Milica Kolaković - Bojović, PhD
Tanja Drobnjak
Milena Banić, PhD

FORMATIVE ANALYSIS

Report of the existing Child-Friendly Justice legal and policies framework and its application in practice in Serbia

CRiS
Child Rights in Serbia

IMPRESSUM

FORMATIVE ANALYSIS - Report of the existing Child-Friendly Justice legal and policies framework and its application in practice in Serbia

PUBLISHER:

International rescue committee – Hellas
64str. Eleftheriou Venizelou
10677 - Athens, Greece
rescue.org

ON BEHALF OF THE PUBLISHER:

Dimitra Kalogeropoulou

AUTHORS:

PART 1 – Assistant professor Milica Kolaković Bojović, PhD
PART 2 and 3 – Lawyer Tanja Drobnjak
PART 4 – Milena Banic, PhD

EDDITING AND COMPILATION:

Božidar Dimić and Katarina Mitić

TRANSLATION:

Darja Koturović

YEAR:

2020

This project is funded by the European Union's Rights, Equality and Citizenship Programme (2014-2020)

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EXECUTIVE SUMMARY

In recent decades, the institutions of the Republic of Serbia, especially since the adoption of the Law on Juveniles and the Criminal Code, as well as through numerous amendments to the latter directed towards provision of additional criminal protection to children, have achieved a **significant degree of harmonization of substantive and procedural criminal legislation with relevant international standards in the field of child protection**, by adopting the concept of the best interests of the child, reflected through a number of legal solutions ensuring: modification of standard procedural mechanisms applied when it comes to adult offenders and victims of crime and diversionary models of conduct that ensure the efficiency of the proceedings; plentiful and tailored sanctions and measures; various procedural safeguard mechanisms; mandatory specialization of all subjects of criminal proceedings in the field of rights of the child; mandatory professional defense, i.e. legal counselling and representation of juvenile victims, as well as the establishment and work of the Council for the Rights of the Child and the Council for Juveniles as expert bodies in charge of monitoring and coordinating public policies and practices relevant to children's rights and especially criminal law mechanisms. It remains necessary to **conceptually harmonize the Criminal Code and the Criminal Procedure Code with regard to the notion of a child, in a way that this notion is already defined in key sources of international standards, the Constitution of the Republic of Serbia and family legislation.** This would ensure that every person under the age of 18 is considered a child, and then, within the category of persons considered children, additional criminal protection would be provided to child victims under the age of 14, who are considered children pursuant to current legal solutions, while persons aged 14-18 are considered minors. At the same time, the law would keep the limit of criminal liability of children in conflict with the law at the current 14 years, but it would also conceptually define persons aged 14-18 as children.

Although numerous amendments to the Criminal Code in recent years aimed at stricter sanctioning of criminal offences committed against children, it is still necessary to thoroughly harmonize the provisions of this law, as well as the Law on Human Organ Transplantation and the Law on Human Cells and Tissues **regarding the prescribed sanctioning ranges and the child's consent to various types of exploitation**. Additional efforts are necessary to **monitor statistics on cases in which persons under the age of 18 appear as offenders, victims, or witnesses of criminal offenses, as well as to harmonize court practice regarding sanctioning for criminal offenses committed against children**.

In addition to the above, it is necessary to **conceptually harmonize the Criminal Code and the Criminal Procedure Code with the notion of victim, in the way this term is defined in key sources of international standards,** which would prevent the presently unclear delineation of victims and injured parties.

The requirements of relevant international standards regarding the provision of **systemic protection, support and assistance to child victims and witnesses** of criminal offenses are still not fully implemented in the Criminal Procedure Code and the Law on Juveniles, hence their further amendments are necessary to enable mandatory granting of a status of particularly vulnerable witness to every child victim, as well as the wider use of video links and other infrastructural mechanisms **protecting the child victim from secondary victimization**. Concurrently, this would ensure **a higher level of protection of the privacy and dignity of the child victim**. To this end, it is necessary to consistently implement the National Strategy for the Exercise of the Rights of Victims and Witnesses of Criminal Offenses in the Republic of Serbia for the period 2020-2025 which would enable **the establishment of a comprehensive and sustainable network of support and assistance services for victims and witnesses** throughout Serbia, which would improve **the right of child victims to**

information in criminal proceedings, as well as **access to free legal aid and specialized professional support and protection services, through better provision of information about their availability.** All the above should also affect a more adequate protection of juvenile offenders who are in fact **hidden victims of the exploitation of criminal activities.** However, the protection of this category of children, who often grow up in a street situation, should be based on **preventive measures and more active work of centers for social work (whose capacities are currently inadequate)** with children from particularly vulnerable groups, which would prevent their abuse for the purpose of exploitation of criminal activities.

It is necessary to **expand the obligation of specialization** for acting in cases involving criminal offences committed by or to the detriment of children, in a way that it **includes expert witnesses.**

Particular attention still needs to be paid to the mechanisms of **inter-institutional cooperation, as well as cooperation of institutions and civil society organizations that are active in the field of protection of children's rights.**

Positive **legislation in the field of asylum and migration** has recently been aligned with relevant standards and the forthcoming period will show whether there are adequate capacities for its consistent implementation in practice.

When it comes to **key public policy documents governing the situation of child offenders, victims and witnesses of criminal offences,** it is important to note that, despite some progress in terms of their mutual coherence, there remain discrepancies that indicate a lack of cooperation between line ministries/authorized proposers. In addition, it was perceived that all analyzed strategic documents are focused almost entirely on the requirements of the negotiation process, while other issues identified through scientific research and practice are almost completely marginalized. Although it is not disputed that changes in criminal legislation should be guided by the requirements of the negotiation process, numerous contradictions indicate that it is time for a more systematic approach to changes, contrary to the existing *ad hoc* principle which, in addition to internal incoherence of criminal legislation, resulted in complete marginalization of emerging needs, such as comprehensive amendments to the Law on Juveniles, while concurrently unnecessary, and often populist-oriented amendments to key laws are being adopted. It appears that more adequate legal powers and **strengthened capacities of the Council for the Rights of the Child and the Council for Juveniles** could contribute to a more consistent and comprehensive approach to criminal law reform in the segment governing the position of children.

The results of the survey *Child Friendly Justice from the perspective of children and young people*, conducted in the period from March to September 2020, show that **there are several challenges in the application of child justice standards related to information on rights and procedure, hearing, security, and safety, respect and dignity, rehabilitation, and reintegration**. Children and young people are generally not informed about their rights in case they encounter the justice system, especially if they have no previous experience. When it comes to information about the procedure and rights of those who have been in contact with the justice system, the results of the research show that the right to information is not sufficiently respected and that children and youth are not sufficiently explained why they are invited, how the procedure will look like, or what rights they have in the procedure. Also, the way in which professionals address children and young people, in order to inform them about their rights and procedures, is not fully adapted to the language they understand. The way a child is heard is not in adjusted to the prescribed standards, and the fact that the premises in which the hearing is conducted are very rarely adapted to the child's friendly environment, pose a serious challenge. The situation is similar with the application of the right to safety and security during

the procedure, as well as respect for dignity. Almost half of the respondents who were in contact with the justice system stated that they did not feel safe during the proceedings or that their sense of security was minimal. More than half of the respondents indicated that during the procedure not all participants treated them with respect or that they respected them minimally. The research shows that most of the respondents, who were in contact with the justice system after the procedure was completed, did not receive psychosocial support.

PART 1: FORMATIVE ANALYSIS OF THE CURRENT NORMATIVE AND STRATEGIC FRAMEWORK OF CHILD FRIENDLY JUSTICE

Asst. Prof. Milica Kolaković-Bojović, PhD

1. INTRODUCTION

1.1. Project scope and tasks

The International Rescue Committee (hereinafter: IRC) has been responding to the world's worst humanitarian crises since its establishment in 1933 and helping people survive and rebuild their lives. The IRC in the Republic of Serbia (hereinafter: RS) has been operating since October 2015 and cooperates with a group of national non-governmental organizations, as well as competent institutions that provide comprehensive protection programs and continues to develop new strategies to further address the needs of refugees and victims of trafficking, in particular children. Although the RS has made significant progress in reforming child rights legislation in recent years, as well as improving anti-trafficking mechanisms, including institutional reform through the establishment of the Centre for the Protection of Victims of Trafficking, the system continues to face triple challenges:

- On the one hand, the migrant wave that started in 2014 brought new challenges in practice for institutions in the RS in terms of protection and support of children before national institutions.
- In addition, with the opening of accession negotiations in 2013, the requirements for harmonization of legislation with relevant EU standards have been intensified.
- Finally, the synergy of both processes, equally through systematic screening of legislation, institutional capacity and practice, demonstrated the need for better synchronization of reform processes and more comprehensive understanding and improvement of the position of children, either as offenders, victims or witnesses in the justice system. This is particularly relevant if children come into contact with institutions of the RS as refugees, migrants, asylum seekers or unaccompanied children (UAC), which makes them particularly vulnerable, both in terms of direct exposure to victimization and in terms of involvement in various harmful activities such as drug abuse, begging, employment that borders with or equals exploitation, as well as criminal activities.

Recognizing these challenges, **the overall goal of the CRIS project** (hereinafter: the Project) is to improve the position of children involved in the Serbian justice system, through the systematic implementation of the rights of the child and confirmed support in the proceedings. This may include the promotion of the right to be heard, the right to information, the right to privacy, the right to non-discrimination and the principle of the best interests of the child, in line with the recommendations of the EU Agency for Fundamental Rights (FRA) "CFJ – perspectives and experiences of children and professionals".

One of the first steps in the implementation of the Project is the development of Formative Analysis (hereinafter: Analysis), as a research aimed at providing information necessary for the implementation of further phases of the Project. In addition to this document, which represents the first segment of the Formative Analysis, the research also includes an analysis of the application of the legal framework in practice (analysis of court rulings). The Formative analysis should show the advantages and disadvantages of the existing practices of practitioners, such as judges, prosecutors, lawyers, case managers/social workers, guardians and other professionals who are in contact with children, and who shape their experience with the system, but also to clarify to what extent such behavior is conditioned by the shortcomings of the normative framework.

1.2. Normative and strategic framework governing the position of children in Serbia

Article 194 of the Constitution of the Republic of Serbia stipulates that the Constitution is the highest legal act of the Republic of Serbia. All laws and other general acts adopted in the Republic of Serbia

shall be in accordance with the Constitution. In addition, the same provision of the Constitution stipulates that ratified international agreements and generally accepted rules of international law are a part of the legal order of the Republic of Serbia. Confirmed international agreements must not be in conflict with the Constitution, while laws and other general acts adopted in the Republic of Serbia must not be in conflict with ratified international agreements and generally accepted rules of international law.

Having this in mind, it is clear that considering the position of children as offenders, victims and witnesses within the criminal justice system of the RS, it is necessary to keep in mind both the standards prescribed by ratified international agreements and the provisions of the Constitution, laws and other general acts. In addition to the above, the current situation and reform processes are shaped by the process of accession of the Republic of Serbia to the European Union (hereinafter: the EU), since the reform priorities are largely subordinated to meeting the criteria set within the negotiation process.

1.1.1. International legal framework

By ratifying the Convention on the Rights of the Child[1], which entered into force on November 2, 1990, an obligation has been taken to harmonize the normative and institutional system of the RS with the provisions of the Convention. In addition to the Convention on the Rights of the Child, the Republic of Serbia ratified two additional protocols to the Convention on the Rights of the Child: Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography[2] and Optional Protocol on the Participation of Children in Armed Conflict in 2002.[3]

In addition to the Convention on the Rights of the Child, the position of this particularly vulnerable group is governed by the provisions of key human rights instruments, such as the International Covenant on Civil and Political Rights[4], which prohibits all forms of slavery, servitude and forced labor in Article 8; the International Covenant on Economic, Social and Cultural Rights[5] which recommends in Article 10 that States sanction any economic exploitation of young people, as well as work in conditions that may be life-threatening.

The Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption[6] was adopted with the aim to establish guarantees in the area of international adoption in the best interests of the child and respect for fundamental rights recognized by international law, as well as to create a system of cooperation between states parties in order to ensure the implementation of these safeguards and prevent kidnapping, sale or children trafficking.

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[7] ("Lanzarote Convention") of the Council of Europe (2007/2010) is the most comprehensive legal instrument on the protection of children against sexual exploitation and sexual abuse, covering all types of sexual offenses against minors (including sexual abuse of children, exploitation of children in prostitution and pornography, exposure of children to sexual content and activities) and punishment of these acts.

[1] Law on Ratification of the United Nations Convention on the Rights of the Child, "Official Gazette of the SFRY - International Agreements", no. 15/90 and "Official Gazette of the FRY - International Agreements", no. 4/96 and 2/97)

[2] Law on Ratification of the Optional Protocol the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography "Official Gazette of the FRY - International Agreements", no. 7/2002.

[3] Law on Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Participation of Children in Armed Conflict "Official Gazette of the FRY - International Agreements", no. 7/2002.

[4] Law on Ratification of the International Covenant on Civil and Political Rights, "Official Gazette of the SFRY", No. 7/71.

[5] Law on Ratification of the International Covenant on Economic, Social and Cultural Rights, "Official Gazette of the SFRY", No. 7/71.

[6] Law on Ratification of the Convention on the Protection of Children and Cooperation in the Field of International Adoption, "Official Gazette of RS - International Agreements", No. 12/2013.

