAVNE POMOĆI 83/2016

- The criminal procedure is urgent **[Art.191 from the LPC]**.

3.12 Are the children witnesses entitled to additional procedural rights and safeguards compared with the adult witnesses in criminal procedure?

Identical to the criminal acts listed in art. 185 of the Law, all procedural safeguards listed above are applicable also with regards to child witnesses in procedures related to those criminal acts **[Art. 187 (6) from the LPC]**. If as a result of the crime the child suffers severe physical and emotional trauma, the Law also prohibits confrontation between the child witness of the criminal act and the suspect or the defendant. **[Art. 188 from the LPC]**.

3.13 Do the child victims of violence have the right for indemnification /compensation claim? Is there a possibility for compensation from budgetary funds?

The *Law on Protection and Treating Children and Minors in Criminal Procedure* does not contain any specific provisions with regards to the right to an indemnification claim for the children and minor victims of criminal acts. Therefore, pursuant to art. 11 the provision of the *Criminal Procedure Code* is applicable with regards to this issue. According to the CPC the injured party or victim of criminal act is entitled to file an indemnification claim in the pending criminal procedure if it fulfills the criteria to file such claim in civil litigation procedure (*Active litis consortium*) **[Art. 208 (1) from the CPC]**. The indemnification claim shall be deliberated upon a proposal by the authorized persons in the criminal procedure, if that does not mean a significant delay of the procedure **[Art. 207(1) from the CPC]**. There is no a state fund for indemnification of children victims of violence in Bosnia and Hercegovina.

3.14 Does the legislation require employing expert advisors in the areas of pedagogy, psychology and social work in the courts and the public prosecutor?

The Law requires employment of so called "*Expert advisors*" within the juvenile divisions at the Courts **[Art.16 (1) from the LPC]**, the prosecution and the police **[Art. 19 from the LPC]**. The "*Expert Advisors*" are social pedagogues - special education teachers, social workers, pedagogues, and psychologists which have an active role in the cases related to juvenile delinquency. They give an expert opinion, gather necessary information, managing data bases and conducting other actions requested by the judge and the prosecutor **[Art. 12 from the LPC]**. The tasks and responsibilities of the "*Expert Advisors*" are explicitly elaborated in Art. 22 and 92 from the Law.

4. Republic of Slovenia

4.1 General introduction

According to provisions of the Constitution of the Republic of Slovenia, children enjoy special protection and care. They are also guaranteed special protection from economic, social, physical, mental or other forms of exploitation and abuse. Violence against children is mostly subject to provisions of the Penal Code, applicable to all criminal offences, regardless of the personal characteristics of victim (age, sex) Certain articles are devoted exclusively to the protection of children and adolescents; these articles define commercial, sexual, mental, and physical violence. The Slovenian criminal justice system has several elements of child-friendly justice, with special focus on child suspects and defendants. In this area, the criminal justice system for children is parallel to the general justice system: cases involving child defendants are dealt with by specialized children's judges under specific rules. Only where issues are not regulated by these specific rules, do the general criminal procedure rules apply. One of the key specificities is that

social services are included in the criminal procedure by having the right to be informed about the procedure, and to actively participate in it by giving proposals and opinions.

4.2 Are there protocols, guidance's and other *soft law* regulations related to protection of children victims of violence?

Due to the lack of English translation of the secondary legislation in Slovenia only the following protocols related to violence against children can be identified:

Rules on the organization and work of multidisciplinary teams and regional services and on the actions of social work centers in dealing with domestic violence⁷³

Rules on the treatment of domestic violence for educational Institutions⁷⁴

Rules on cooperation between the police and other authorities in the detection and prevention of domestic violence⁷⁵;

Rules on procedures for dealing with domestic violence in the implementation of health activities⁷⁶.

4.3 Is there a definition of “the best interest of the child” principle within the domestic legislation?

There is no separate definition within the Slovenian legislation on “The best interest of the child”. There are some provisions in place which instruct the institutions in the criminal procedure to consider the child’s best interests. For example, the court may decide to close the hearing to the public, if this is in the best interest of the child (Article 295 CPA). Another provision which mentions the best interests of the child is that a child may only be detained together with adults if this is in his/her best interests.⁷⁷

4.4 Are there definitions on the different form and types of violence against children within the domestic legislation?

The types on violence are included in the definition of family violence in compliance with Family Violence Prevention Act (referring to all potential victims of violence not exclusively to children), and are divided as: physical violence; sexual violence; psychological and economic violence.⁷⁸

4.5 Is there a clear requirement for the educational, health and social institutions to report act of violence against children to the police and the public prosecution? Is the omitting to report such act a criminal act *per se*.

⁷³Pravilnik o sodelovanju organov ter o delovanju centrov za socialno delo, multidisciplinarnih timov in regijskih služb pri obravnavi nasilja v družini [Rules on the organization and work of multidisciplinary teams and regional services and on actions of the social work centres in dealing with domestic violence], Official Journal of the Republic of Slovenia No. 31/2009.

⁷⁴Pravilnik o obravnavi nasilja v družini za vzgojno-izobraževalne zavode [Rules on the treatment of domestic violence for educational institutions], Official Journal of the Republic of Slovenia No. 104/2009.

⁷⁵Pravilnik o sodelovanju policije z drugimi organi in organizacijami pri odkrivanju in preprečevanju nasilja v družini [Rules on cooperation between the police and other authorities in the detection and prevention of domestic violence], Official Journal of the Republic of Slovenia No. 25/2010

⁷⁶Pravilnik o pravilih in postopkih pri obravnavanju nasilja v družini pri izvajanju zdravstvene dejavnosti [Rules on procedures for dealing with domestic violence in the implementation of health activities], Official Journal of the Republic of Slovenia No. 38/2011.

⁷⁷<http://www.policija.si/eng/images/stories/Legislation/pdf/CriminalProcedureAct2007.pdf>

⁷⁸http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/zpnd_en.pdf

All state agencies and organizations (including health and educational institutions) have public authority binding them to report criminal offences liable to public prosecution, including the criminal acts of violence against children of which they have been informed or which were brought to their notice in some other way[Art. 145 (1) from the CPA].

4.6 Does the legislation governing the education contain provisions related to the violence against children?

The Organization and Financing of Education Act prescribes that kindergartens, schools and other institutions for education of children and young adults with special needs shall in line with the goals of the previous article, guarantee a safe and supportive learning environment, wherein physical punishment of children, and subsequently, any kind of violence against and among children, as well as discrimination on the grounds of gender, sexual orientation, social and cultural background, religion, race, ethnic and national origin, and physical and mental development shall be disallowed (Art 2a).⁷⁹

4.7 Is there a requirement for joint teams composed of all relevant institutions when protecting children victims of violence?

There are multifunctional teams working within social services that are competent to deal with children who are victims of domestic violence. Multifunctional teams are composed of social workers, health workers, and educators, who are tasked to provide support and assistance to children who need continuous measures to recover from the crime. To guide the functioning of the multifunctional teams there are implementing acts in place which have been adopted following the Prevention of Family Violence Act. *These acts refer to child victims of family violence:* rules on the organization and work of multidisciplinary teams and regional services and on the actions of social work centers in dealing with domestic violence⁸⁰; rules on the treatment of domestic violence for educational institutions⁸¹; rules on cooperation between the police and other authorities in the detection and prevention of domestic violence⁸², and rules on procedures for dealing with domestic violence in the implementation of health activities.⁸³

4.8 Is there a special law that governs the child justice system and the criminal law protection of children?

Republic of Slovenia differs significantly when compared with the other countries from ex-Yugoslavia because it does not have a special law governing the criminal justice system for children as defendants, victims and witnesses in criminal procedures. Instead, the Criminal Code⁸⁴ contains substantive provisions regulating the criminal liability of minors and the types of sentences for minors while the Criminal Procedure Act⁸⁵ is regulating the criminal procedure against minor perpetrators of criminal acts. The CPA also contains certain specific provisions with

⁷⁹http://www.mizs.gov.si/fileadmin/mizs.gov.si/pageuploads/ANG/Organisation_and_Financing_of_Education_Act_Oct_2016.pdf

⁸⁰<http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV9598>

⁸¹<http://pisrs.si/Pis.web/pregledPredpisa?id=PRAV9804>

⁸² Pravilnik o sodelovanju policije z drugimi organi in organizacijami pri odkrivanju in preprečevanju nasilja v družini [Rules on cooperation between the police and other authorities in the detection and prevention of domestic violence], Official Journal of the Republic of Slovenia No. 25/2010

⁸³<http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV9886>

⁸⁴Kazenski zakonik (Uradni list RS, št. 50/12 – uradno prečiščeno besedilo, 6/16 – popr., 54/15 in 38/16)

⁸⁵Zakon o kazenskem postopku (Uradni list RS, št. 32/12 – uradno prečiščeno besedilo, 47/13, 87/14, 8/16 – odl. US, 64/16 – odl. US in 65/16 – odl. US)

relation to the criminal-law protection of the children victims of violence and the children as witnesses in criminal procedures.