[7] Law on Ratification of the Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, "Official Gazette of RS - International Agreements", No. 1/2010.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence[8] ("Istanbul Convention") prescribes the obligations of states to protect and support children who witness violence against women and domestic violence, protect victims from further violence and ensure effective cooperation between all competent state authorities in providing protection and support to victims and witnesses of all forms of violence covered by the Convention, including referral to general and specialized support services. An important novelty introduced by this Convention is that it also considers child witnesses of violence as victims of violence.

The Council of Europe Convention on High-Tech Crime ("Budapest Convention") (2001) contains a definition of what can be considered the exploitation of children in pornography and defines activities related to the production or distribution of pornographic material. [9]

In addition to the above, the general procedural safeguards contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms[10] with protocols, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of Persons with Disabilities and the Convention on the Civil Aspects of International Child Abduction are important. as well as relevant general comments of the Committee on the Rights of the Child, the Committee on the Elimination of All Forms of Discrimination against Women, the Committee on the Rights of Persons with Disabilities and the recommendations of these committees given in concluding observations on the reports of the Republic of Serbia.

In addition to the above sources of standards that represent the general regulatory framework of the position i.e. the rights of the child, but also provide additional protection to children in certain areas, given the thematic scope of this Analysis, and in the context of the position and possible victimization of migrants and asylum seekers, three sources of international standards are particularly important: CoE Convention on Action against Trafficking in Human Beings, as a general framework of standards in the field of trafficking in human beings; Directive 2012/29 of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime and strengthening the position of victims of crime, as well as Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on the prevention and combating trafficking in human beings and the protection of victims, replacing Council Framework Decision 2002/629/JHA, with a focus on their provisions governing the situation of children.

[8] Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, "Official Gazette of RS - International Agreements", No. 12/2013.

[9] In addition to the above, key international instruments of the International Labor Organization are also important, such as the International Labor Organization (ILO) Convention No. 138 (1973), which prescribes the highest standard in the field of minimum age for employment. ILO Convention No. 182 concerning the Worst Forms of Child Labor (1999) applies to all children under the age of 18 and, for the first time, defines the worst forms of child labor as follows: smuggling of children, debt slavery and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children to take part in armed conflict; b) the use, acquisition or offering of a child for the purpose of prostitution, the production of pornography or pornographic performances; c) the use, procurement or offering of a child for illicit activities, in particular for the production and smuggling of drugs as defined by relevant international agreements; d) work which, by its nature or the circumstances in which it is performed, is likely to be harmful to the health, safety or morals of children." Finally, the provisions of the European Social Charter (1961), the European Revised Social Charter and the European Convention on the Exercise of Children's Rights should be borne in mind, followed by the Council of Europe Strategy on the Rights of the Child 2016-2021 and the UN Sustainable Development Agenda 2030.

[10] Law on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, amended in accordance with Protocol No. 11, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms not included in the Convention and its First Protocol, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 12 to the Convention for the Protection of Human Rights of Rights and Fundamental Freedoms and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances: Official Gazette of Serbia and Montenegro - International Agreements, No. 9/2003-16.

1.1.2. Strategic and legislative framework

The position of children in Serbia is regulated by numerous strategic documents, both sectoral and those focused on the process of accession negotiations with the European Union:

- Action Plan for Chapter 23 is a comprehensive reform document that addresses the situation of children both in the part on fundamental rights and the functioning of the judiciary, based on recommendations and Interim Benchmarks defined by the European Commission;
- Action Plan for Chapter 24 is a comprehensive reform document that addresses the situation of children through several aspects, including asylum, migration, and trafficking in human beings, based on recommendations and Interim Benchmarks defined by the European Commission;
- National Strategy for Improving the Position of Victims and Witnesses of Criminal Offenses in the Republic of Serbia for the period from 2020-2025 with the accompanying Action Plan for the period 2020-2022 is a strategic document that stipulates harmonization of legislation with the Victims' Directive and the establishment of the National Network for Assistance and Support to Victims and Witnesses of Criminal Offenses;
- National Strategy for Prevention and Protection of Children from Violence for the period 2020 - 2023 ("Official Gazette of RS", No. 80/2020) addresses the issue of violence against children in a comprehensive, multisectoral manner;
- National Strategy for Youth for the period 2015 - 2025 ("Official Gazette of RS", No. 22/15) sets out the basic principles for improving the social position of young people and creating conditions for the exercise of the rights and interests of young people in all areas;
- Strategy for the Prevention of Drug Abuse from 2014 to 2021 ("Official Gazette of RS", No. 1/15) aims to ensure and improve public health, general well-being for individuals and society, to ensure and improve a high level of population safety, as well as to offer a balanced, integrative, evidence-based approach to the problem of drugs;
- Strategy for social inclusion of Roma men and women in the Republic of Serbia for the period 2016 - 2025 ("Official Gazette of RS", No. 26/16), which covers the following areas: education, housing, employment, health and social protection;
- National Strategy for Gender Equality for the period 2016 - 2020 ("Official Gazette of RS", No. 4/16) contains a measure related to the prevention of early and forced marriages, especially Roma girls and young women and provision of support to young women and young mothers to continue their education;
- Strategy for Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children and Protection of Victims for the period 2017 - 2022 ("Official Gazette of RS", No. 77/17) is the second strategic document of the Government, adopted to address the issue of human trafficking; It envisages comprehensive societal response to human trafficking, in line with new challenges, risks and threats; The strategy aims to improve the system of prevention, assistance and protection of victims and combating trafficking in human beings, especially women and children;
- Information Security Development Strategy in the Republic of Serbia for the period 2017-2020. ("Official Gazette of RS", No. 53/17) determines that adequate protection of children on the Internet requires awareness raising of both parents and children, as well as strengthening the role of school through appropriate school programs on safe ways of using the Internet and other information technologies;

- Strategy for the Development of the System of Enforcement of Criminal Sanctions in the Republic of Serbia until 2020 ("Official Gazette of RS", No. 114/13) envisages the improvement of conditions for accommodation of juveniles, as well as the improvement of specialized and individualized treatment programs for particularly vulnerable groups, for the purpose of successful resocialization and reintegration;

- General Protocol for the Protection of Children from Abuse and Neglect was adopted by the Government on 5 August 2005; the general objectives of the Protocol are: to promote the welfare of children through the prevention of abuse and neglect; ensure a prompt and coordinated procedure that protects the child from further abuse and neglect and provide therapeutic assistance to the child and family; ensure that all actions and decisions taken, throughout the proceedings, are in the best interests of the child; the target groups of this protocol are all children whose well-being is endangered i.e.: children in all situations (in the family and outside the family); all children in the country, regardless of legal status, ethnic origin, gender and any other social or individual characteristics. The protocol is binding on all service providers, including non-governmental organizations, as well as those who set child protection policies; In addition to the General Protocol for the Protection of Children from Abuse and Neglect, special protocols have been adopted relating to the educational system, the field of health care, social protection, justice, internal affairs and labor inspection.

At the time of drafting the analysis, the RS Government is in the process of adopting three key strategic documents for the area covered by this analysis, namely the revised Action Plan for Chapter 24 and the National Strategy for Exercise of the Rights of Victims and Witnesses of Criminal Offences in the Republic of Serbia for the period 2020-2025, with the accompanying Action Plan for the period 2020-2023, hence for the purposes of making the Analysis, the latest available drafts of these documents were used. In the final phase of the Analysis, a revised Action Plan for Chapter 23 was adopted.

In addition to the aforementioned strategic documents, the position of children in the Republic of Serbia is regulated by the Constitution[11] and a complex legal framework, where both primary and secondary criminal legislation are of key importance for the subject of this analysis:

- Criminal Code (“Official Gazette of RS”, No. 85/05, 88/05–corr., 72/09, 111/09, 121/09, 104/13, 108/14, 94/16 and 35/19), regulates the issues of age limit and other conditions of criminal liability of minors and sanctioning and prescribes a whole range of criminal acts that can be committed exclusively and/or to the detriment of the child;

- Criminal Procedure Code (“Official Gazette of RS”, No. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14 and 35/19), contains provisions on particularly vulnerable witness and regulates the position of the victim i.e. the injured party in criminal proceedings;

- Law on Police (“Official Gazette of RS”, No. 6/16, 24/18 and 87/18) regulates the work and conduct of the police in relation to children;

- Law on Juvenile Offenders (“Official Gazette of the RS”, No. 85/05) contains provisions that apply to juvenile offenders, provisions that relate, *inter alia*, to substantive criminal law, the bodies that apply it, criminal proceedings and the enforcement of criminal sanctions against these perpetrators of criminal offenses, as well as special provisions on the protection of children and minors as victims in criminal proceedings;

- Law on Special Measures for the Prevention of Crimes against Sexual Freedom against Minors ("Official Gazette of RS", No. 32/13) provides for special measures to be taken against

[11] Based on the Constitution of RS, children have rights according to their age and maturity; children are protected from psychological, physical, economical and all other forms of exploitation and abuse (Art. 64, pages 1 and 3). The Constitution guarantees special protection of the families, mothers, single parents, and children (Art. 66) as well as the possibility of exclusion of public from the legal proceedings to protect minors (Art. 32).

perpetrators of criminal offences against sexual freedom committed against minors determined by the same law and regulates keeping special records of persons convicted of these crimes;

- Law on Public Order and Peace, "Official Gazette of RS", no. 6/2016 and 24/2018, in the part sanctioning prostitution;
- Law on Human Organ Transplantation, “Official Gazette of RS”, No. 57/2018 (penal provisions);
- Law on Human Cells and Tissues, "Official Gazette of RS", No. 57/2018 (penal provisions).

In addition to the above, the protection of children in various aspects is also ensured through the implementation of the provisions of:

- Law on Prevention of Domestic Violence "Official Gazette of RS", No. 94/16, which prescribes measures for prevention of domestic violence and actions of state bodies and institutions in preventing domestic violence and providing protection and support to victims of domestic violence;
- Family Law ("Official Gazette of RS", No. 18/05, 72/11 - other law and 6/15), which defines and prohibits domestic violence and establishes the obligation of the state to take all necessary measures to protect the child from neglect, physical, sexual and emotional abuse and from any kind of exploitation;
- Law on Social Protection ("Official Gazette of RS", No. 24/11), determines the goals of social protection, which are achieved by providing financial support to individuals or families in need, as well as social protection services; beneficiaries of social protection services are also children victims of abuse, neglect, violence and exploitation;
- Law on Prohibition of Discrimination ("Official Gazette of RS", No. 22/09) contains provisions on the prohibition of discrimination against children; it is forbidden to discriminate against a child or minor based on a certain status i.e. personal characteristics of the child, parents, guardians and family members;
- Law on the Fundamentals of the Education System (Official Gazette of the RS, No. 88/17, 27/18 – oth. laws, 10/19 and 6/20) contains provisions on the prohibition of discrimination, violence, abuse and neglect and prohibition of behaviors that offend the reputation, honor or dignity of the child and student; physical, psychological, social, sexual, digital and any other violence, abuse and neglect of a child is prohibited;
- Law on Sports ("Official Gazette of RS", No. 10/16) prohibits all types of abuse, exploitation, discrimination and violence against children in the field of sports, and prescribes that organizations in the field of sports and persons performing professional educational work with children in these organizations, as well as all members and employees of organizations in the field of sports, particularly promote equality among children and actively oppose all types of abuse, exploitation, discrimination and violence;
- Labor Law (“Official Gazette of RS”, No. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 - CC decision, 113/17 and 95/18 - authentic interpretation) contains provisions that specifically protect employees who have not reached 18 years of age i.e. children;
- Law on Health Care ("Official Gazette of RS", No. 25/19), prescribes that the principle of respect for the rights of the child implies managing the best interests of the child in all activities of health care providers, providing health services and procedures adapted to children, as well as the child's right to proper development and protection from all forms of violence, abuse, neglect and exploitation; the law constitutes the obligation of all health

workers as a general principle of respect for the rights of the child, which includes guiding the best interests of the child in all activities of health care providers, providing health services and procedures adapted to children, as well as the child's right to proper development and protection from all forms of violence, abuse, neglect and exploitation; that law, as well as the Law on Patients' Rights ("Official Gazette of the RS", nos. 45/13 and 25/19 - other law) prescribes the confidentiality of patients' data, and the obligation of the health institution and the health worker, subject to punishment, to keep the data and not disclose it, which does not provide full protection of the child, especially when violence against the child or the risk of violence against the child is related to the health condition of the offender or possible offender.

– Law on Public Information and Media ("Official Gazette of RS", No. 83/14, 58/15 and 12/16 - authentic interpretation), which contains provisions on protection of victims of violence from victimization in the media. [12]

1.3. Methodology and the analytical process

Given the previously mentioned challenges Serbia faces in the context of reform processes in the EU accession and the migrant wave, the starting point in the analytical process were the requirements arising from the accession negotiation process, mainly within negotiation Chapters 23 and 24, all in the context of harmonization with EU legislation and other relevant international standards. The focus of the analysis was on the standards set in the Council of Europe Convention on Action against Trafficking in Human Beings on the Prevention of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting victims, which replaces the Council Framework Decision 2002/629/JHA, as well as Directive 2012/29 of the European Parliament and of the Council on the establishment of minimum standards in the field of rights, support and protection of victims of crime and strengthening the position of victims of crime. In order to better understand the context of the Directive 2011/36, the CoE Convention on Action against Trafficking in Human Beings was also analyzed. The main goal was to identify the standards of support and protection that these documents require from institutions with which children come into contact in court and related proceedings.

Given that the European Commission (hereinafter: the EC) presented its observations on the current situation in 2013 as a part of the analytical review (screening) of the situation in Serbia in the Screening report for Chapters 23 and 24[13] and recommendations for improvement, and also defined Interim Benchmarks in the Common Negotiating Position for both chapters[14] , all the above documents served as a basis for assessing the situation, along with the annual progress reports[15]. Given that the reform

[12] For a review of the relevant normative framework on child protection, see more in: National Strategy for Prevention and Protection of Children from Violence for the Period from 2020 to 2023 "Official Gazette of RS", No. 80/2020.

[13] Screening Report for Chapter 23, https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20(3).pdf, accessed on June 25 2020., Screening Report for Chapter 24, available at: http://mup.rs/wps/wcm/connect/0d2cad85-2456-48f1-af04-b750b99e01e0/%D0%98%D0%97%D0%92%D0%95%D0%A8%D0%A2%D0%90%D0%88+%D0%9E+%D0%A1%D0%9A%D0%A0%D0%98%D0%9D%D0%98%D0%9D%D0%93%D0%A3+%D0%97%D0%90+%D0%9F%D0%9E%D0%93%D0%9B%D0%90%D0%92%D0%89%D0%95+24+%28%D0%B5%D0%BD%D0%B3%D0%BB%D0%B5%D1%81%D0%BA%D0%B0+%D0%B2%D0%B5%D1%80%D0%B7%D0%B8%D1%98%D0%B0%29.pdf?MOD=AJPERES&CVID=lO7CS.U, accessed on June 25 2020.

[14] Common Negotiating Position for Chapter 23, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/Ch23%20EU%20Common%20Position.pdf, last accessed: June 20 2020; Common Negotiating Position for Chapter 24, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/Ch24%20EU%20Common%20Position.pdf, accessed on June 25 2020.

[15] Republic of Serbia, Report for 2019 accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on the EU Enlargement Policy 2019 {COM(2019) 260 final}

processes in the area under analysis have been outlined in the Action plans for Chapters 23[16] and 24[17], these comprehensive strategic documents, coupled with the relevant national strategies and action plans, have served as the subject of the analysis. In that sense, the fact that the process of drafting, revision and adoption of numerous strategic documents is underway was taken into account, so the analysis included the latest versions of documents that are currently in the procedure.

When analyzing the harmonization of criminal legislation, such as legislation in the field of asylum and migration, special attention was paid to the harmonization requirements defined in the process of negotiations with the EU, as well as those set by the UNCRC in 2017.[18]

Considering the aforementioned, further in the analysis:

- First, an analysis is provided on the relevant standards contained in the CoE Convention on Action against Trafficking in Human Beings, Directive 2012/29 of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime and empowerment of victims of crime and Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and the protection of victims, replacing Council Framework Decision 2002/629 /JHA;
- The requirements defined within the negotiation process in Chapters 23 and 24 are then analyzed;
- This is followed by an analysis of the content of criminal (criminal and misdemeanor) substantive and procedural legislation, as well as legislation related to asylum and migration, using as a criterion the relationship of children as victims and witnesses and child perpetrators who are actually hidden victims. Special attention is paid to the situation of children of migrants and asylum seekers, particularly those who are unaccompanied;
- In the final part, the strategic framework is analyzed, both the one that is directly related to the negotiations, and the national one, in relation to the observed deficiencies of the criminal, as well as the legislation related to asylum and migration.

In all the above segments, conclusions, and recommendations for further harmonization with the relevant standards have been defined.

[16] Action plan for Chapter 23, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/akcioni_planovi/action_plan_23.pdf, accessed June 20 2020; Action plan for Chapter 24, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/akcioni_planovi/action_plan_24.pdf, accessed June 25 2020

[17] Action plan for Chapter 24, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/akcioni_planovi/action_plan_24.pdf, accessed June 25 2020.

[18] Recognizing the progress made by the RS in various areas related to the rights of the child, the United Nations Committee on the Rights of the Child issued several recommendations in its Concluding Observations in the second and third periodic reports for 2017 to further align its legislation and practice with the principles and provisions of the UN Convention on the Rights of the Child (UNCRC). These recommendations include: enacting a comprehensive children's act and introducing a children's rights impact assessment for all new laws; improve the competencies of professionals working with children; to promote the best interests of children and the right of the child to be heard; to establish fair and efficient asylum procedures conducted in a child-sensitive manner; to establish adequate and coordinated mechanisms for the identification and protection of children victims of trafficking; to fully harmonize its judicial system with the UNCRC, etc. UN Committee on the Rights of the Child, Concluding Observations on the Combined Second and Third Periodic Reports of the Republic of Serbia, available at: https://www.ljudskaprava.gov.rs/sr/node/143, accessed June 9 2020.

2. RELEVANT EU STANDARDS

2.1. Council of Europe Convention on Action against Trafficking in Human Beings 2009

The Council of Europe Convention on Action against Trafficking in Human Beings nowadays represents a basic, general instrument and source of international standards in the field of combating trafficking in human beings.

Article 1 of the Convention defines as basic purposes of this document:

> a) to prevent and combat trafficking in human beings, while guaranteeing gender equality,
>
> b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
>
> c) to promote international cooperation on action against trafficking in human beings.

The Convention applies to all forms of trafficking in human beings (national and international) (Art. 2) and proclaims the principle of non-discrimination, recognizing the need for special protection of women.

In accordance with Article 4 of the Convention:

> a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, or practices like slavery, servitude, or the removal of organs;
>
> b) The consent of a victim of “trafficking in human beings” to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
>
> v) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
>
> g) "Child" shall mean any person under eighteen years of age;
>
> d) "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

The Convention prescribes a few preventive measures aimed at raising awareness and discouraging demand (Art. 5-6), as well as special border control and document control measures (Art 7-9).

Article 10 of the Convention prescribes measures for the identification of victims of trafficking, and in the case of child victims, Para 3 is of particular importance, which provides that when the age of the victim is uncertain and there is a reasonable suspicion that the victim is a child, the person should be considered a child and should be provided with special protective measures pending verification of his or her age. Also, Para 4 provides that as soon as it is established that an unaccompanied child is a victim, each Contracting Party shall:

a) provide for representation of the child by a legal guardian, organization or authority which shall act in the best interests of that child;

b) take the necessary steps to establish his/her identity and nationality;

c) make every effort to locate his/her family when this is in the best interests of the child.

The Convention also contains a few provisions aimed at **protecting victims of trafficking and assisting victims**. Thus, Article 11 regulates the protection of the privacy and identity of victims, stipulating that their personal data should be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). The Party shall take measures to ensure in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child. In addition, each Party should consider adopting measures, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, to encourage the media to protect the privacy and identity of victims through media self-regulation or regulatory or co-regulatory measures.

Article 12 of the Convention dedicated to assistance to victims of trafficking in human beings sets out the minimum standards to be met by each Party to **assist victims in their physical, psychological, and social recovery**. Such assistance should include at least:

a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;

b) access to emergency medical treatment;

c) translation and interpretation services, when appropriate;

d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;

e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;

f) access to education for children.

In addition to assistance, each Party should pay due attention to the need to ensure **the safety and protection of the victim**. In addition, each Party shall provide the necessary medical and other assistance to victims legally residing in its territory who do not have adequate resources and who need such assistance and shall adopt rules according to which victims legally residing in its territory shall be entitled to access to the labor market, vocational training and education.

In the field of victim assistance, the Convention also recognizes the role of NGOs and obliges the Parties to take measures of cooperation with them, but also with other competent organizations or other parts of civil society that provide assistance to victims.

Also, particularly important is the provision of Para 6 of the same article, which obliges the parties **that provision of assistance to a victim is not made conditional on his or her willingness to act as a witness**, as well as to ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care. In addition to the above, the Convention recognizes the specifics of the psycho-physical position of the victim of human trafficking, protecting him or her from expulsion for a period of 30 days, even before it is determined, when there are reasonable grounds to believe that the person concerned is a victim – the so-called recovery and

reflection time (Art. 13 of the Convention). During this period, the person is entitled to all the above-mentioned measures of assistance and protection.

Article 14 of the Convention regulates the matter of issuing a residence permit to victims of trafficking, with the possibility of extension if the competent authorities consider their stay necessary due to their personal situation or if the competent authorities consider their stay necessary due to their cooperation with the competent authorities in investigation or criminal proceedings. The Convention emphasizes in particular that **residence permit for children who are victims of trafficking in human beings, if provided by law, is issued in accordance with the best interests of the child** and, where appropriate, renewed under the same conditions. The Convention leaves it to the Parties to regulate the non-renewal or withdrawal of a residence permit by domestic law, but also to take into account when issuing another type of residence permit that the victim has, or has had, a residence permit issued in accordance with the provisions of the Convention. In the context of the **situation of children of migrants and asylum seekers**, the fact that the Convention does not allow that granting a permit as a victim of trafficking prejudice to the right to seek and enjoy asylum is of particular importance. The Convention also regulates the repatriation of victims, obliging states to establish mechanisms or programs involving competent state and international institutions and non-governmental organizations. The goal of such programs is to avoid re-victimization. Each Party should make its best effort to favor the reintegration of victims into the society of the State of return, including reintegration into the education system and the labor market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programs should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.[19] **Child victims shall not be returned to a State, if there is indication, following a risk and security assessment that such return would not be in the best interests of the child.**

Articles 18-22 of the Convention provide for **the obligation to criminalize trafficking in human beings**, as well as the use of the victim's services, acts related to travel documents, attempt, incitement and aiding, as well as the responsibility of the legal entity. The Convention does not prescribe penalties but insists on proportionality (Art. 23) taking into account the following aggravating circumstances:

a) the offence deliberately or by gross negligence endangered the life of the victim;

b) the offence was committed against a child;

c) the offence was committed by a public official in the performance of her/his duties;

d) the offence was committed within the framework of a criminal organization,

as well as previous convictions (Art. 24 and 25)

The provision of Article 26 of the Convention is of great importance, as it obliges member states (in accordance with the basic principles of their legal system) to provide for the possibility of **not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so**.

The Convention guarantees victims, from the first contact with the competent authorities, **access to information on appropriate judicial and administrative proceedings in a language they understand, as well as to legal advice and free legal aid** to victims under the conditions prescribed by its domestic law. The same provision guarantees **victims' right to compensation** from perpetrators, but also by establishing a fund for compensation of victims or measures or programs for social assistance and

[19] In addition, each Party shall adopt such legislative or other measures as may be necessary to make information available to victims and, as appropriate, in cooperation with any other interested Party, necessary to contact organizations that may assist them in the country in which they are located, returned or repatriated, such as law enforcement agencies, NGOs, legal experts who can give them advice and social welfare institutions.

social integration of victims, which could be financed from funds collected through measures involving seizure and/or confiscation of the proceeds from crime.

Regarding the **procedural aspects** of the prosecution of this type of crime, states are expected to ensure the prosecution of human trafficking *ex officio* in their legislation at least when the crime is committed in whole or in part on its territory[20], but also that victims may report the crime to the authorities in the country in which they reside. The competent authority, to which the report is filed, if it has no jurisdiction in such cases, shall deliver it, without delay, to the competent authority of the Party in whose territory the offense was committed. The report shall be decided in accordance with the domestic law of the Party in which the offense was committed.

The Convention also obliges the Parties to ensure that NGOs providing assistance to victims have access to the victim with his or her consent (Art. 27), but also regulates in detail the measures of procedural protection of victims, stipulating that each contracting party should adopt legislative or other measures necessary to provide effective and adequate protection against possible retaliation or intimidation, especially during and after the investigation and prosecution of perpetrators, as follows:

a) victims;

b) as appropriate, those who report the criminal offences or otherwise co-operate with the investigating or prosecuting authorities;

c) witnesses;

d) when necessary, members of the family of persons

e) for members of groups, foundations, associations, or non-governmental organizations that provide support to victims.

The Convention specifies that other measures may include physical protection, relocation, identity change and assistance in obtaining jobs. In this segment as well, the Convention stipulates that a child victim of trafficking shall be afforded special protection measures that will take into account his or her best interests (Art. 28) and obliges the establishment of specialized bodies and coordinating bodies for combating trafficking in human beings and protection of victims.

Victims in court proceedings are guaranteed the protection of private life (if necessary, identity), as well as security from intimidation, with special emphasis on the fact that, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures (Art. 30).

In the framework of international cooperation, the Convention emphasizes the importance of strengthening the mechanisms of information exchange and search for missing persons, particularly missing children, if on the basis of available information it can be concluded that they are victims of human trafficking. To this end, the Parties may conclude bilateral or multilateral agreements with each other (Art. 32-34).

[20] Pursuant to Art. 31 of the Convention: 1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed: a in its territory; or b on board a ship flying the flag of that Party; or c on board an aircraft registered under the laws of that Party; or d by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State; e against one of its nationals.

2.2. Directive 2012/29 of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime and strengthening the position of victims of crime

The adoption of the Victims Directive entails a culmination of numerous years of efforts to improve the position of victims in the European legal area, but also the initial position, following the establishment of minimum safeguards in the field of support, assistance and protection in all national legal systems, in improving the position of various categories of victims or some segments of support, assistance and/or protection.