4.9 Are the criminal acts committed by adult perpetrators against children tried by general judges and panels for criminal procedure or by special juvenile judges and panels? Is there a requirement for specialization for the judges, prosecutors, police officers and other professions involved in the criminal procedures?

The criminal procedures cases related to violent criminal acts committed by an adult perpetrator against child victims are tried by general judges and panels without any requirement for specialization in the field of children's rights. The panel for juveniles [Art. 462 from the CPA] and the juvenile judges are only proceeding in cases where the defendant is minor.

4.10 Do the child victims of violence have the right to a free legal counsel during the criminal procedure? Is there a requirement for specialization of the attorneys?

The child victims of violent criminal acts, like all crime, have the right to be represented by a lawyer in the course of the criminal procedure [Art. 65(1)]. In criminal procedures which are taking place due to criminal offences against sexual inviolability, neglect of minors and cruel treatment and trafficking in human beings, the child-injured party must from the initiation of the criminal procedure onwards have an authorized person to care for their rights, particularly in connection with the protection of their integrity during examination before the court and during the exercising of property-law demands. Minors- injured parties who have no authorized person shall be assigned an authorized person from among lawyers by the court ex officio [Art. 65 (3)]. The CPA also gives a specific right of the child to be assisted by a person he/she trusts [Art. 65 (4)].

Crime victims (including child victims) who do not have resources to hire a lawyer, are not entitled to free legal aid under the free legal system in place for people with low income who cannot afford a lawyer (a person may apply for free legal aid at a district court and in making a decision on the application, the court reviews the income and other property of the applicant). The exception to above rule occurs when children become victims of specific crimes as mentioned above, as well as child victims of family violence, as the right to free legal aid is provided to all victims of family violence who are endangered⁸⁶. The assessment of which victim of crime is endangered is done by social services on a case by case basis. No guidelines or rules on the assessment have been identified.

4.11 Are the child victims of violence entitled to additional procedural rights and safeguards compared with the adult injured parties in criminal procedure?

The Slovenian Criminal Procedure Act establishes the following specific procedural safeguards and standards for protection of the children victims of criminal acts:

- The defendant may not be present during the questioning of witnesses younger than 15 who are victims of criminal offences against sexual inviolability, neglect of minors, cruel treatment and trafficking of human beings [Art. 178 (4)],
- A person under the age of 18, especially if that person has suffered damage from the criminal offence at issue, should be examined considerately to avoid producing harmful effect on his state of mind. If necessary, a pedagogue or some other expert should be called to assist in the examination of a minor [Art. 240 (4)],

⁸⁶Articles 25 and 26 of the Family Violence Prevention Act

- The panel may on the motion of the parties or on its own, but always after it has heard the parties, exclude the public from the trial or a part thereof if so required by among other things protecting of the interests of minors [Art. 295],
- Direct questioning of persons under 15 years of age who are victims of criminal offences against sexual inviolability, neglect of minors, cruel treatment and trafficking of human beings shall not be permitted in the main hearing. In such instances, the court shall be obliged to decide that the records of previous questioning of such persons be read [Art. 331 (5)].
- The child when attending a public hearing of a criminal procedure as a witness or a victim, must be removed from the courtroom as soon as his presence is no longer necessary [Art. 331 (4)].

4.12 Are the child witnesses entitled to additional procedural rights and safeguards compared with the adult witnesses in criminal procedure?

The court is obliged to make sure that during the questioning of the child, in particular if the child was also a victim of the crime, it is necessary to proceed with care so that the hearing would not have a damaging effect on the child's psychological state. If it is necessary, the child may be questioned with the assistance of a pedagogue or another professional equipped to deal with children. If the questioned child is younger than 14, a person whom the child trusts can be present at the hearing [Art. 240 (4)]. The children witnesses have the right to choose a legal representative of their own choice but they do not have the right to free legal aid, unless they are also victims of the crime. The court must remove the child witness from the courtroom as soon as his/her presence is no longer necessary [331 (4)].

4.13 Do the child victims of violence have the right for indemnification compensation claim? Is there a possibility for compensation from budgetary funds?

The child victim may lodge a compensation claim in the criminal procedure in accordance with the general rules of compensation law defined in the Obligations Code. Under the Obligations Code the person may claim compensation for pecuniary (including lost income and expenses) and non-pecuniary damages (including physical pain, mental pain and fear). The child must make the claim through the parents or legal representatives. In cases where the child has a mandatory lawyer, it is the lawyer who has the specific duty to advise the child on the possibility to claim compensation in the criminal procedure. The claim should be made within the statutory periods defined in the Obligations Code. The criminal court examines the compensation claim if this would not cause too long a delay for the criminal procedure [Art. 100]. The Slovenian legislation also enables child victims of violent intentional crimes (considered a vulnerable group) to access state compensation, if they meet the formal conditions stipulated in the *Crime Victim Compensation Act*⁸⁷.

Compensation is recognized for physical pains, suffering, loss of maintenance, medical and hospitalization expenses, funeral expenses, damages for destroyed medical devices, and expenses for compensation claims. The authority in charge of taking decisions concerning criminal victim compensation is the Commission of the Government of the Republic of Slovenia deciding on the compensation to victims of criminal acts. The damage must be paid 30 days after the decision on the amount to be refund has become final and after the interested person receives such decision. Written claims must be addressed to the Ministry of Justice.

⁸⁷The Crime Victim Compensation Act, Official Gazette of the Republic of Slovenia, n. 101/5 and 86/10.

4.14 Does the legislation require employing expert advisors in the areas of pedagogy, psychology and social work in the courts and the public prosecutor?

The legislation assessed does not require employment of expert advisors within the courts and the public prosecutors.

5. Kingdom of Netherlands

5.1 General introduction

The Dutch juvenile justice system stems from 1905. This particular national system is interesting because it is considered to be one of the most progressive systems in the world. The basic characteristics of the Dutch system are: **a.** Specialization of the bodies dealing with its implementation, **b.** State participation in the funding of the activities of all bodies engaged with the execution of juvenile justice, **c.** Professionalization of the personnel engaged with the execution of juvenile justice. These people work full time and are paid for their activities, **d.** Cooperation among individual bodies and between these bodies and society at large. **e.** Diversion from the traditional criminal justice, **f.** Independence and discretion of local bodies dealing with juvenile justice **g.** Respect of the juveniles' rights and interests in cases of state or community intervention and **h.** Pedagogical approach to children in conflict with law⁸⁸. Juvenile justice is executed according to the rules and through the bodies specified in the *Children's Rights Act*⁸⁹ and the *Criminal Code*⁹⁰ and the *Code of Criminal Procedure*⁹¹ of the Netherlands⁹².

5.2 Are there protocols, guidance's and other soft law regulations related to protection of child victims of violence?

There are numerous protocols related to protection of child victim of violence with the most of them focused on domestic violence and child abuse. Some of those protocols are: Amsterdam Protocol on Child Abuse, Youth Health Care Service draft guidelines on secondary prevention of child abuse, 2007, Dutch Association of Doctors in Youth Health Care (AJN) interview protocol on female genital mutilation etc.

5.3 Is there a definition of "the best interest of the child" principle within the domestic legislation?

The Netherlands legislation lacks an unambiguous interpretation of the concept the best interest of the child although the term is frequently used in the judicial decision-making. The concept 'best interest of the child' occurs frequently in Dutch legal texts, however, its meaning is not defined⁹³.

⁸⁸Boev.B, *The Juvenile Justice System in the Netherlands*, Bulgarian Helsinki Committee, Available on: <https://issuu.com/bghelsinki/docs/2002juvjusticeholland-1->

⁸⁹This Act is part of the Civil Code.

⁹⁰Criminal Code, 3 March 1881, date of commencement 1 September 1886

⁹¹Criminal Code of Procedure, 15 January 1921, date of commencement is 1 January 1926

⁹²Prof. Dr. Ton Liefwaard, Ms. Maryse Hazelzet, ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS - NATIONAL REPORT ON JUVENILE JUSTICE TRENDS, Netherlands. Available on: http://www.oijj.org/sites/default/files/baaf_netherlands1.pdf

⁹³Zijlstra, A. E. (2012). In the Best Interest of the Child: a study into a decision-support tool validating asylumseeking children's rights from a behavioural scientific perspective [S.l.]: s.n.

5.4 Are there definitions on the different form and types of violence against children within the domestic legislation?

The Youth Act from 2014 (Jeugwet) defines the term child abuse (*kindermishandling*) as any form of threatening to a child or physical, psychological or sexual violence by the parent or other person to whom the child is in a relationship of dependency and lacks a free will, forced actively or passively causing harm in the form of physical and psychological injury [**Art.1.1 (1) 24 from the Youth Act**]. In the Netherlands the following kinds of child abuse are distinguished, which occur in different combinations: **Physical abuse**: beating, kicking, biting, pinching, scratching, dropping, inflicting burns, shaking (shaken baby syndrome) and Münchhausen Syndrome by Proxy, **Physical and psychological neglect**: withholding care and attention and therefore ignoring basic needs of love, warmth, security and support, **Mental or emotional abuse**: behavior that reflects rejection and hostility, **Sexual abuse**: forcing sexual acts by using the dominant power position, **Being a witness to domestic violence**: growing up in a family in which parenting occurs in an unsafe situation, which may seriously affect the developmental process of children⁹⁴.

5.5 Is there a clear requirement for the educational, health and social institutions to report act of violence against children to the police and the public prosecution? Is the omitting to report such act a criminal act *per se*.

The Mandatory Reporting Code (Domestic Violence and Child Abuse) Act, targets domestic violence and child abuse, including sexual violence, female genital mutilation, honor-based violence, senior abuse and forced marriage. The Code establishes an obligation for the following sectors: **a.** health care and youth health care, **b.** including mental health care and care under the Exceptional Medical Expenses Act, **c.** youth care, **d.** education, from primary school to higher education, including compulsory education, **e.** child care, **f.** social support, **g.** criminal justice, including the Central Agency for the Reception of Asylum Seekers.

The code is also applicable for the independent professionals such as doctors, nurses, obstetricians, dentists, pharmacists, health psychologists, psychotherapists, physiotherapists, dieticians, speech therapists, podiatrists, occupational therapists, optometrists, and laboratory assistants. Each of these subjects are required to have a reporting code that meets the statutory requirements and to promote awareness and use of the reporting code within the organization. The Code establish an obligation for the abovementioned institution and professional when identify the signs for violence or abuse to file an appropriate report to the competent institutions⁹⁵.

5.6 Does the legislation governing the education contain provisions related to the violence against children?

The Primary Education Act (Wet op het Primair Onderwijs) stipulates an explicit obligation for the schools not funded by the public budget to comply with the Mandatory Reporting Code (Domestic Violence and Child Abuse Act)[**Art. 4b from the PEA**]. The PEA also stipulates an

⁹⁴De Baat and others. Combating child abuse and neglect in the Netherlands. 2011. Available at:[http://www.nji.nl/nl/Download-NJi/Publicatie-NJi/\(301995\)-Daphne_report_Netherlands.pdf](http://www.nji.nl/nl/Download-NJi/Publicatie-NJi/(301995)-Daphne_report_Netherlands.pdf)

⁹⁵Ministry of Health, Welfare and Sport, Model Reporting Code Domestic Violence and Child Abuse - Action plan for responding to signs of domestic violence and child abuse, 2014. Available at: <https://www.government.nl/topics/children-and-children-s-rights/documents/reports/2013/03/14/model-reporting-code-domestic-violence-and-child-abuse>

obligation for reporting of sexual offences [Art. 4a from the PEA]. The same obligations are required by the Secondary Education Act (Wet op het Voortgezet Onderwijs) [Art. 3 & 3a from the SEA].

5.7 Is there a requirement for joint teams composed of all relevant institutions?

Due to the lack of available translation of the Dutch legislation to the English language such requirement was not identified.

5.8 Is there a special law that governs the child justice system and the criminal law protection of children?

Netherlands like Slovenia does not have a special law that regulates the criminal justice system for children. The involvement of children in criminal procedures as defendants/suspects, victims and witnesses is governed by the so-called deviated provisions within the *Criminal Code*⁹⁶ and the *Criminal Code of Procedure*⁹⁷. The deviated provisions are specific rules applying to children between the ages of 12 and 18. For issues not covered by the deviated provisions the other provisions of the CC and CCP are applicable. When applying the deviated provisions the best interests of the child have to be the first matter of importance. The *Criminal Code or Procedure* contains provisions related to the criminal-law protection of children victims and witnesses in criminal procedures. The Dutch child justice system is characterized by presence of other specific laws each regulating certain specific aspects of the system such as the *Act to strengthen the position of the victim in the criminal procedure*⁹⁸, the *Youth Care Act (Wet op de Jeugdzorg)*⁹⁹ and the *Criminal Injuries Compensation Fund Act*¹⁰⁰.

5.9 Are the criminal acts committed by adult perpetrators against children tried by general judges and panels for criminal procedure or by special juvenile judges and panels? Is there a requirement for specialization for the judges, prosecutors, police officers and other professions involved in the criminal procedures?

Specially trained judges adjudicate on cases with child victims and witnesses¹⁰¹. Also this cases are handled by specially trained prosecutors¹⁰².

5.10 Do the child victims of violence have the right to a free legal counsel during the criminal procedure? Is there a requirement for specialization of the attorneys?

Every victim has the right to legal advice and assistance. There are no specific rules for child victims. The victim is free in his/her choice for legal assistance. For example, (s)he can choose a friend or family member, but also a staff member of Victim Support Netherlands (*Slachtofferhulp Nederland*) or a lawyer [Art. 51c from the CPC]. During the public hearing, the victim can only be represented by an attorney of law, who has to be orally authorized for that purpose or has written authorization with him/her. A child under 16 cannot make an arrangement with an attorney him/herself. Under the Civil Code, parents are responsible for the representation of their children. The victim does not automatically have access to free legal aid as access to such aid depends on the type of case or on income. Legal aid is provided by lawyers. The victim

⁹⁶Criminal Code, 3 March 1881, date of commencement 1 September 1886

⁹⁷Criminal Code of Procedure, 15 January 1921, date of commencement is 1 January 1926

⁹⁸*Act to strengthen the position of the victim in the criminal procedure*, 1 January 2011

⁹⁹Youth Care Act, 22 April 2004

¹⁰⁰Criminal Injuries Compensation Fund Act, 23 December 1992

¹⁰¹Source: http://www.childreninjudicialproceedings.eu/Criminal/ComparativeData/default.aspx#Theme_10_Training

¹⁰²Ibid.

himself/herself will have to request financial assistance for payment of the costs of legal assistance at the Council for Legal Aid (*Raadvoor de Rechtsbijstand*). The amount of financial contribution depends on the income of the victim, which in cases involving children depends on the income of the parents.

5.11 Are the child victims of violence entitled to additional procedural rights and safeguards compared with the adult injured parties in criminal procedure?