The basis for the adoption of the Directive is contained in 82 (2) of the Treaty on the Functioning of the European Union [21] which provides for the establishment of minimum rules applicable in the Member States to enable mutual recognition of judgments and judicial decisions, and police and judicial cooperation in criminal matters having cross-border implications, especially in relation to the rights of victims of crime. This provision served as a starting point for the adoption of a document on the basis of previously taken steps, by which the standards guaranteed to certain categories of victims, through a number of previously adopted sources[22], would now be unified and guaranteed to all victims of crime.

It became clear that the European Union is committed to protecting and establishing minimum standards for victims of crime at the beginning of the 21st century when the Council adopted Framework Decision 2001/220 /JHA of 15 March 2001 on the status of victims in criminal proceedings. Under the Stockholm Program - An Open and Secure Europe that serves and protects its citizens, adopted by the European Council at its meeting on 10 and 11 December 2009, the European Commission and its Member States were asked to examine ways to improve legislation and practical support measures for the protection of victims, with special emphasis on the support and recognition of all victims, including victims of terrorism, as a priority. With this in mind, in its resolution of 10 June 2011 on the roadmap for strengthening the rights and protection of victims, especially during criminal proceedings (Budapest Roadmap), the Council found it necessary to take action at EU level to improve rights, support and protection of victims of crime. That is, as stated in the Directive itself, the aim of the Directive is to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps towards raising the level of protection of victims throughout the Union, in particular in criminal proceedings.

However, the comprehensiveness and uniformity of the approach adopted by the Directive, as well as its binding nature, have created preconditions for this, undoubtedly important issue, to be treated with special attention, both in EU MS and those striving for membership in the European Union. The Directive, as one of the basic principles, recognizes the individual approach to victims and protection from secondary victimization. It is required that the rights guaranteed by this document are not conditioned by the citizenship, residence, or domicile of the victim. Although the Directive guarantees the rights of all victims, this document recognizes children, victims of partner or domestic violence, victims of terrorism, persons with disabilities and victims of gender-based violence as particularly sensitive categories. The rights granted to the victim also apply to the relatives of the deceased victim, included in the Directive under this term, leaving it to the national legislatures to define this circle more closely. Requirements regarding protection and support to victims are regulated starting from the first contact with state authorities when reporting the crime, and the Directive specifically addresses the following rights i.e. the needs of the victim: the right to be informed about the course of proceedings and the status of the case; the right to a remedy and available protection and support

[21] Treaty on the Functioning of the European Union, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN, accessed on March 20 2020.
[22] Framework Decision 2001/220/JHA of 15 March 2001 on the status of victims in criminal proceedings; Stockholm Program - An open and secure Europe serving and protecting its citizens, adopted by the European Council at its meeting on 10 and 11 December 2009.

mechanisms; the right to translation; the right to support; the right to compensation; the right to a legal remedy against the decision of the police and the public prosecutor on the absence of criminal prosecution; procedural safeguard measures aimed at preventing secondary victimization; the obligation to conduct special training for police officers, judges and public prosecutors who come into contact with victims; the need to provide preconditions for statistical evaluation of the implementation of the Directive, through the provision of precise data on all segments of protection and support[23].

Although the introductory part of the Directive points out that its provisions build on the standard established by a number of related documents adopted in the previous decade, and that it actually **supports an integrated approach to support, assistance and protection of all victims of crim**e, the Directive recognizes particular vulnerability of children as victims and, consequently, prescribes special provisions for this category of victims, stating that it does not affect the more far-reaching provisions contained in other EU legislation targeting the specific needs of special categories of victims, such as victims of human trafficking and children – victims of sexual abuse, sexual exploitation and child pornography. (para. 69) This also defines the relationship between the Victims Directive and the Directive 2011/36, with **Directive 2011/36 being a *"lex specialis"* in relation to the Victims Directive.**

Thus, Para 14 emphasizes that in the application of this Directive, the primary concern must be the best interests of children in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. **Child victims should be considered and treated as full holders of the rights provided for in this Directive** and should be able to exercise those rights taking into account their ability to form their own opinion. In the case of children, the child, or, if it is not in the best interests of the child, the holder of parental responsibility, should be able to exercise the rights provided for in this Directive. This Directive does not affect the national administrative procedures required to declare a person a victim. Article 1 (2) of the Directive provides that 2. Where the victim is a child, Member States shall ensure that **the implementation of this Directive is in the best interests of the child, to be assessed in each individual case.** In that sense, a sensitive approach to children will be of the utmost importance, with respect for the child's age, maturity, attitudes, needs and concerns. The child and his legal representative, if any, will be informed of any measures or rights that specifically concern children. In cases where, in accordance with this Directive, it is necessary to appoint a guardian or representative to the child, the said role may be performed by that person, legal person, institution or competent authority (par. 60).

The Directive guarantees that **the right of child victims to be heard in criminal proceedings** should not be precluded solely on the basis that the victim is a child or based on the victim's age. (para. 42) The procedural rules under which victims may provide evidence and may be heard during criminal proceedings shall be determined by national law (Art. 10 of the Directive).

The Directive states that victims of human trafficking, terrorism, organized crime, violence in intimate partner relationships, sexual or exploitative violence, gender-based violence, hate crimes, victims with disabilities, and **child victims are often subject to secondary and re-victimization, intimidation and retaliation**. Particular care should be taken when assessing whether such victims are at risk of such victimization, intimidation and retaliation, and there must be a strong presumption that victims will benefit from special protection measures. The Directive insists on adapting special protection measures to the specifically assessed individual needs of the victim.[24] In this regard, special attention will be paid to victims of terrorism, organized crime, trafficking in human beings, gender-based

[23] See more in: M. Kolaković-Bojović, Harmonization of criminal legislation of the Republic of Serbia with EU standards within Chapter 23, Criminal legislation between practice and regulations and harmonization with European standards (ed. M. Simović), Serbian Association for Criminal Theory and Practice and the Ministry of Justice of the Republic of Srpska, Banja Luka, 2017, 267-276.

[24] The individual assessment shall, in particular, take into account: (a) the personal characteristics of the victim; (b) the type or nature of the crime; and (c) the circumstances of the crime

violence, violence in intimate partner relationships, sexual violence, exploitation or hate crimes, as well as victims with disabilities. At the same time, for the purposes of this Directive, it will be understood that child victims have specific protection needs due to their vulnerability to secondary and repeat victimization, to intimidation and to retaliation (Art. 22 of the Directive).

Recognizing the importance of protecting the privacy of the victim in the context of preventing secondary and repeat victimization, intimidation and retaliation, the Directive provides for a range of measures that include **non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim.** This type of protection is especially important for child victims and includes non-disclosure of the child's name. However, the Directive also states that, in exceptional cases, a child may benefit from the disclosure or even widespread publication of information, for example where a child has been abducted. Measures to protect the privacy and image of victims and members of their families must always be consistent with the right to a fair trial and freedom of expression, as provided for in Articles 6 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (para. 54). In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for the right to freedom of expression and public information, as well as the right to freedom and pluralism of the media, encourage the media to take self-regulatory measures (Art. 21 of the Directive).

In addition to non-disclosure of data on child victims, the Directive provides for a range of protective measures in Article 24 which is fully dedicated to the right to protection of child victims during criminal proceedings, as follows:

> a) during criminal investigations, all interviews with the child victim may be audio visually recorded and such recorded interviews may be used as evidence in criminal proceedings;
>
> b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities shall appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;
>
> c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The procedural rules for the audio-visual recordings referred to in point (a) of the first subparagraph and the use thereof shall be determined by national law.

Particularly important is the provision that provides that where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

In addition to the above, the Directive, as part of preventive action, prescribes the obligation of the state to establish a system of training in the field of victims' rights, but also to conduct awareness-raising campaigns.

More specifically, Para 61 of the Directive provides that any officials who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors, and judges

and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training focused on victims with specific needs and specific psychological training. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations, and exchange of best practices in accordance with the Budapest roadmap[25].

In addition, Article 25 (1) of the Directive provides that **Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.**

Para 2 of the same article of the Directive provides that, without prejudice to judicial independence and differences in the organization of the judiciary across the EU, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.

Para 3 of the same article of the Directive provides that, with due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.

Para 4 of the same article of the Directive provides that Member States, through their public services or by funding victim support organizations, shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

Para 5 of the same article of the Directive provides that, in accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognize victims and to treat them in a respectful, professional and non-discriminatory manner.

In addition, the Directive provides that Member States will take the necessary measures, including via the Internet, **to raise awareness of the rights enshrined in this Directive, reduce the risk of victimization and minimize the negative consequences of criminal offense and the risk of secondary and repeat victimization, intimidation and retaliation, especially through the identification of at-risk groups, such as children, victims of gender-based violence and violence in intimate partner relationships.** This action includes information and awareness-raising campaigns, as well as educational and research programs, which may be conducted, where appropriate, in cooperation with relevant civil society organizations and other stakeholders.

[25] Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings 2011/C 187/01, available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32011G0628(01), last accessed on March 18 2020.

2.3. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and the protection of victims, replacing Council Framework Decision 2002/629/JHA

This directive adopts an integrated, holistic, and human rights approach in the fight against trafficking in human beings. Stronger prevention, prosecution and protection of victims' rights are the main objectives of this Directive. This Directive also accepts a contextual understanding of the different forms of trafficking in human beings and aims to ensure that each form is addressed through the most effective measures (para 7).

Despite the integrated approach, the Directive already recognizes in its introductory part that **children are more vulnerable than adults and are therefore at greater risk of becoming victims of trafficking**. Given this, the Directive stipulates that in its implementation, the best interests of the child must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child (para 8). This approach is further reflected in the fact that the Directive, in addition to the general guarantees applicable to all victims of trafficking, also contains a number of additional safeguards related to child victims.

Initially, the Directive explicitly states that **any person under the age of 18 is considered a child** for the purposes of its implementation, thus implying in practice that its implementation requires legislators to provide the same level of rights for all age groups, including those aged 14- 18 years (Art. 2 Para 6 of the Directive).

Article 2 of the Directive stipulates that Member States shall take the necessary measures to ensure that **the following intentional acts are punishable**: the recruitment, transportation, transfer, harboring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. However, when this conduct involves a child, it shall be a punishable offence of trafficking in human beings even if none of the above means have been used. **A position of vulnerability** means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved. **Exploitation** shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, including begging, slavery or practices similar to slavery, or the exploitation of criminal activities, or the removal of organs. **The consent of a victim** of trafficking in human beings to the exploitation shall be irrelevant where of the above means have been used (Art. 2).

The age of the victim, in accordance with the Directive, is also crucial in terms of the existence of constitutive elements of the criminal offense of trafficking in human beings. Namely, the Directive points out in Para 11 that when a child is concerned no possible consent should ever be considered valid. This is crucial for situations where child victims of exploitation appear as perpetrators of crimes. According to the Directive, **the term "exploitation of criminal activities"** should be understood as the exploitation of a person who, *inter alia,* commits pickpocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition of trafficking also covers trafficking for the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behavior such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.

In addition, **the Directive recognizes the fact that the victim is a juvenile as an essential element in prescribing a sentence for the criminal offence of trafficking in human beings**, so Article 4 provides that Member States shall take the necessary measures to ensure that an offence referred to in Article

2 is punishable by a maximum penalty of at least five years of imprisonment, unless the offense is committed against a victim who is particularly vulnerable, which, in the context of this Directive, includes at least the child victims, when the offense is punishable by imprisonment for a **maximum penalty of at least of 10 years of imprisonment**.

Regarding the **procedural status of child victims**, Para 19 of the Directive provides that child victims of trafficking should have the right to **free legal representation and counseling**. While in Para 22, the Directive provides that in addition to measures available to all victims of trafficking, Member States should ensure that **special measures of assistance, support and protection** are available to child victims. These measures should be provided in the best interests of the child and in accordance with the 1989 United Nations Convention on the Rights of the Child. **Where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support, and protection**. Assistance and support measures for child victims should focus on their physical and psycho-social recovery and on identification of a durable solution for the person in question. Access to education would help children to be reintegrated into society. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.

The Directive recognizes that **particular attention should be paid to unaccompanied child victims of trafficking in human beings**, as they need specific assistance and support due to their situation of special vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed to safeguard the minor's best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States (Para 23). When, in accordance with this Directive, a guardian and/or a representative are to be appointed for a child, those roles may be performed by the same person or by a legal person, an institution or an authority (Para 24).

These principles are more precisely defined in Articles 13 and 14 of the Directive, which entail general provisions on measures to assist, support and protect child victims of trafficking, stating that children victims of trafficking will be provided with assistance, support and protection. The implementation of the Directive will primarily take into account the best interests of the child, with Article 14 specifying the forms of general support and assistance and stating that Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law. Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child (Para 2).

Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family (Para 3).

The Directive also specifies that these general provisions apply without prejudice to the provisions on **measures of procedural protection, support and assistance in criminal investigations and proceedings**, i.e. the participation of the victim itself in the proceedings.