The children victims of violence are entitled to the following rights as injured parties in criminal procedures:

- The victim or surviving relative have **the right to make a statement about the consequences of the crime during the public hearing**. The right to speak can be exercised for crimes for which a sentence of at least eight years may be imposed or for other offences as prescribed by law. Examples of those specific crimes are the possession of child pornography, molestation, threats and inducing children to commit illicit sexual acts (Art. 240b, 242 and 248a CCP),
- The hearing of child victims is carried out by an officer specifically trained in creating a 'natural contact' with child victims, to ensure a child-friendly environment. The hearings take place in specially designed rooms¹⁰³,
- The victims have, upon request, a right to be informed by the police or the Public Prosecutor about the start and progress of the criminal procedure against the suspect, the right to be informed by the Public Prosecutor when the convicted suspect has been released, the right to a copy or record of the crime report (51a CCP),
- The victims have the right to copies of the documents relating to the case, as far as they are relevant to the victim, upon permission of the Public Prosecutor. If the Prosecutor refuses, the victim can submit an objection against this (Art, 51b CCP),
- Placing in care: in cases of violence, the child lives no longer at home but in a care home or with foster parents. This measure can be combined with placing under supervision when the risk of maltreatment or abuse remains present the right to provide another domicile address (at the police station or victim support) to their own, to prevent their address being known to the offender.
- The right to an anonymity. Anonymity is only permitted in serious cases where there is concrete danger to the victim. The right to privacy of the victim has to be balanced against the right of the suspect to a fair trial as laid down in the ECHR. As a result of Article 6 ECHR, it is considered that in most cases anonymity is not an option.
- As mentioned under 2.1.4, for children under the age of 12, a studio hearing takes place. Likewise, interviews with children from the age of 12 to 16 must be recorded through audiovisual means. The recording is done in the interest of establishing the truth and can be used as evidence in court¹⁰⁴. After proceedings have ended, the recorded materials must be destroyed. When a studio hearing takes place, the child's lawyer can follow everything live from a separate room.

¹⁰³Source: <http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Netherlands.pdf>

¹⁰⁴Instructions on auditory and audiovisual registration of interviews with informants, witnesses and suspects (*Aanwijzing auditief en audiovisueel registeren van verhoren van aangevers, getuigen en verdachten*), 28 July 2010, Government Gazette n. 11885.

5.12 Are the child witnesses entitled to additional procedural rights and safeguards compared with the adult witnesses in criminal procedure?

Unlike the child victims, the child witnesses do not enjoy the right to be heard or participate in the proceedings. They are only involved when necessary for the progress of the proceedings. In the Dutch criminal law system, there are no specific rules concerning child witnesses, which means that the general rules on witnesses apply. In general, this means that the witness is entitled to legal assistance during the hearing and has the possibility to request treatment as a threatened witness, (*Bedreigdegetuige*) or to be treated as an anonymous witness. In the regulations of the Public Prosecutors Office, binding guidelines are given on the treatment of certain groups of child witnesses and victims.

For instance, special measures are in place for child witnesses of domestic violence. Similar to the legal aid provided for child victims, interviews with child witnesses under the age of 12 take place in a studio where the hearing will be recorded. For child witnesses between the ages of 12 and 16, the audiovisual recording of the hearing is mandatory. The child witness can be kept outside the regular public hearing. In addition, a child under 16 is not sworn in but rather urged to tell the truth. During the preliminary investigation, the witness has the right to be legally assisted by a lawyer. The right to legal aid is the same as for child victims; free legal counsel is not automatically appointed to assist the witness and the witness must make a request to the Council for Legal Aid for a financial contribution¹⁰⁵.

5.13 Do the child victims of violence have the right for indemnification compensation claim? Is there a possibility for compensation from budgetary funds?

The victim can join the criminal procedure as a third party, called the injured party (*Benadeeldepartij*), with a civil claim for compensation for damages. The nature of the civil claim however, must not be a disproportionate burden to be dealt with in the criminal procedure (Art. 51a).

5.14 Does the legislation require employing expert advisors in the areas of pedagogy, psychology and social work in the courts and the public prosecutor?

The legislation assessed does not contain provisions requiring employment of expert advisors in the areas of pedagogy, psychology or social work. Within the courts and the prosecutors.

6. United Kingdom

6.1 General introduction

The legislation pertaining to child protection and violence against children in the UK consists of many laws and guidance that are continuously being amended by new legislation, and this is known as statutory law. The way in which courts interpret laws is known as case law, and this can have effect of amending statutory law. Not all Laws cover all parts of the UK (England, Wales, Scotland, and Northern Ireland). The legislation covering child protection can be divided on civil and criminal law. The current (basic) child protection system is based on the Children Act 1989, amended with the Children Act 2004; The Human Rights Act 1998; the Children's Commissioner for Wales Act 2001; The Education Act 2002 and 2011; Children and Adoption Act 2002 and

¹⁰⁵Source: <http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Netherlands.pdf>

2006; Children and Young Persons Act 2008; Borders Citizenships and Immigration Act 2009; Apprenticeships, Skills, Children and Learning Act. There are numerous guides related to safeguarding children, and we would emphasize the Statutory Guidance for Schools and Colleges 2016 (keeping children safe in education) and A guide to inter-agency working to safeguard and promote the welfare of children 2016 (working together to safeguard children).

6.2 Are there protocols, guidance's and other *soft law* regulations related to protection of child victims of violence?

The legislation in UK's 4 nations – England, Northern Ireland, Scotland and Wales – have their own child protection system and laws to help protect children from abuse and neglect. Each nation has a framework of legislation, guidance and practice to identify children who are at risk of harm, and take action to protect those children and prevent further abuse occurring. Each UK nation is responsible for its own policies and laws around education, health, and social welfare. This covers most aspects of safeguarding and child protection. Laws are passed to prevent behavior that can harm children or require action to protect children. **Guidance** sets out what organizations should do to play their part to keep children safe. Although the child protection systems are different in each nation, they are all based on similar principles.

6.3 Is there a definition of “the best interest of the child” principle within the domestic legislation?

The Children Act 1989 provides the legislative framework for child protection of England and establishes the key principles: the paramount nature of the child's welfare and the expectations and requirements around duties of care to children. When a court determines any question with respect to: (a)the upbringing of a child or(b)the administration of a child's property and or the application of any income arising from it, the child's welfare shall be the court's paramount consideration. In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

When deciding upon certain circumstances that consider the welfare of the child, a court shall have regard in particular to: (a)the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);(b)their physical, emotional and educational needs;(c)the likely effect on their change in his circumstances;(d) their age, sex, background and any characteristics of his which the court considers relevant;(e)any harm which they may have suffered or is at risk of suffering;(f)how capable each of their parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting their needs;(g)the range of powers available to the court under this Act in the proceedings in question.¹⁰⁶

6.4 Are there definitions on the different form and types of violence against children within the domestic legislation?

The Statutory guidance for schools and colleges 2016 should be read and followed by: **1.**governing bodies of maintained schools (including maintained nursery schools) and colleges; **2.**proprietors of independent schools (including academies and free schools), alternative provision academies and non-maintained special schools; **3.**and management committees of pupil referral units. Safeguarding and promoting the welfare of children is defined for the

¹⁰⁶<http://www.legislation.gov.uk/ukpga/1989/41/section/1>

purposes of the guidance as: protecting children from maltreatment; preventing impairment of children's health or development; ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and taking action to enable all children to have the best outcomes. Children includes everyone under the age of 18. The guidance defines different types of neglect and abuse quoting that "All school and college staff should be aware that abuse, neglect and safeguarding issues are rarely standalone events that can be covered by one definition or label. In most cases, multiple issues will overlap with one another."

Abuse: a form of maltreatment of a child. Somebody may abuse or neglect a child by inflicting harm or by failing to act to prevent harm. Children may be abused in a family, in an institutional, and or community setting by those known to them or, more rarely, by others (e.g. via the internet). They may be abused by an adult, adults, or by another child or children.

Physical abuse: a form of abuse which may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child.

Emotional abuse: the persistent emotional maltreatment of a child such as to cause severe and adverse effects on the child's emotional development. It may involve conveying to a child that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or 'making fun' of what they say or how they communicate. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond a child's developmental capability as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious **bullying (including cyberbullying)**, causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, although it may occur alone.

Sexual abuse: involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children.