As regards procedural measures, the Directive obliges Member States to take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant judicial system, **the competent authorities appoint a proxy for child victims of trafficking when, under national law, holders of parental rights are prohibited from representing a child as a result of a conflict of interest between them and the child victim.**

In addition, Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims **have access without delay to free legal counselling and to free legal representation**, including for the purpose of claiming compensation, unless they have sufficient financial resources (Para 2)

In Para 3 of the same article, the Directive lists the procedural safeguards that Member States should provide, without prejudice to the rights of the defense, in criminal investigations and proceedings relating to any of the offenses referred to in Articles 2 and 3 of the Directive:

> (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
>
> (b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;
>
> (c) interviews with the child victim are carried out, where necessary, by professionals trained for that purpose;
>
> (d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;
>
> (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;
>
> (f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

In addition, the Directive provides that all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law (Para 4).

In addition, in Para 5 of the same Article the Directive provides that Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

> (a) the hearing take place without the presence of the public; and
>
> (b) the child victim be heard in the courtroom without being present using appropriate communication technologies.

Also, the Directive specifies that these measures do not prejudice procedural safeguards that are already provided for all victims of trafficking in human beings by Article 12 of the Directive.

In addition to the procedural safeguards referred to in Article 15, Article 16 of the Directive regulates measures of **assistance, support and protection for unaccompanied child victims, insisting on assessing the individual needs of the child victim by assessing the unaccompanied personal circumstances and finding a durable solution based on individual assessment of the best interests of the child**. Concurrently, Member States shall take the necessary measures to ensure that, where appropriate**, a guardian is appointed to unaccompanied child victims of trafficking in human beings**, as well as to take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities **appoint a representative where the child is unaccompanied or separated from its family.** Also, the Directive specifies that special measures prescribed for child victims do not prejudice procedural safeguards that are already provided for all children victims of trafficking in human beings.

The Directives also pays special attention to preventive measures, emphasizing that such measures should also consider the specifics of children's rights. **Officials likely to encounter victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims.** That training obligation should be promoted for members of the following categories when they are likely to come into contact with victims: police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labor inspectors, social, child and health care personnel and consular staff, but could, depending on local circumstances, also involve other groups of public officials who are likely to encounter trafficking victims in their work (Para 25. of the Directive).

2.4. Serbia on the path towards the EU membership and the reform processes

Negotiations on the conclusion of the Stabilization and Association Agreement (SAA) between the Republic of Serbia and the EU were officially opened on 10 October 2005 and were successfully concluded with the initialing of the Agreement on November 7, 2007. The SAA and the Interim Agreement on Trade and Trade-Related Matters (TTAs) were signed on 29 April 2008 at a meeting of the EU General Affairs and External Relations Council in Luxembourg. On September 9, 2008, the National Assembly of the RS ratified both Agreements. The Stabilization and Association Agreement entered into force on September 1, 2013, giving Serbia the status of a country associated with the European Union. The first meeting of the Stabilization and Association Council was held on October 21, 2013 in Luxembourg, representing a new step in the relations of the RS with the EU. By signing the Stabilization and Association Agreement, Serbia committed itself to harmonization of legislation with the EU *acquis* and its consistent implementation. Respecting this provision, already in October 2008 Serbia adopted the National Program for Integration of the RS into the European Union (NPI), as a plan of legislative activities of Serbia aimed at harmonizing its legislation with the EU *acquis* by the end of 2012. In continuation of this process, in February 2013, the Government of the Republic of Serbia adopted the National Program for the Adoption of the Acquis (NPAA) for the period 2013-2016.[26]

The second, revised NPAA was adopted on 17 November 2016 and reflects the content of the negotiating positions and action plans for the chapters in which the negotiation process began during 2015 and 2016, including Chapters 23 and 24, as the most important for criminal law reform. At the proposal of the Ministry of European Integration, the Government of the RS adopted the third revised

[26] Introductory statement of the Republic of Serbia, available at: https://media.srbija.gov.rs/medeng/documents/eu/the_opening_statement_of_the_republic_of_serbia.pdf, accessed April 4 2020. NPAA is a detailed, multi-annual plan for harmonizing domestic legislation with EU standards, originally adopted for the period 2013-2016. It is intended to link European legislation and the domestic legal framework in order to monitor the scope and quality of that harmonization. The NPAA is the most important and comprehensive document in the process of European integration of Serbia, considering that in addition to harmonizing the entire domestic legislation with the EU law, it also envisages the obligation to strengthen administrative capacities during accession negotiations with the EU, as well as long-term financial planning and responsible budget planning. The NPAA is a continuation of the National Integration Program (NPI), which was implemented in the period from 2008 to 2012 and ensures the continuity of the legislative harmonization process.

version of the National Program for the Adoption of the Acquis Communautaire (NPAA) at its session on March 1, 2018. According to the NPAA, it is planned to fully harmonize the legislation with the EU law by the end of 2021, which is to be followed by a period of monitoring the implementation of regulations until accession. The goal of the Government is that Serbia is fully technically ready for EU membership by the end of 2021, regardless of the date of the formal closing of accession negotiations and the acquisition of full membership.

The existence of a broad social and political consensus in Serbia of all relevant political actors on its future membership in the EU was proved by the adoption of the Resolution of the National Assembly of the Republic of Serbia on the accession of the Republic of Serbia to the European Union in 2004, as well as the Resolution of the Assembly on the principles in the negotiations on the accession of the Republic of Serbia to the European Union in December 2013[27].

2.5. The position of children and the requirements of the negotiation Chapters 23 and 24

When it comes to the position of children in contact with the judiciary, the reform processes within the negotiation Chapters 23 and 24 undoubtedly have the greatest impact. Screening of the compliance of the normative and institutional framework of Serbia with the *acquis* relevant to Chapters 23 and 24 began in September 2013 with explanatory screening for Chapter 23 – Judiciary and Fundamental Rights (presentation of the relevant *acquis* and EU standards to Serbian institutions). This phase served as a starting point for assessing the level of compliance of the Serbian legislative and institutional framework with the *acquis* and European Union standards during bilateral screening in December 2013. The screening process resulted in the publication of the Screening Report[28].

In line with the recommendations of the Screening Report submitted to Serbia in mid-2014, Serbia has developed a comprehensive Action Plan for Chapter 23 (hereinafter: AP23), adopted on 27 April 2016. The Government of the RS has adopted the Action Plan for Chapter 23 as a key overall strategic document in the field of judiciary and fundamental rights, whereas all other strategic documents must be harmonized with it. Due to the opening of the accession negotiations with the EU for Chapter 23, on July 18, 2016, the Government of the Republic of Serbia and the EC adopted a Joint Negotiating Position,[29] which includes a list of 50 Interim benchmarks for assessing the reform process.

An identical procedure was conducted within Chapter 24 - Justice, Freedom and Security. Explanatory screening for Chapter 24 was held on 2-4 October 2013 in Brussels. It was followed by a bilateral Chapter 24 screening held on 11-13 December 2013, also in Brussels. After receiving the Screening Report, in March 2016 the Action Plan for Chapter 24[30] was adopted and in July 2016 the Chapter was opened with the adoption of the Common Negotiating Position for Chapter 24.[31]

After two years of implementation of these strategic documents, their revision began in mid-2018, with the aim of harmonizing with the actual state of play in the reform achievements, as well as to

[27] Turanjanin, V, Kolaković-Bojović, M. and Batrićević, A. (2018) *Assessment of the level of compliance of the Criminal Code of the Republic of Serbia with the relevant standards within the accession negotiations with the European Union*, PERFORM.
[28] Screening Report for Chapter 23, available at: https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20(3).pdf, accessed: June 1 2020.
[29] Common negotiating position Chapter 23, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/Ch23%20EU%20Common%20Position.pdf, last accessed: June 17 2020.
[30] Action plan for Chapter 24, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/akcioni_planovi/action_plan_24.pdf, accessed: April 4 2020.
[31] Common negotiating position Chapter 24, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/Ch24%20EU%20Common%20Position.pdf, accessed June 25 2020.

align with the Interim benchmarks contained in the negotiating positions. This process was completed in the second half of July 2020 i.e. in the final phase of the analysis.[32]

2.5.1. Improvement of the position of children and Chapter 23

The issue of the position of children before the judicial authorities in Serbia is addressed within Chapter 23 in several segments. First, directly, through direct requests for amendments to criminal legislation on juveniles, as well as indirectly, through the development and implementation of national strategic documents, in line with the Action Plan for Chapter 23.

One of the key requirements contained in AP23 is related to the improvement of the position of juveniles in the Serbian judicial system, involving the adoption of amendments to the **Law on Juvenile Offenders and Criminal Protection of Juveniles** in order to: review the type and system of criminal sanctions for juveniles; introduce a wider range of special obligations, introduce new diversion schemes; harmonize the Law with the provisions of the new Criminal Procedure Code, adopt bylaws for the implementation of diversion schemes in line with the approach that puts the implementation of diversion models in the context of community responsibility.

In addition, amendments to the Criminal Procedure Code have been requested to align with the Victims Directive.

42	According to the Interim benchmark 42, Serbia is obliged to establish a judicial system that meets the needs of the child, *inter alia*, through changes and implementation of the Law on Juvenile Offenders and Criminal Protection of Juveniles.
44-45	According to the Interim benchmarks 44 and 45 Serbia needs to amend its legislation (including the Criminal Procedure Code) to align it with the *acquis* on procedural and victim rights. Serbia is obliged to provide the necessary training and to monitor the implementation of legislation containing procedural safeguards, compatible with European Union standards, as well as to take corrective action when necessary.

In assessing Serbia's position six years after the start of negotiations, in its latest Annual Report on Serbia (2019)[33], The European Commission has stated that an integrated national framework for ensuring the proper implementation of children's rights has yet to be established. The EC also noted that the Council for the Rights of the Child established a working group to develop an Action Plan for Children (National Action Plan for Children), since the previous plan expired in 2015. "Statistics on vulnerable groups are still not available individually, especially on Roma children and children with disabilities. Violence against children remains a concern". The EC stated that the Council for Juveniles (Council for Monitoring and Improving the Work of Criminal Procedure Bodies and Enforcement of Criminal Sanctions against Juveniles) was re-established in April 2018, but also that the adoption of the Law on Juveniles was again delayed. The Commission underlined the need to ensure better protection for child victims who testify in criminal proceedings and raised serious concerns about violations of children's rights in state institutions for children, especially children with disabilities, in terms of access to inclusive education.

[32] During the preparation of this analysis, both revised action plans were referred to the adoption procedure.

[33] Republic of Serbia, Report for 2019 accompanying the Communication from the Commission sent to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on the EU Enlargement Policy for 2019 {COM(2019) 260 final}, 28.

2.5.2. *Improvement of the position of children and Chapter 24*

Despite numerous overlaps between Chapters 23 and 24 regarding requests for amendments to criminal legislation, Chapter 24 introduces additional requirements, incorporated into the Interim benchmarks under the subchapters Asylum, Migration and Trafficking in Human Beings.

1	The Republic of Serbia should increase its efforts to comply with the requirements of the European Union in the field of asylum. In particular, the Republic of Serbia is developing a strong mechanism for early warning, readiness and crisis management and is properly implementing it in crisis situations. The Republic of Serbia establishes adequate capacity for the registration of displaced persons and determines whether they need international protection or not.

2	The Republic of Serbia adopts and implements the new Law on Asylum, which is largely harmonized with the relevant *acquis communautaire* and which provides a basis for establishing initial records on the implementation of the asylum procedure harmonized with EU regulations, which provides: unhindered access to the procedure, reasonable time to resolve asylum applications, improved quality of decisions made; speed of recognition of status comparable to the EU average, sufficient reception capacity and assistance for asylum seekers and their integration (including vulnerable categories) into society, effective measures to prevent possible abuse of rights by migrants, including speedy appeal procedures; effective and prompt return of rejected applicants to their country of origin or third country of transit. Appropriate legal and immigration provisions for unsuccessful asylum seekers or irregular migrants who cannot be quickly relocated from the Republic of Serbia.

3	The Republic of Serbia provides adequate accommodation for intercepted irregular migrants in accordance with the needs and pays special attention to vulnerable groups. The Republic of Serbia shall provide adequate facilities for the detention of irregular migrants and procedural timeframes for the return of irregular migrants in accordance with their needs and in accordance with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Republic of Serbia constantly monitors the adequacy of accommodation in detention facilities for migrants and is ready to, if necessary, provide additional capacity in the event of a sudden influx of migrants in a short period of time.

10	In accordance with Interim benchmark no. 10, Serbia amends the Criminal Code, the Law on Employment of Foreigners and the Law on Foreigners, and enacts the Law on Border Control and harmonizes its laws with the EU *acquis* in the field of legal and irregular migration. Serbia effectively monitors and reports on the implementation of these laws and takes corrective measures if necessary.

The wave of migration that swept Europe inevitably resulted in changes in the field of legal and irregular migration. Therefore, in accordance with the Interim benchmark no. 10, Serbia has introduced appropriate amendments to the Criminal Code, as well as the Law on Employment of Foreigners and the Law on Foreigners and passed the Law on Border Control in early 2018.

34	In line with Interim benchmark 34, Serbia adopts and implements a strategy and action plan in line with the EU Strategy to Combat Trafficking in Human Beings and respecting a human rights-based approach. Serbia aligns its legislation with the relevant EU *acquis*, by strengthening its operational capacity, providing more proactive access to investigative bodies, targeting vulnerable groups such as children and Roma, preventing re-victimization during investigations, prosecutions or trials, and provides training on the above to all relevant organizations and services, including services that can 9824/16 GS/wd 28 to assist in the early identification of victims and/or potential victims.