Neglect: the persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to: provide adequate food, clothing and shelter (including exclusion from home or abandonment); protect a child from physical and emotional harm or danger; ensure adequate supervision (including the use of inadequate care-givers); or ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.¹⁰⁷

¹⁰⁷https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550511/Keeping_children_safe_in_education.pdf

6.4.1 Definition, preventing and tackling bullying

The document - **Preventing and tackling bullying Advice for head teachers, staff and governing bodies**¹⁰⁸ is produced to help schools prevent and respond to bullying as part of their overall behavior policy. It outlines, in one place, the Government's approach to bullying, legal obligations and the powers schools have to tackle bullying, and the principles which underpin the most effective anti-bullying strategies in schools

Bullying is behavior by an individual or group, repeated over time, that intentionally hurts another individual or group either physically or emotionally. Bullying can take many forms (for instance, cyber-bullying via text messages or the internet), and is often motivated by prejudice against particular groups, for example on grounds of race, religion, gender, sexual orientation, or because a child is adopted or has caring responsibilities. Cyber-bullying is a different form of bullying and can happen at all times of the day, with a potentially bigger audience, and more accessories as people forward on content at a click. It might be motivated by actual differences between children, or perceived differences. Stopping violence and ensuring immediate physical safety is obviously a school's first priority but emotional bullying can be more damaging than physical; teachers and schools have to make their own judgments about each specific case.

Bullying outside school premises: Teachers have the power to discipline pupils for misbehaving outside the school premises "to such an extent as is reasonable". This can relate to any bullying incidents occurring anywhere off the school premises, such as on school or public transport, outside the local shops, or in a town or village center. Where bullying outside school is reported to school staff, it should be investigated and acted on. The head teacher should also consider whether it is appropriate to notify the police or anti-social behavior coordinator in their local authority of the action taken against a pupil. If the misbehavior could be criminal or poses a serious threat to a member of the public, the police should always be informed.

6.5 Is there a clear requirement for the educational, health and social institutions to report act of violence against children to the police and the public prosecution? Is the omitting to report such act a criminal act *per se*.

Children's Act 1989 (Section 47 Local authority's duty to investigate.) (1) Where a local authority a) are informed that a child who lives, or is found, in their area: is the subject of an emergency protection order, or is in police protection; (b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm, the authority shall make, or has cause to make, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare. (2) Where a local authority has obtained an emergency protection order with respect to a child, they shall make, or have cause to make such enquiries as they consider necessity of what action they should take to safeguard or promote the child's welfare.¹⁰⁹

The Guide to inter-agency working to safeguard and promote the welfare of children 2015 prescribes that whenever there is reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm, there should be a strategy discussion involving local authority children's social care (including the fostering service, if the child is looked after), the police, health and other bodies such as the referring agency. This might take the form of a multi-agency meeting

¹⁰⁸https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444862/Preventing_and_tackling_bullying_advice.pdf

¹⁰⁹<http://www.legislation.gov.uk/ukpga/1989/41/section/47#commentary-c20474491>

or phone calls and more than one discussion may be necessary. A strategy discussion can take place following a referral or at any other time, including during the assessment process. A strategy discussion attendees: A local authority social worker and their manager, health professionals and a police representative should, as a minimum, be involved in the strategy discussion. Other relevant professionals will depend on the nature of the individual case but may include: the professional or agency which made the referral; the child's school or nursery; and any health services the child or family members are receiving. All attendees should be sufficiently senior to make decisions on behalf of their agencies.¹¹⁰

6.6 Does the legislation governing the education contain provisions related to the violence against children?

According to Education Act 2002 (section 175)

(1) A local education authority shall make arrangements for ensuring that the functions conferred on them in their capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children.

(2) The governing body of a maintained school shall make arrangements for ensuring that their functions relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the school.

(3) The governing body of an institution within the further education sector shall make arrangements for ensuring that their functions relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children receiving education or training at the institution.

(4) An authority or body mentioned in any of subsections (1) to (3) shall, in considering what arrangements are required to be made by them under that subsection, have regard to any guidance given from time to time (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales.

(5) In this section: "child" means a person under the age of eighteen; "governing body", in relation to an institution within the further education sector, this meaning is given by section 90 of the Further and Higher Education Act 1992 (c. 13); "maintained school" means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school. ¹¹¹*The Education Act 2011* made changes to provisions on school discipline and placed restrictions on the public reporting of allegations made against teachers.

The more detailed document on violence (abuse and neglect of children) governing education is the *Statutory guidance for schools and colleges* 2016.

¹¹⁰https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592101/Working_Together_to_Safeguard_Children_20170213.pdf

¹¹¹<http://www.legislation.gov.uk/ukpga/2002/32/section/175>

6.7 Is there a requirement for joint teams composed of all relevant institutions when protecting child victims of violence?

According to the Children's act 2004, Section 11 - Arrangements to safeguard and promote welfare, the authorities to which the Act applies are: Local Authority in England - The Local Education Authorities and Children's Services Authorities (Integration of Functions) Order¹¹²; district council which is not such an authority; the National Health Service Commissioning Board; a clinical commissioning group; a Special Health Authority, so far as exercising functions in relation to England, this designated order has been made by the Secretary of State for the purposes of this section; an NHS trust all or most of whose hospitals, establishments and facilities are situated in England; an NHS foundation trust; the local policing body and chief officer of police for a police area in England; the British Transport Police Authority and others.

Each person and body to whom the section applies must make arrangements for ensuring that (a) their functions are discharged in regard to the need to safeguard and promote the welfare of children; and (b) any services provided by another person pursuant to arrangements made by the person or body in the discharge of their functions are provided having regard to that need. ¹¹³*The Guide to inter-agency working to safeguard and promote the welfare of children 2015 - Working together to safeguard children sets forth the responsibilities of each institution in the process of protecting children: "Safeguarding children and protecting them from harm is everyone's responsibility. Everyone who comes into contact with children and families has a role to play."* The guide refers to the role, the professional role and cooperation of all institutions involved: social services, the police the health care institutions and the educational institutions

6.8 Is there a special law that governs the child justice system and the criminal law protection of children?

There is no single piece of legislation that covers the youth justice system in the UK. Instead, myriad of diverse laws and guidance exist that regulates both, the criminal responsibility of young people and the criminal law protection of children. There are three distinct features of the UK youth justice system that must be taken into consideration when analyzing it. Firstly, not all laws cover all parts of the UK (England, Wales, Scotland, and Northern Ireland) and that the legal systems vary in the different areas. Laws are amended by new legislation passed by Westminster (English Parliament), the Welsh Assembly Government, the Northern Ireland Assembly and the Scottish Parliament. This legislation is known as statutory law. The second distinction is that in the UK the statutory law exists concurrently with the case law which is how courts interpret laws. The case law can have the effect of amending statutory law. And the third characteristics of the UK system is the abundance of guidance as a form of soft law which include specific instructions on how to protect the children victims of violence. The main legislation regulating the protection of children victims of violent criminal acts are *the Children and Young Persons Act (1933)*, *Children Act (1989 and 2004)*, *Crime and Disorder Act (1998)*, *Sex Offenders Act 1997*, *Sexual Offences Act 2003*, *Female Genital Mutilation Act 2003*, *Domestic Violence, Crime and Victims Act 2004*.

The child victims and witnesses must go through the formal criminal justice system where the offender is an adult. There are some specific rules and procedures for dealing with child victims

¹¹²<http://www.legislation.gov.uk/ukxi/2010/1158/contents/made>

¹¹³<http://www.legislation.gov.uk/ukpga/2004/31/section/11#commentary-c20903801>

in criminal proceedings but these are not extensive. For the most part, such matters are dealt with through **guidelines**¹¹⁴ and **advisory information**¹¹⁵. Nevertheless, a victim or witness under 18 years of age is automatically regarded as being vulnerable and therefore eligible to be considered for special measures. The focus of those measures is achieving high quality evidence during interviews and when providing testimony in court, though they inevitably help to protect the child's welfare as well. **The Victims Commissioner for England** is established under statute and must promote the interests of victims and witnesses, encourage good practice in the treatment of victims, and witnesses and review the operation of the victim's code of practice.

6.9 Are the criminal acts committed by adult perpetrators against children tried by general judges and panels for criminal procedure or by special juvenile judges and panels? Is there a requirement for specialization for the judges, prosecutors, police officers and other professions involved in the criminal procedures?

The crimes against children committed by adults are adjudicated by the magistrate 'courts. Adult magistrates' courts can only undertake trials and sentence people for offences for which the maximum penalty is six months in prison. Magistrates' courts deal mainly with cases involving people over the age of 18. They can deal with young people, but only if they are being tried with an adult. The youth court is a section of the magistrates' court and can be located in the same building. It deals with almost all cases involving young people under the age of 18. This section of the magistrates' court is served by youth panel magistrates and district judges. They have the power to give Detention and Training Orders of up to 24 months, as well as a range of sentences in the community.