The Negotiating position also addressed the issue of human trafficking, introducing an obligation to adopt a new strategic framework and further harmonize both legislation and practice with relevant international standards, while recognizing the need for special protection of children.

35	In line with Interim benchmark 35, Serbia is preparing, adopting, and implementing a strategy and action plan for the effective resolution of high-tech crime in line with the EU's strategic and operational approach to high-tech crime. Serbia strengthens its operational capacity (in terms of staff and equipment in the High-Tech Crime Unit) to address high-tech crime and aligns its legislation with the relevant EU *acquis*, including on sexual abuse of children online, provides specialized training and raises public awareness and awareness of civil servants on high-tech crime.

The subject of this analysis is partially the Interim benchmark number 35, in the segment related to sexual abuse of children online and in the context of continuous monitoring and harmonization of its legislation with the EU *acquis* on high-tech crime, especially EU Directive 2017/541 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA.

After the initial implementation period, the Progress Report for 2019[34], stated that the number of convictions for organized crime (especially in the fight against trafficking in human beings) remains low (23 people have been convicted, while no person has been convicted for this offence in the context of organized crime). However, the EC notes that during 2018, Serbia applied the provision on "especially sensitive victims" to 18 victims (compared to 10 in 2017), thus providing better protection for victims and better quality of investigation. Also, it was stated that the revision of standard operating procedures is underway i.e. a document that defines the roles and responsibilities of all key anti-trafficking actors in the identification, support, and prosecution of cases. It was also noticed that Serbia is becoming more proactive in terms of detecting, identifying and protecting victims of human trafficking, which is reflected in the fact that specialized investigation teams have been established in 27 criminal police units throughout Serbia. Although the capacity of institutions for prevention and identification of victims of trafficking for labor exploitation has not gone unnoticed, as well as the opening of the Shelter for Victims of Trafficking, it was concluded that the capacity of the Center for Protection of Victims of Trafficking needs to be further strengthened, including additional efforts to improve the protection and support for victims of trafficking (especially children), in order to avoid re-victimization during the investigation and trial and to facilitate the reintegration of victims into society. Although the legal framework provides the basis, compensation is rarely granted. There is no fund or compensation scheme.

[34] Republic of Serbia, Report for 2019 accompanying the Communication from the Commission sent to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on the EU Enlargement Policy for 2019 {COM(2019) 260 final, 34-35.

3. CHILD FRIENDLY JUSTICE AND POSITIVE CRIMINAL LEGISLATION OF THE RS

3.1. The concept of the victim in criminal legislation of the Republic of Serbia

3.1.1. The concept of the injured party in Criminal Procedure Code

One of the issues that attracted a lot of attention with regard to harmonization of our criminal legislation with the provisions of the Victims Directive is the relationship between the terms "victim" used by the Directive[35] and the injured party, utilized in Serbian Criminal Procedure Code. Given that the question: Why is the term victim not recognized in Serbian legislation? is being repeatedly asked in the public, like a 'mantra', it is necessary to consider the relationship between the terms "victim" and "injured party" in the Victims Directive and the current Criminal Procedure Code.

Article 2 of the Victims Directive recognizes two categories of victims of criminal offenses and the criterion for distinguishing them is the fact whether the victim – as a passive subject of the criminal offense lost his or her life or not as a result of the criminal offense. In cases where the commission of the criminal offence did not result in the loss of the life of the victim of the crime, the term means "a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence". In this case, the term victim is used in the narrower sense of its meaning. In contrast, in the case when the commission of a criminal offense directly caused the death of the victim (passive subject of the criminal offense), the term victim encompasses family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death (the term victim in a broader sense). In addition, the circle of persons as family members was specified. This circle involves: the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependents of the victim.

When it comes to the concept of injured party in the CPC, it is clear that the legislator also distinguishes two categories of injured persons and that the criterion for distinguishing them is identical to the criterion for distinguishing the two categories of victims of criminal offences in terms of Article 2 of the Directive. Thus, under the injured party in the narrower sense, according to Article 2, item 11 of the CPC considers a natural or legal person who's personal or property right has been violated or jeopardized by a criminal offence.

In addition, when determining the circle of legal successors of the injured party, Article 57 of the CPC defines that if an injured party dies during the prescribed time limit for making a declaration on assuming criminal prosecution, or submitting a motion for criminal prosecution, or during the proceedings, his/her spouse, common-law spouse or other persons with whom he/she had lived in a common law marriage or other permanent personal association, children, parents, adopter, adoptee and siblings and legal representative may, within three months of his/her death declare that they are assuming prosecution or submit a motion that they continue the proceedings.

Having in mind the above, the concept of the injured party under the CPC is broader than the concept of the victim contained in the Directive, since it also includes legal entities. In this sense, the question arises as to how to act in the context of compliance with the provisions of the Directive.

The proposal often heard in the public is the complete abandonment of the term injured party and acceptance of the term victim of a criminal offence, which would, *inter alia*, result in a complete disruption of the legal tradition on this issue, while it would also require a comprehensive intervention in the CPC which would imply the co-existence of the terms "victim" and "injured party", in order to ensure a distinction between the positions of natural and legal persons. Truth be told, the introduction

[35] And occasionally the Criminal Code.

of this term would contribute to the exercise of the victim's right to be recognized as such, in the context of non-financial reparations. Nevertheless, at the legislative level, as well as in practice, this would lead to inconsistency and uneven practice, since "getting used" to this change in practice would necessitate a long period of time[36].

3.1.2. The concepts of the victim and the injured party in the Criminal Code

The issues related to the concept of the victim are also commonly discussed solely from the point of view of amendments to the Criminal Procedure Code, while the Criminal Code remains out of focus. Accordingly, apart from the brief statement that the „criminal substantive law… uses the term "victim" only in few provisions, and does not use the procedural term "injured party" at all, which, from the point of view of current positive criminal legal system, in fact represents a mistake, given that it unnecessarily narrows the protection of certain interests of the injured party", Škulić[37] does not engage in the significance of the problem of terminological inconsistency in the CC and the CPC, and the problem of the utilization of the term victim in the CC, even in situations where it is obvious that it does not relate to the passive subject of the criminal offence.

Hence Article 54 of the CC stipulates that the court shall determine a punishment for a criminal offender within the limits set forth by law for such criminal offence, with regard to the purpose of punishment, taking into account all circumstance that could have bearing on severity of the punishment (extenuating and aggravating circumstances), and particularly the following: degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behavior after the commission of the criminal offence and **particularly his attitude towards the victim of the criminal offence**, and other circumstances related to the personality of the offender.

Similarly, Article 72 of the CC provides that, when pronouncing a suspended sentence, the court may order protective supervision of the offender if, considering his personality, previous conduct, attitude after committing of the offence and **particularly his attitude towards the victim of the offence** and circumstance of its commission, it may be assumed that protective supervision would enhance achieving the purpose of suspended sentence.

The term "victim" is also used in Article 73 of the CC, which regulates the content of protective supervision, whereby it is determined that protective supervision may include the elimination or mitigation of the damage caused by a criminal offense, particularly **reconciliation with the victim of a criminal offense.**

Article 77 of the CC, which regulates the pronunciation of judicial caution, stipulates that, when deciding whether to pronounce a judicial caution, the court shall, having regard to the purpose of the caution, particularly take into consideration the personality of the offender, his past conduct, his conduct after commission of the offence, and specifically his **attitude to the victim of the offence**, degree of culpability and other circumstances under which the offence was committed.

The term victim is also used in a special part of the Criminal Code, in Article 388 Trafficking in human beings, which stipulates that whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys,

[36] Kolaković-Bojović, M (2020) Directive on Victims (2012/29/EU) and criminal legislation of the Republic of Serbia, Victim of criminal offense and criminal legal instruments of protection (international legal standards, regional criminal legislation, application and measures to improve protection), Bejatović, S (ed.), OSCE Mission to Serbia, 41-54.

[37] Škulić, M. (2015) Normative analysis of the position of the injured party by a criminal offense in the criminal justice system of the Republic of Serbia, OSCE Mission to the Republic of Serbia.

acts as intermediary in sale, hides or holds another person with intent to exploit such person's labor, forced labor, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts, shall be punished with imprisonment of three to twelve years; whereas **whoever knows or should know that the person is a victim of trafficking,** and abuses its position or allows to another to abuse its position for the exploitation envisaged in para 1 of this Article, shall be punished with imprisonment of six months to five years.

In addition to the problematic standpoint on the adequacy of the term injured party, the statement of Škulić that the CC does not use the term injured party simply does not correspond to the truth and this fact further complicates the situation, as it indicates that the use of the term victim in these examples does not demonstrate the legislator's decision to use a different terminological approach to this issue in the Criminal Code. On the contrary, it could be said that this issue was not given too much thought, and that the choice of terminology was approached spontaneously. This may be supported by the fact that the term victim is present mainly in those segments of the CC that have undergone amendments in recent years and/or are a consequence of harmonization with international standards.

Likewise, in the case of Article 79, which regulates the types of security measures, including the prohibition of convergence and communication with victim, further regulated in Article 89a, which stipulates that the court may prohibit the offender **to converge to a victim** at certain distance, **prohibit access to the area around the residence or place of victim and prohibit further harassment, or further communication with victim, if reasonably should be considered that further exercise of such actions of the offender is dangerous for the victim**.

Furthermore, Article 93 provides for the protection of the injured party, stipulating that if in criminal proceedings **a property claim of the injured party is accepted**, the court shall order seizure of material gain only if it exceeds **the adjudicated amount of the property claim of the injured party. The injured party** who was directed in criminal proceedings to institute civil action in respect of his compensation claim, may request compensation from the seized material gain if he institutes a civil action within six months from the day the decision referring him to litigation becomes final. **The injured party** who does not file compensation claim during criminal proceedings may request compensation from the seized material gain if he has instituted civil action to determine his claim within three months from the day of learning of the judgement ordering seizure of material gain, and not later than three years from the day the order on seizure of material gain became final. In cases previously referred to, **the injured party** must, within three months from the day the decision accepting the compensation claim became final, request to be compensated from the seized material gain.

Having all the above in mind, it does not seem acceptable to propose that the legislator defines both terms, with a clear distinction of their use in terms of anticipating rights and obligations.

Our standpoint would be that only two possible solutions would satisfy the need to adequately guarantee the rights of victims in criminal proceedings and ensure harmonization with relevant international standards, and thus a positive assessment of international institutions.

- One possible solution would involve a replacement of the term injured party by the term victim, thus completely rejecting the tradition and fundamentally changing the approach;
- The second solution would be a kind of compromise between the traditional and internationally recognized concept, which would involve the introduction of a provision that would clearly define that the term injured party, when it comes to a natural person, in terms of the Criminal Code, should be interpreted in accordance with the Victims Directive, citing the particular provision of the Directive.

Whether opting for option one or two, the legislator would need to incorporate it into both the CPC and the CC, eliminating in this way the terminological dualism and confusion that currently prevail.

3.2. Children in substantive criminal law in the RS

3.2.1. The concept of a child in criminal law of the RS[38]

The **Constitution of the Republic of Serbia** defines the term child as a person under the age of 18, which is in accordance with the definition contained in the Convention on the Rights of the Child, the Victims Directive and Directive 2011/36. This definition is adopted by the following laws: Family Law, Law on the Fundamentals of the Education System, Labor Law, Law on Health Care and Law on Prevention of Discrimination against Persons with Disabilities.

According to the provisions of Article 64 Para 1, 3 and 5 of the Constitution of the Republic of Serbia, it is proclaimed that children enjoy human rights appropriate to their age and mental maturity. Children are protected from psychological, physical, economic and any other exploitation or abuse. Children under the age of 15 may not be employed, nor may they work in jobs harmful to their health or morals, if they are under the age of 18, according to Article 66 Para 4 of the Constitution.

According to the **criminal legislation of the Republic of Serbia**, a child who has reached the age of 14 and has not reached the age of 18 is called a minor (younger juvenile - a person who turned 14 and not 16 years of age at the time of committing a criminal offence; older juvenile - a person who turned 16 years of age and not 18 years of age at the time of committing a criminal offence)[39]. The provision of Article 2 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles[40], it is prescribed that neither criminal sanctions nor other measures provided under this law may be pronounced or applied to a person under fourteen years of age at the time of commission of an unlawful act provided under law as a criminal offence[41].

When it comes to children who were under the age of 14 at the time of committing a criminal offence, their position in criminal law indicates the objective inability of bearing guilt, which is motivated mainly by criminal-political and generally humane reasons of not exposing too many young people to criminal prosecution. In the general sense, such a normative solution is dictated by the international obligations of our country, because the provision of Art. 4 Para 1 of the United Nations Standard Minimum Rules for Juvenile Justice [42] provides that in those legal systems recognizing the concept of the age of criminal liability for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.[43]

The National Program for the Adoption of the Acquis of the European Union (second revision in 2016) emphasizes that it is necessary to harmonize criminal legislation, regulations in the field of misdemeanor law and regulations governing police work and police powers with the UN Convention on the Rights of the Child, which defines a child as any person under the age of 18 and provide the same legal protection to every child victim of a criminal or other punishable offense, regardless of age.[44]

Namely, according to Article 1 of the Convention on the Rights of the Child: „For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under

[38] The author wishes to express gratitude to Dr. Ana Batrićević, senior research associate at the Institute for Criminological and Sociological Research, for her selfless support in drafting this chapter. The chapter relies heavily on: Turanjanin, V, Kolaković-Bojović, M. and Batrićević, A. (2018) Assessment of the level of compliance of the Criminal Code of the Republic of Serbia with relevant standards in the framework of accession negotiations with the European Union, PERFORM.

[39] National Strategy for Prevention and Protection of Children from Violence, Official Gazette of the Republic of Serbia, no. 122/2008

[40] Law on Juvenile Offenders and Criminal Protection of Juveniles, "Official Gazette of RS", No. 85/2005., https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf, accessed on May 20 2020

[41] Škulić, M. (2010) Age limit of ability to bear guilt in the criminal law sense, Crimen (1) 2, p. 207

[42] United Nations Standard Minimum Rules for Juvenile Justice (Beijing Rules), United Nations General Assembly Resolution 40/33, of 29.11.1985.

[43] Škulić, M. (2010) Age limit of ability to bear guilt in the criminal law sense, Crimen (1) 2, p. 216

[44] National Program for the Adoption of the Acquis (Second Revision), p. 75. http://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/NPAA_2016_revizija_srp.pdf, accessed on May 20 2020 (available in Serbian).

the law applicable to the child, majority is attained earlier". Since according to Article 11 Para 1 of the Family Law maturity is reached at the age of 18 in the Republic of Serbia, it is clear that the concept of a child in all relevant regulations should be defined to include every human being under the age of 18 – exactly as it was done by the aforementioned Article 1 of the Convention on the Rights of the Child.

The current **Criminal Code of the Republic of Serbia** states in Article 112 Para 8 that a child is a person under 14 years of age. In addition, Art. 112, Para 9 states that a minor is a person over 14 years of age but who has not attained 18 years of age, while Art. 112, Para 10 states that juvenile is a person who has not attained 18 years of age. Thus, the concept of a juvenile referred to in Art. 112, Para 10 of the Criminal Code practically corresponds to the concept of a child from Art. 1 of the Convention on the Rights of the Child. However, the position of a child and the position of a minor who has reached 14 years of age in our criminal law differ significantly, since the child is not criminally liable, while a person who has reached 14 years of age is criminally liable even if he is under 18 years of age.

Compliance with the Convention on the Rights of the Child and both directives in terms of accepting the definition of a child as a person under 18 years of age would also affect the provisions of the **Law on Misdemeanors**[45]. Namely, Art. 71, entitled Responsibility of a minor for a misdemeanor, states that a minor who has not reached the age of 14 at the time of committing the misdemeanor (child) cannot be prosecuted in misdemeanor proceedings. Since a person under the age of 18 is considered a child, it is not necessary to insert the word child in brackets after the words "... not reached the age of 14..."

Certain changes would also be necessary in Art. 72 entitled Responsibility of the parent, adoptive parent, guardian, or custodian of a child or minor. Namely, by defining a child as a person under the age of 18, the concept of a minor and the concept of a child would be equated. In this regard, the title of this article should be amended to read "Responsibility of the parent, adoptive parent, guardian or custodian of the child". In accordance with the amended definition of the term child, either only Para 1 of Art. 72 should be left: "When a child has committed a misdemeanor due to failure of due supervision of a parent, adoptive parent, guardian or custodian, and these persons have been able to exercise such supervision, the parent, adoptive parent, guardian or custodian of the child shall be punished for the misdemeanor as if they had committed it themselves" (which would then apply to all persons under the age of 18), and delete Para 2 "the law may stipulate that the parent, adoptive parent, guardian, or custodian of a minor aged 14 to 18 shall be liable for the misdemeanor committed by the minor if the misdemeanor is a consequence of failure to supervise the minor, and they were able to perform such supervision" and 3 "in addition to parents, adoptive parents, guardians or custodians, the law may provide that other persons which have the obligation to supervise a minor who has committed a misdemeanor will be liable for the misdemeanor" Namely, then all cases when the misdemeanor was committed by a person under the age of 18 (child) would be covered by Para 1 of Art. 72.

However, it is possible to introduce a different solution and prescribe in Para 1 of Art. 72 "When a child under the age of 14 has committed a misdemeanor due to failure of proper supervision of a parent, adoptive parent, guardian, or custodian and these persons were able to perform such supervision, the parent, adoptive parent, guardian or custodian of the child shall be punished for the misdemeanor as if they had committed it themselves". Then, paras 2 and 3 of Article 72 could be retained, whereby the provision of para 2 would read: "the law may prescribe that the parent, adoptive parent, guardian, or custodian of a child older than the age of 14 to 18 years of age shall be liable for a misdemeanor, if it is the result of a failure to exercise proper supervision over the child, and they were able to perform such supervision", while Article 3 would read: "except for parents, adoptive parents, guardians or custodians, the law may stipulate that for the misdemeanor of a child who has reached the age of 14, the law may provide that other persons which have the obligation to

[45] Law on Misdemeanors, Official Gazette of RS, no. 65/2013, 13/2016 and 98/2016

supervise a minor who has committed a misdemeanor will be liable for the misdemeanor". In this way, the definition of a child in Article 1 of the Convention on the Rights of the Child would be respected, but at the same time a distinction would be made in terms of liability for misdemeanors between children under 14 and children aged 14 to 18, whereby parents, adoptive parents, guardians or custodians would be liable for the first, while for the others this responsibility would exist only in cases prescribed by law. However, if we keep in mind that the concept of a child is incompatible with the notion of liability (either criminal or misdemeanor), it would not be correct to envisage the possibility that children aged 14 to 18 are responsible for the misdemeanor, but it would always be the responsibility of parents or other persons responsible for children.

Depending on the selected solution, the lower limit for misdemeanor liability would potentially be moved from 14 to 18 years of age. In that sense, the issue of amending Article 299 of the Law on Misdemeanors, entitled "Treatment of a Child", would also be raised. Namely, the mentioned article prescribes the following: "When the court determines that the minor was not 14 years old at the time of the commission of the misdemeanor, it shall suspend the misdemeanor proceedings." However, if the term child would cover all persons under the age of 18, this article would read: "When the court finds that the child was under the age of 14 at the time of the commission of the misdemeanor, it shall suspend the misdemeanor proceedings." This would imply that a distinction is made in terms of child's liability for the misdemeanor, i.e. that children under the age of 14 are not liable for the misdemeanor and children after the age of 14 are liable. On the other hand, if the notion of liability (either for a misdemeanor or a criminal offense) is incompatible with the notion of a child (Art. 1 of the Convention on the Rights of the Child includes all persons under 18 years of age), then para 1 of Art. 299 of the Law on Misdemeanors should be reformulated to read: „When the court determines that the child was under the age of 18 at the time of the commission of the misdemeanor, it shall suspend the misdemeanor proceedings". Para 2 of Article 299, which reads: "In the case referred to in para 1 of this Art., the court shall notify the parent, adoptive parent and guardian of the minor, as well as the guardianship authority, about the misdemeanor and may, if necessary, inform the school or organization in which the minor is placed" should be amended to read: “In the case referred to in para 1 of this Art., the court shall inform the parent, adoptive parent and guardian of the child, as well as the guardianship authority, and if necessary may also inform the school or organization in which the child is placed".

Acceptance of the definition of the term child from Article 1 of the Convention on the Rights of the Child would imply certain amendments to the **Law on Police**, more precisely the Art. 70 entitled "Application of powers towards minors". Namely, para 1 of this Article prescribes that "Police powers towards minors shall be applied by all police officers, except in the case of collecting information in the capacity of a citizen (injured party, witness) and questioning of a minor in the capacity of a suspect, which is performed by a police officer for minors". Given that the term "minor" includes persons under the age of 18, this means that it actually refers to children within the meaning of Art. 1 of the Convention on the Rights of the Child and should be titled "Application of powers to children". Accordingly, Para 1 of this Article should read: "Police powers towards a child shall be applied by all police officers, except for collecting information in the capacity of a citizen (injured party, witness) and questioning the child in the capacity of a suspect, which is performed by a police officer for children".

3.2.2. Criminal offences committed to the detriment of children in the Criminal Code

In terms of criminal law protection, Serbian criminal law utilizes the term "minor" for the category of persons referred to in the Convention as a "child", while the term "child" is used in some incriminations in the Criminal Code for a person who is under 14 years of age[46]. In order to align the Criminal Code of the Republic of Serbia with the Convention on the Rights of the Child, it is necessary to amend the legal provision defining the term child so that it reads: "A child is considered to be a

[46] Škulić, M. (2011) Juvenile Criminal Law, Belgrade: Faculty of Law, University of Belgrade, p. 177.

person under 18 years of age". Amendment to this legal provision, however, would affect the interpretation and application of a number of other articles of the Criminal Code: Aggravated Murder in Article 114 Para 1 Item 9 (...who causes death of a child or pregnant woman), Incitement to Suicide and Aiding in Suicide in Art. 119 Para 4 (...If the act specified in para 1 of this Art. is committed against a child or mentally incompetent person), Rape in Article 178 Para 4. (...If the offence specified in paras 1 and 2 of this Art. results in death of the person against whom it was committed or if committed against a child), Sexual Intercourse with a Helpless Person in Article 179 Para 3 (If the offence specified in paras 1 and 2 of this Article results in death of the person against whom it was committed or if committed against a child), Sexual Intercourse with a Child in Article 180, Sexual Intercourse through Abuse of Position in Article 181 Para 3 (...If the offence specified in Para 2 of this Art. is committed against a child) and Para 5 (...If death of the child results due to offence specified in para 3 of this Art.), Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Para 3 (...If the act specified in paras 1 and 2 of this Art. is committed against child), Inducing a Child to Attend Sexual Acts in Article 185a, Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Minor in Article 185b Para 2 (...Whoever commits criminal offence specified in Para 1 of this Art. against the child...).

It should be emphasized that, since the concept of a child in Article 1 of the Convention on the Rights of the Child and the concept of a minor in Para 10 of Art. 112 of the Criminal Code would be equal (both terms include persons under 18), the concept of a minor would practically become redundant. In this context, it should be highlighted that, if the term minor is to be replaced by the term child, the following incriminations in the current Criminal Code should be amended: 1) Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 and 2) Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Minor in Article 185b. Instead of the current title of the criminal offence "Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography", Article 185 should be renamed to read "Showing, Procuring and Possessing Pornographic Material and Child Pornography". Given that all forms of this criminal offense would then refer to children, its para 3 (...If the act specified in paras 1 and 2 of this Art. is committed against child ...) would be superfluous, while a more severe punishment prescribed as the aggravated form should also apply to paras 1 and 2. Likewise, in the case of Art. 185 b, instead of the title "Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Minor", it should be labeled "Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Child". In this way, the aggravated form referred to in Para 2 of this Article would become superfluous (...Whoever commits criminal offence specified in para 1 of this Art. against the child....), and a more severe punishment prescribed should be determined for the basic form of the criminal offence.

However, the harmonization of the aforementioned provisions of the Criminal Code with the definition of the term child in the Convention on the Rights of the Child could also be achieved in a different way, without raising any other controversial issues. Namely, it would be sufficient to envisage, as aggravated forms of the following criminal offenses, situations when these offenses are committed against a “child under 14 years of age“: Aggravated Murder in Article 114 Para 1 Item 9 (...who causes death of a child or pregnant woman), Incitement to Suicide and Aiding in Suicide in Article 119 Para 4 (...If the act specified in para 1 of this Art. is committed against a child or mentally incompetent person), Rape in Article 178 Para 4 (...If the offence specified in paras 1 and 2 of this Art. results in death of the person against whom it was committed or if committed against a child), Sexual Intercourse with a Helpless Person in Article 179 Para 3 (If the offence specified in paras 1 and 2 of this Art. results in death of the person against whom it was committed or if committed against a child), Sexual Intercourse with a Child in Article 180, Sexual Intercourse through Abuse of Position in Article 181 Para 3 (...If the offence specified in Para 2 of this Art. is committed against a child) and Para 5 (...If death of the child results due to offence specified in para 3 of this Art.), Showing, Procuring and

Possessing Pornographic Material and Minor Person Pornography in Article 185 Para 3 (...If the act specified in paras 1 and 2 of this Art. is committed against child), Inducing a Child to Attend Sexual Acts in Article 185a, Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Minor in Article 185b Para 2 (...Whoever commits criminal offence specified in Para 1 of this Art. against the child...). Therefore, in all the listed criminal offenses i.e. aggravated forms, the term "child" should be replaced by "child under 14 years of age".

In addition to the discussed amendments to the Criminal Code, accepting the definition of a child in Article 1 of the Convention on the Rights of the Child would also mean radical changes to the Law on Juvenile Offenders and Criminal Protection of Juveniles[47], given that that law, equally as the Criminal Code, accepts that the lower limit of criminal liability is 14 years of age.

Finally, when assessing the compliance of the definition of a child utilized in domestic criminal law i.e. domestic juvenile criminal law, with the definition of the term child in Article 1 of the Convention on the Rights of the Child, it should be borne in mind that there is no essential contradiction between them, even though, according to the rules of our criminal legislation, a child is a person who has not reached the age of 14 at the time of committing a criminal offense, while persons who have reached the age of 14 and are not yet 18 are considered minors, divided into (younger) minors and juveniles[48]. An argument for this stems from the fact that the Convention itself explicitly allows for the possibility of resolving this issue differently in national legislation, either by enabling that the law prescribes a child's adulthood (and logically, minor age) earlier, and also because the conceptual definition of the child is regulated only for the purpose of the Convention itself, and not in a way that would formally and legally bind the states that have ratified the Convention[49].