According to Children and Young Persons Act 1933 (1). Magistrates' courts (judges having powers of District Judges (Magistrates' Courts) are sitting for the purpose of (i)hearing any charge against a child or young person, or(ii)exercising any other jurisdiction conferred on youth courts by or under this or any other act are to be known as youth courts.(2)A justice of the peace is not qualified to sit as a member of a youth court for the purpose of dealing with any proceedings unless they have an authorization extending to the proceedings.(3)They have an authorization extending to the proceedings only if they have been authorized by the Lord Chief Justice, with the concurrence of the Lord Chancellor, to sit as a member of a youth court to deal with (a)proceedings of that description, or(b)all proceedings dealt with by youth courts.¹¹⁶

6.10 Do the child victims of violence have the right to a free legal counsel during the criminal procedure? Is there a requirement for specialization of the attorneys?

A child, in common with all victims and witnesses in criminal proceedings does not have a right to legal counsel, assistance or representation. They may pay for their own legal advice, but there are no obligations on authorities to permit legal advisors to be present during interviews or provision of testimony or to assist during the process. Some charities such as Victim Support and Coram Children's Legal Centre are also able to provide free legal advice but this is provided on a voluntary basis¹¹⁷.

¹¹⁴Crown Prosecution Service policy on prosecuting criminal cases involving children and young people as victims and witnesses

¹¹⁵The Code of Practice for Victims of crime details certain legal obligations of witness care unit Section

¹¹⁶<http://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/45>

¹¹⁷Source:

[http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/United%20Kingdom%20\(E&W\).pdf](http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/United%20Kingdom%20(E&W).pdf)

6.11 Are the child victims of violence entitled to additional procedural rights and safeguards compared with the adult injured parties in criminal procedure?

The primary focus of these safeguards and standards is achieving high quality evidence during interviews and when providing testimony in court, though they inevitably help to protect the child's welfare as well.

- **Right to be informed**¹¹⁸: Each victim of criminal act including children is entitled to information on: **a.** Any progress in the investigation such as where a suspect is arrested, where they are charged, interviewed, placed in custody, released from custody, including reasons for any decisions; **b.** Any decisions not to charge, not to prosecute or non-court disposals such as cautions and final warnings. Reasons for decisions must be provided; **c.** Any restorative justice proceedings and the victims' role or rights within those proceedings; **d.** Any dates of hearings and the outcome of hearings such as with respect to remand in custody, trial, and any delays in criminal proceedings including reasons; **e.** Requirements on the victim to give evidence or attend hearings; **f.** The results of any criminal proceedings, including the verdict of the trial, any sentence where the offender is found guilty, any appeal and the result of the appeal; **g.** Where the offender is convicted of a sexual or violent offence and sentenced to 12 months or more, the victim should be informed of the possibility to make representations about the release of the offender, and should be informed of any relevant release information including restrictions on the offender; **h.** Eligibility for compensation under the Criminal Injuries Compensation Scheme, explanations for any refusal of compensation, the possibility of seeking a review and subsequently an appeal of the decision and the procedures involved, and an explanation of appeal decisions. In general, with respect to vulnerable victims and witnesses such as children, information must be provided within one working day of the information being available.
- The **public is excluded** from the criminal procedure.
- **Special measures when being interviewed or giving testimony in court.** The police should explain to the victim/witness the special measures and ask which ones they want. The special measures are: **a.** Screening witness from accused; **b.** Evidence by live link which enable the witness to give evidence during the trial from outside the courtroom via a televised link; **c.** Evidence given in private in sexual offence cases and cases involving intimidation; **d.** Removal of wigs and gowns by barristers and judges; **e.** Video recorded evidence in chief; **f.** Video recorded cross-examination/re-examination (not yet implemented)¹¹⁹; **g.** Examination through an intermediary appointed by the court; **h.** Aids to communications for overcoming physical difficulties with understanding or answering questions such as alphabet boards.
- **Right to be heard.** All victims should also be given the opportunity to make a Victim Personal Statement (VPS) at the end of the interview. The purpose of a VPS is to give the victim of crime the chance to say what effect the crime has had on them and to help identify their need for information and support. This information can be used by a judge to ascertain the consequences of the offence to the victim which can be relevant when determining the sentence.

¹¹⁸Victims' Code of Practice for victims and in the Witness Charter for witnesses

¹¹⁹See Footnote 108

6.12 Are the child witnesses entitled to additional procedural rights and safeguards compared with the adult witnesses in criminal procedure?

The same rules for protection of child victims with regards to the burden of proceedings and child friendly environment apply for child witnesses.

6.13 Do the child victims of violence have the right for indemnification compensation claim? Is there a possibility for compensation from budgetary funds?

In England, Wales and Northern Ireland, child and adult victims can seek compensation either from the offender or in certain circumstances from the State. Offender compensation is available once the offender has been convicted of the offence. The offender makes the payments to the court, which will then pass the money on to the child. Child and adult victims of violent crime may be eligible for State compensation under the same rules. Such compensation is available, irrespective of whether an offender has been charged or convicted of an offence. The Criminal Injuries Compensation Scheme provides compensation payments to those with the most serious injuries and those who have been the victim of the most distressing crimes. There is no prohibition on children making an application for compensation, though it is also stated that compensation may be paid to a victim even where the application is made by another person on his or her behalf. Victim Support provides free practical assistance in completing application forms as well as legal advice.

6.14 Does the legislation require employing expert advisors in the areas of pedagogy, psychology and social work in the courts and the public prosecutor?

The legislation assessed does not contain provisions requiring employment of expert advisors in the areas of pedagogy, psychology or social work within the courts and the prosecutors.

II Comparison of the Legislation

The comparison of the assessed legislation was performed through comparing 10 separate indicators related to the different aspects of the protection of the children victims of violence.

Indicator 1: *Definition of the term "Best Interest of the Child is present in the legislation*

All countries assessed are signatory parties of the Convention of the Rights of the Child. As such the principle of *Best Interest of the Child* is encompassed in their national legislation. However there is difference among the different legislation with regards to the level to which the meaning and scope if this principle is defined in the laws or its interpretation is left to the court and the state organs. Our country, the Federation of Bosnia and Hercegovina, Slovenia and the Netherlands does not have definition of this principle. On the other hand, the legislation of Serbia, Croatia and the United Kingdom have guidance and criteria on how to interpret this principle in individual cases.

Indicator 2: *The different forms of violence against children are defined and stipulated in the national legislation*

The acts of violence against children could be done in a variety of forms, from the visible physical abuse to the much more subtle emotional abuse. It can be performed directly or through the cyber space. Key precondition for protection of the children is proper identification of the forms of violence in the national legislation. With regards to this indicator the research has grouped the

countries in two major groups. In the first one (Slovenia, Federation of Bosnia and Hercegovina and Netherlands), the acts of violence are solely defined as criminal acts in the national criminal codes. The second group, beside the incrimination of these acts in the criminal codes, additionally gives a precise definition of all acts which are considered as violence against children. This group is composed by Serbia, Croatia and the UK. Our country lays in the middle because it have definition of the acts of violence but they are solely included in the legislation about protection from domestic violence.

Indicator 3: *The educational, healthcare and social institutions are specifically legally bounded to report a case of violence against children in case of indications on such*

With regards to this indicator there is clear consensus among the assessed national legislations. The teachers, counselors, mentors, doctors, nurses, social workers and other professionals which duties are directly related to protection and care of children are legal obliged to report immediately to the competent institution (police, prosecution, social centers) if they have information that certain child is a victim of any form of violence. The difference among the legislation is solely whether this obligation is emanated from the general obligation for reporting a crime when noticed applicable to all citizens, or there is special obligation to these professions to report a crime and thus failure to do so results with greater sentence compared with the general public.

Indicator 4: *The legislation governing education contain provisions related to protection from violence against children*

This indicators assist in assessing whether the laws regulating educational institutions (schools) encompass provision defining and/or prohibiting the violence against children. It points out whether the burden of identifying cases of violence against children is transferred also to the schools beside the police, social workers and doctors. The assessment have showed that the Federation Bosnia and Hercegovina, Slovenia and the UK's educational legislation does not include special provision for violence against children. Contrary, Serbia, Croatia and the Netherlands have specific provision defining the acts of violence and prescribing obligation for identification and referral. National legislation on education does not have provision on this issue.

Indicator 5: *The juvenile justice system is regulated by a special law different from the general criminal justice legislation*

The criminal law protection of children victims of violence is part of the general juvenile justice system. However there are difference among the assessed countries with regards whether there is special law on the juvenile justice. Our country, Serbia, Croatia and the Federation of Bosnia and Hercegovina have special laws on the juvenile justice while Slovenia, Netherland and the UK encompass the substantial and procedural provisions regulating the juvenile justice within their general criminal legislation.

Indicator 6: *The violent criminal acts of adult perpetrators against children victims are processed by specialized judges and panels*

Additional comparison between the assessed national legislation can be made with regards to the professional requirements for the judges and the panels that are trying cases of violent criminal acts committed against children by adult perpetrators. In Serbia, Croatia, Federation of Bosnia and Hercegovina and the Netherlands these cases are processed by specialized judges and panels

where the judges and the lay judges are required to have special knowledge and experience in the area of juvenile justice, children rights, children psychology etc. Contrary, in Slovenia, the UK and our country these cases are processed by the general judges and panels processing all criminal cases.

Indicator 7: *The children victims of violence have right to a free legal counsel in the criminal procedure*

The right to a legal counsel to the victim and injured parties of criminal acts in the criminal procedures is undisputed and recognized in all legislation. However, there is distinction with regards to whether free legal counsel is provided to the children and their families which do not possess the means to hire a professional attorney. The laws of Serbia, Croatia, FBiH, Netherlands and the UK stipulated explicitly the right of a free legal aid to the children victims of violence. Contrary, Slovenia's and our national legislation does not foresee this right.

Indicator 8: *The children witnesses in criminal procedures are entitled to additional procedural rights and safeguards compared with the adult witnesses in criminal procedure*

Among this indicator there is consensus in all of the assessed legislations. All of them stipulate special procedural rights and safeguards for the children witnesses in criminal procedures compared with the adult witnesses in criminal procedure.

Indicator 9: *The children victims of violence are entitled to the right of compensation from the budget*

This specific right is a safeguard that the children victims will be compensated for their pecuniary and non-pecuniary damages consequence of the act of violence. Such rights is only recognized in our country, Slovenia and the United Kingdom. In the other countries the compensation for damages is solely possible in civil procedure from the defendant.

Indicator 10: *Expert advisors from the areas of pedagogy, psychology and social work can be employed within the courts.*

The legislation of Serbia, Croatia and FBiH provides the possibility for employment of Expert advisors from the areas of pedagogy, psychology and social work can be employed within the courts and the prosecutions that will work in cases of violence against children. Such opportunity is not foreseen in the legislations of our country, Slovenia, Netherlands and the UK.

The table below contains a graphical overview of the most relevant indicators assess in the national legislation.

	FYROM	RS	CRO	FBIH	SLO	NL	UK
Definition of the term “Best Interest of the Child is present in the legislation	No	Yes	Yes	No	No	NO	Yes
The different forms of violence against children defined in the legislation	No	Yes	Yes	Yes	No	Yes	Yes
The educational, healthcare and social institutions are legally bound to report a case of violence against children in case of indications on such	Yes	Yes	Yes	Yes	Yes	Yes	Yes
The legislation governing education contain provisions related to protection from violence against children	No	Yes	Yes	No	No	Yes	No
The juvenile justice is regulated by a special law	Yes	Yes	Yes	Yes	No	No	No
The violent criminal acts of adult perpetrators against children victims are tried by specialized judges and panels	No	Yes	Yes	Yes	No	Yes	No
The children victims of violence have right to a free legal counsel in the criminal procedure	No	Yes	Yes	Yes	No	Yes	Yes
The children witnesses entitled to additional procedural rights and safeguards compared with the adult witnesses in criminal procedure.	Yes	Yes	Yes	Yes	Yes	Yes	Yes
The children victims of violence are entitled to the right of compensation from the budget	Yes	No	No	No	Yes	No	Yes
Expert advisors from the areas of pedagogy, psychology and social work can be employed within the courts.	No	Yes	Yes	Yes	No	No	No

CONCLUSIONS

The “best interest of the child” principle is present in the legislation of all countries assessed due to the fact that all of them have ratified the UN Convention on the Rights of the Child. Application and referral to this principle is present in the legislation governing child rights, family relations, legal guardianship, adoption, education, healthcare, juvenile justice and the criminal-law protection of minors. A precise definition of the principle and its meaning, is rarely present in the legislation. Guidance on how to interpret the principle in individual cases is present in Serbia and Croatia UK in the protocols and the guidance. Therefore, it can be concluded that the secondary

legislation is much more appropriate to define this principle instead of the rigid primary legislation.

The majority of countries assessed have precise definitions on different types and forms of violence against children, nevertheless most of the definitions are included in the secondary legislation. Concerning the definitions on the types of violence it is important to note the vague content of emotional violence and the tendency of defining new specific forms of violence in certain countries. The bullying, the cyber violence, and the neglect as a separate form of violence are defined as such. The secondary legislation should include precise definition of the violence and list of indicators on how to recognize it and report it.

The institutions, that due to the nature of their work have contact with children such as schools, healthcare providers, and social welfare institutions, have the possibility to identify violence or neglect more frequently than other institutions. Explicit requirement in the legislation regarding the obligation of schools, healthcare and social welfare institutions to identify and report violent acts is present in the UK, FBiH and the Netherlands. In the remaining countries, the general obligation for the public institutions to report acts identified within their own competence applies.

In half of the assessed countries, the legislation pertaining to education comprises specific provisions that prohibit violence and oblige the school officials to report in cases of such.

The juvenile justice system and the criminal-law protection is regulated with special law in the countries of ex-Yugoslavia with the exception of Slovenia. The special law incorporates provisions on substantive (criminal responsibility, sentencing etc.), statutory (court, composition, competence, procedural (the acting of police, prosecutors and courts) nature and provisions related to the enforcement of sanctions. All these laws also enclose provisions on the criminal-law protection of children victims of violence. On the other hand, in Slovenia and Netherlands, the juvenile justice is enforced according to the deviated provisions from the Criminal and Criminal Procedure Acts.

In general, the child victims of violence have the right to legal counsel as damaged parties in all of the assessed countries. The difference is with regards to the modalities on whether the child has the right to a free of charge legal aid, the procedure of granting free legal aid and whether mandatory representation is required in certain situations.

The legislation of Netherland and the UK grants the right to be heard to the victims of violent criminal acts (including children) in the criminal procedure. These rights include the Victim Personal Statement. The victims have the right to comment on the effect of the crime and to help identify their need for information and support. This information can be useful for the judge to ascertain the consequences the offence had on the victim which is relevant when determining the sentence. Also, the victims in the UK have the right to be informed on all aspects of the pending criminal case. These two rights are generally present in the legislation of the countries of ex-Yugoslavia, but not defined in precision as in Netherlands and the UK.

The right to a compensation for the children victim of violence from the public budget is present only in the legislation of our country, Slovenia, and the UK. In the remaining countries, the compensation for damages could only be requested from the perpetrator of the criminal act.

The juvenile courts and prosecutors in Croatia and Federation of Bosnia and Hercegovina are obliged to employ expert advisors in the areas of pedagogy, psychology and social work. These

experts work on the cases related to children as defendants or victims of criminal acts. Such possibility is allowed in Serbia but it's not mandatory. In the other countries assessed such obligation is not mandatory.

Part 3

Recommendations for improvement of the national legislation pertaining to prevention and protection of violence against children

1. **Defining what constitute an act of violence against children with amends to the Law on the Rights of the Child.** The definition must include clear and explicit explanation on all four types of violence against children including physical, mental, sexual violence and neglect in accordance with the UN, EU and CoE standards. Additionally, a relatively new specific forms of violence against children such as bullying, cyber bullying and economic violence should also be defined in legislation. Amendments of the Law should be followed by adoption of a by-law that will additionally establish early indicators for early identification of violence. Clear definition of the acts which are considered acts of violence against the children in law and indicators for recognition of violence will facilitate the identification of individual cases of violence especially for the more subtle forms of violence such as emotional abuse and cyber-bullying. Example for definition of the acts of violence:
 - a. **Bullying** is behaviour by an individual or group, repeated over time, that intentionally hurts another individual or group either physically or emotionally. Bullying can take many forms and is often motivated by prejudice against particular groups on grounds of race, religion, gender, sexual orientation, or because a child is adopted or has caring responsibilities.
 - b. **Cyber-bullying** is a different form of bullying and can happen at all times of the day, with a potentially bigger audience, and more accessories as people forward on content at a click, motivated by actual or perceived differences between children, differences.

2. **The criminal cases where children are victims and/or injured parties of specific violent criminal acts should be processed and tried by a specialized juvenile judges and panels.** This can be achieved through amending the Law on Justice for the Children. The specific vulnerability of the children who were victims of violence and now should participate in the procedure as a witnesses requires special knowledge and skills of the judge in order to avoid double victimization. The judges must possess advanced knowledge on the rights of the child, social pedagogy, children and adolescent psychology and skills for dealing with children victims of trauma. The lay judges must be selected from professionals in the area of pedagogy, child and adolescent psychology, and social work. The list of violent crimes¹²⁰ for which a jurisdiction will be given to a specialized judges and panels for children must be prescribed within the Law on Justice for Children.

¹²⁰ The list of violent criminal acts against children should include: Murder, murder of a child at birth, instigation to suicide and assistance in suicide, severe bodily injury, unlawful deprivation of liberty, kidnapping, rape, sexual assault of a helpless person, sexual assault by position abuse, sexual assault upon a child who has not turned 14 years of age, gratifying sexual urges in front of another, gratifying sexual urges in front of another, mediation in prostitution, enticing a child who has not turned 14 to sexual assault or to other sexual act, displaying pornographic material to a child, incest, unwed life with a child, taking away a child, change of family situation, neglecting and maltreating a child, abandoning

3. **The Law on Justice for Children must be aligned with the Law on Free Legal Aid with regards to the right to free legal aid for the children who are victims and/or injured parties of violent criminal acts.** The LJC must include a provision requiring that the attorneys that are providing legal aid to children victims of violence must be properly trained in areas specific for protection of the children's rights. Simultaneously, the LFLA must be amended on a manner that will establish a fast line procedure for appointment of an attorney to children victims of violence. The system for free legal aid should be organized in a manner that will secure timely payment of the attorney's fees. The access to legal aid must be secured for the criminal procedure but also in eventual civil procedure if necessary for realization of the right to a compensation for the pecuniary and non-pecuniary damages deriving from the committed crime.

4. **Full respect and implementation of the "one hearing principle" when examining the children victims and injured parties of violent criminal acts.** The law must establish procedural safeguards with regards to the conditions that must be met in order for the examination can be conducted (ex. psychologist must confirm that the child is able to give a statement etc.) and the prosecutor must clearly define the questions and the information for which the statement is needed. Second hearing can be allowed but only as an exemption in extraordinary circumstances, if the second hearing is fundamental for proper determination of the facts and if it does not affect significant trauma to the child.

5. **Criteria for interpretation of the principle "best interest of the child" should be incorporated in all regulations relevant to child protection,** including but not limited to: Law on Justice for Children; laws on primary and secondary education, Law on justice for the children, Law on health care protection, The Law on Prevention and Protection from Family Violence, Law on State Educational Inspectorate, Law on Justice for Children, relevant by-laws, Rulebooks, Protocols, etc. The criteria should follow the standards set up in the auspices of the Convention of the Right of the Child. The criteria must point out the prevalence over the interest of the parents, guardians, institutions or communities in situations where these interests differ from the interest of the child.

6. The best interest of the child must have priority in all matters that concern the child over the interest of the parents, guardians, institutions or communities in situations where these interests differ from the interest of the child. Minimum general standards and guidelines **on proceeding in cases of violence against children** that all relevant institutions (particularly the courts) authorized to take action should consider:
 - Characteristics of the minor (age, gender, disability, irrational social behavior and other)
 - Age, sex, background and any characteristics which the institution/the court considers relevant;
 - The safety of the child /any harm which they may have suffered or is at risk of suffering;
 - Desires/wishes and feelings of the minor (according to the age and maturity/considered in the light of his age and understanding).

a helpless child, domestic violence, not paying alimony, hindering and non-execution of protection measures for minors, enabling the use of narcotics, and precursors, armed robbery and robbery.

- Physical, emotional, health, educational needs and needs related to accommodation, nutrition, clothing of the minor
 - Capacity/Ability of the parents/other persons to respond to the needs of the minor
 - Useful resources for securing growth and development circumstances.
 - Time needed for adjustment to new environment or elimination of the effects of abuse and neglect.
7. **Incrimination of the failure to report an act of violence to children by employees of educational, healthcare, social work and other institutions where children are stationed temporary or permanently through amending the Article 364 from the Criminal Code (Failure to report criminal act or perpetrator).** The current law incriminates the failure only if it is done by an official persons. The teachers, doctors, counselors and the social workers are not considered as official persons under the current Criminal Code. The threat of criminal responsibility will stimulate the employees to report such crimes to the police and the public prosecutor.
8. **The laws on primary and secondary education** should include provisions that prohibit violence, abuse and neglect against children determining what is considered as violence within the educational institutions distinguishing the different types of violence: physical; psychological, social, sexual, neglect of students, bullying (cyber bullying). The Laws may include provision that obliges the teachers, educators, the professional staff and the remaining employees of the educational institutions to undertake measures to protect the rights of the students, particularly in cases of violence. A responsible person for notifying the relevant institutions should be prescribed with the Laws (Principal, Manager, assigned coordinator). Those who find out or assess that there is a doubt that certain child is victim of any form of violence are obliged immediately to notify the relevant institution (police, public prosecutor or other). These Laws should also invoke on misdemeanor or criminal responsibility for the employees and the responsible person for infringement of the obligation to investigate, proceed or report when having indications that violence has occurred.
9. The option of **hiring expert advisors** (social pedagogues, social workers and psychologists) with in the courts and the public prosecutors should be considered as an alternative to using the services of the Centers for Social Welfare. The role of the expert advisors in the courts will be to provide an expert opinion on the victim, its physical and social state, the conditions in which it lives etc. The expert advisors in the public prosecutor's offices would provide expert opinions needed for rendering decision from the competence of the prosecution.
10. **Amendments and systematization of the bylaws and soft law** - The applicable (bylaws and the soft law - Protocols) that refer to violence against children should be amended for each sector (Police, Education, Health Care, Centers for social work, Public Prosecution) and include provisions on addressing the violence against children. The relevant bylaws should systematically consist of general bylaw/soft law that define the violence of children comprising all types of violence, the multi-sector cooperation, and prescribing one national body that is competent to supervise, coordinate and further develop the

work on combating violence against children. The work of each sector should be defined in detail in separate documents that will consist of clear provisions on recognizing and processing the cases of violence against children. The approach towards the violence against children should be unified, effective, and in line with the social developments (the existence of the cyber space). The general bylaw/soft law on multi-sector cooperation should include all recommended amendments such as best interest of the child, the widened scope of types of violence, as well the unified definition on violence against children. The bylaws/soft laws for each sector separately (Police, Education, Health Care, Centers for social work, Public Prosecution) should derive and comply with the general bylaw.

11. **The Bureau for Educational Development together with the local self-government** should take a proactive approach in the prevention of violence against children by developing programs, trainings and workshops on the topic for teachers and educators, but also for parents and children.
12. **Introducing the “safe house”¹²¹ as a new approach of dealing with cases where a child is a victim of violence.** This model proposes that all relevant institutions authorized to take actions in cases where children victims/witnesses of violence are involved, meaning the police, the center for social work, the health workers, the prosecution and the defense should be settled in one place where child-friendly environment is set. The establishment of a “safe house” will contribute to avoid the risk of re-victimization, and with the proper technical and material equipment, will be used for the first assessment and interrogation of the child victim of violence, medical examination and therapy, and legal counseling.
13. Strengthening human capacities and adjustment of the technical equipment and material assets within the relevant institutions for full implementation of the additional procedural rights and safeguards stipulated in the LJC and CPC.

¹²¹Based on the Barnahus Model

ANNEX I

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