3.2.3. Children victims of human trafficking according to the Criminal Code of the Republic of Serbia

In terms of the definition of human trafficking, criminal legislation of the Republic of Serbia is fully in line with the Council of Europe Convention on Action against Trafficking in Human Beings, and with Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting victims, through the criminal offences Human Trafficking in Article 388 of the Criminal Code, Trafficking in Minors for Adoption (Art. 389 CC), Holding in Slavery and Transportation of Enslaved Persons (Art. 389 CC). The harmonization was completed by prescribing four criminal offenses in the Law on Human Organ Transplantation[50] and the Law on Human Cells and Tissues[51].

With regard to the compliance of the solution contained in the Criminal Code with the provisions of the Convention on Trafficking in Human Beings and Directive 2011/36, the definition of the act of committing the criminal offence of trafficking in human beings from Art. 388, Para 1 of the CC is important, which prescribes: Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labor, forced labor, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts.

Aggravated forms of this offence exist if the offence is committed against a minor (Para 3), if the offence resulted in grave bodily injury of a person (Para 4) or in death of one or more persons (Para

[47] Law on Juvenile Offenders and Criminal Protection of Juveniles, "Official Gazette of RS", No. 85/2005.
[48] Škulić, M., *Op.cit.*, p. 176-177.
[49] Škulić, M. *Op.cit.*, p. 176-177.
[50] Law on Human Organ Transplantation, "Official Gazette of RS", no. 57/2018.
[51] Law on Human Cells and Tissues, "Official Gazette of RS", no. 57/2018.

5), if the offence is committed by a group (Para 6) or by an organized group, (Para 7). It is important to note that Para 2 of the same article stipulates that when the offence is committed against a minor, the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration.

An easier form is provided in para 8 (Whoever knows or should know that the person is a victim of trafficking, and abuse its position or allow to another to abuse its position for the exploitation envisaged in Para 1 this Art.) and Para 9, if the offence was committed against a minor. Para 10 excludes the consent of a person to exploitation or establishing slavery or similar relation specified in para 1.

Although seemingly fully aligned with the CoE Convention, this provision is controversial at several levels:

- Primarily, in the field of delineation with the essence of related criminal offences,
- in terms of qualified forms
- as well as regarding the prescribed sentence for basic and qualified forms of criminal offence.

When it comes to the problem of delineation, the previously mentioned spontaneous manner in approaching the amendments to the CC is emphasized, so the harmonization with the CoE Convention led to the overlapping of the essence of criminal offense under Art. 388 with the offense under Art. 390, which will be discussed later in more detail.

About prescribing aggravated forms, the current Criminal Code does not provide as a qualifying circumstance the case when the act of trafficking in human beings was committed by a civil servant in the performance of official duties.

Regarding the prescribed sentence, the provision of Art. 388 represents a serious omission of the legislator. Namely, the prescribed punishment for the basic form is imprisonment of three to twelve years, which is in accordance with the provisions of the Directive 2011/036. It would be expected that the gradation in sentencing exists both through additional protection of particularly vulnerable victims (minors) and in terms of the consequences that occurred (severe bodily injury or death of one or more persons), as well as the manner of execution (by a group or organized criminal group). It would also be logical for the gradation to be established even when there is a concurrence of aggravating circumstances (minor victim, graver consequence, manner of execution). However, the legislator did not follow this logic, so the minimum prescribed punishment in case the act was committed to the detriment of a minor is imprisonment for at least five years (Art. 338, para 3). This provision sounds logical in relation to the punishment prescribed for the basic form. However, if the act resulted in a serious bodily injury of a minor, the Law stipulates the same punishment, imprisonment of a minimum of five years (Art. 338, para 4). The situation is further complicated by the wording of para 4, which first refers to Paras 1-2 and sanctions the occurrence of a graver consequence in the form of a serious bodily injury with imprisonment of 5 to 15 years, but envisages a more severe sanction for the occurrence of a serious bodily injury of a minor. It is clear that in the absence of a special maximum, the sanctioning range was increased in relation to the mentioned 5 to 15 to 5 to 20 years, which was probably the intention of the legislator, since there is no logic in punishing the perpetrator less severely for a graver consequence for a minor, than when such a consequence has not occurred. Gradation in terms of proportionality of the severity of the consequence and the prescribed sentence exists only in the case of death, whereby the minimum prescribed sentence is imprisonment of ten years (Art. 338, para 5), while in the case of a crime committed by a group or if someone engages in the commission of this criminal offense, a sentence of at least five years is prescribed again, regardless of the age of the victim (Art. 338, para 6). The same situation exists when the crime is committed by an organized criminal group, whereby a prison sentence of at least ten years is always prescribed.

Articles 8 and 9 of this Article prescribe that whoever knows or should know that the person is a victim of trafficking, and abuse its position or allow to another to abuse its position for the exploitation envisaged in Para 1 of this Art., shall be punished with imprisonment of six months to five years (Art. 388 Para 3), whereas if the offence is committed against a person for whom an offender knew or could have known to be a minor, a punishment of imprisonment of one to eight years is prescribed.

Apart from the illogicalities related to the gradation of the envisaged sanctions, the lack of prescribing the maximum penalty i.e. the upper limit in the criminal range, is also problematic. Since the Art. 2 of the Directive provides determination of the maximum penalty to at least ten years in the case of child victims, the question arises whether the absence of its regulation in our CC, or binding to the general maximum, provides adequate results in practice, bearing in mind the tendency to impose penalties around a special minimum.

3.2.4. Trafficking in Minors for Adoption and Holding in Slavery and Transportation of Enslaved Persons

In addition to the criminal offense of trafficking in human beings under Article 388 of the CC, the provisions of Articles 389 and 390 of the CC which, *inter alia,* recognize the need for additional protection of children, are also relevant for the subject of this analysis and harmonization with the provisions of the Victims Directive and Directive 2011/036.

Hence Art. 389 of the CC incriminates trafficking in minors for adoption. This provision ensures criminal protection of a child under sixteen years of age from abduction for the purpose of adoption contrary to laws in force or adoption of such a child or mediation in such adoption, as well as buying, selling or handing over such person, or transport, provision of accommodation or concealing (Art. 389 Para 1). Aggravated forms of this offense will exist if someone engages in committing the offense referred to in para 1, or the offense is committed by a group (Art. 389, para 2), as well as when the offense is committed by an organized criminal group (Art. 389, para 3). For the existence of this offence, it is necessary that the adoption contrary to the positive regulations is included in the intention.

When it comes to the sentences provided for this criminal offence, it is interesting that they are significantly lower than those provided for the criminal offence under Article 388, so a prison sentence of one to five years is prescribed for the basic form. Unlike the offence referred to in Article 388, the legislator made a gradation here, so that engagement in committing the offense or committing the offence by a group is punishable by imprisonment of at least three years, while in case of committing an act by an organized criminal group, imprisonment of at least five years is prescribed.

3.2.5. Holding in Slavery and Transportation of Enslaved Persons

As mentioned earlier, additional protection of minors i.e. children is also provided by the provision of Art. 390 CC, which incriminates slavery of another person or placing a person in similar position, or holding a person in slavery or similar position in violation of international law, whereby sentence is prescribed for whoever buys, sells, hands over to another or mediates in buying, selling and handing over of such person or induces another to sell his freedom or freedom of persons under his support or care. It is important to note that a violation of the rules of international law does not have to be covered by intent. For the basic form, imprisonment of one to ten years is envisaged.

Para 2 prescribes that whoever transports persons in slavery or other similar position from one country to another, shall be punished with imprisonment of six months to five years.

Para 3 prescribes that whoever commits the offence specified in paras 1 and 2 of this Article against a minor, shall be punished with imprisonment of five to fifteen years.

A careful analysis, in the context of Art. 388 of the CC and the provisions of the Convention and Directive 2011/36, clearly indicates that the overlap of criminal offenses (especially in terms of Para

1) is such that it brings into question the need for further independent existence of Art. 390 in the existing form.

3.2.6. Incrimination of human trafficking in relation to Mediation in Prostitution (Article 184 CC) and Pimping and Procuring (Article 183 CC)

As a part of this analysis, with regard to the criminal offences Pimping and Procuring (Art. 183 CC) and Mediation in Prostitution (Art. 184 CC) and Human Trafficking (Art. 388 CC), we have not only engaged in the analysis of their compliance with relevant standards, but also in the analysis of the relationship between the essence of these two criminal offences, as well as certain problems imposed by their application in practice.

Article 183 of the Criminal Code - Pimping and Procuring incriminates pimping of a minor for sexual intercourse or an equal act or other sexual act (Para 1), as well as procuring a minor for sexual intercourse or an act of equal magnitude or other sexual act (Para 2). While for the offence referred to in para 1, a prison sentence of one to eight years and a fine are envisaged, for the offence referred to in para 2, a prison sentence of six months to five years and a fine are prescribed. When it comes to the very act of committing this offence, it is important to note that its demarcation with the related criminal offences, and especially the offence in Article 184 of the Criminal Code, often brings difficulties in practice.

In that sense, it is important to correctly understand the notion of pimping, as undertaking those actions which connect the person who performs intercourse or an act equated with it and the minor over whom intercourse or an act equal to it is performed. Here, a person can be influenced by taking any action referred to in Art. 178-182.[52]

Unlike pimping, when enabling sexual intercourse, there is no influence on the will of the passive subject, but the act of execution consists in creating conditions or facilitating the performance of some of the sexual acts.[53] Article 183 of the Criminal Code incriminates causing or inducing another person to prostitution or participating in handing over a person to another for the purpose of prostitution, or by means of media or otherwise promoting or advertising prostitution.

Namely, when it comes to Article 184 of the Criminal Code, a number of disputable issues arise,[54] whereas the most important thing for the criminal protection of children is the one referred to in the existing para 2 of this provision, which should be deleted. That is, the meaning of the provision of Article 184 is the incrimination of mediation in the voluntary engagement of prostitution. This would mean that the existing para 2 is also based on the presumption of consent of a minor to engage in prostitution, which is in conflict with the provision of Article 388 of the CC, which, in accordance with relevant international standards, considers the child's consent to exploitation (including prostitution) irrelevant. This stands even more because for the existence of the offence under Article 388 CC it is not necessary that the offence was committed by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefits.

[52] Stojanović, Z. (2016) Commentary on the Criminal Code of the Republic of Serbia. Belgrade: Official Gazette 454-456.

[53] *Ibidem*

[54] First of all, in practice, there has been a recent increase in the number of Serbian citizens traveling abroad to engage in prostitution, especially in Germany, Austria and Slovenia (prostitution is legalized in these countries, but only for EU citizens). This phenomenon often occurs as a form of organized crime, so in police-monitored cases in the period from 2014-2017, cases of cooperation between criminal groups from Germany, BiH, Slovenia and Serbia were noticed, in terms of recruiting persons for prostitution and then distributing the profit obtained. With this in mind, we consider it necessary to amend para 2 of the existing Article 184, in such a way as to criminalize the recruitment, conveyance and other ways of organizing or conducting the provision of sexual services in a state where that person does not reside or is not a citizen. Also, we are of the opinion that it is necessary to add a new para 3 which would criminalize the commission of the offence referred to in paras 1 and 2 by an organized criminal group.

3.2.7. Other criminal offences that can be committed to the detriment of children

Following the public support caused by a series of unfortunate events in which children were victims of cruel crimes, the legislator decided to amend the Criminal Code, thus bringing a stricter penal policy for a whole range of criminal offences committed to the detriment of children. Having in mind the special vulnerability of the child, as well as the duration and severity of the consequences, further in the analysis, in addition to the criminal offences already analyzed and including an additional exploration of the necessity of harmonization of the concept of the child as defined in the Convention on the Rights of the Child, the CoE Convention and the Directive, special attention is paid to the following offenses: Rape (Art. 178 CC), Sexual Intercourse with a Helpless Person (Art. 179 CC), Sexual Intercourse with a Child (Art. 180 CC), Sexual Intercourse through Abuse of Position (Art. 181 CC), Pimping and Procuring (Art. 183 CC), Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography (Art. 185 CC), Inducing a Child to Attend Sexual Acts (Art. 185a), Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Minor (Art. 185b), Coercion into Marriage (Art. 187a), Cohabiting with a Minor (Art. 190 CC) and Neglecting and Abusing a Minor (Art. 193).

Rape (Article 178 CC), Sexual Intercourse with a Child (Article 180 CC), Sexual Intercourse with a Helpless Person (Article 179 CC), Sexual Intercourse through Abuse of Position (Article 181 CC)

Although it does not belong to the group of criminal offences that can be committed exclusively to the detriment of a child, the CC recognizes the gravity of this offence when it is committed against a minor. Namely, as explained in Chapters 4.2.1 and 4.2.2, Serbian legislation distinguishes between a child under 14 and a minor aged 14-18, which results in differences in approach when it comes to criminal protection throughout the whole set of criminal offences.

The criminal offence of Rape in Article 178 CC criminalizes the act of forcing another to sexual intercourse or an equal act by use of force or threat of direct attack against the body of such or another person. Para 2 of the same Article incriminates if the offence specified in para 1 is committed under threat of disclosure of information against such person or another that would discredit such person's reputation or honor, or by threat of other grave evil.

Special protection for child victims is provided by paras 3-4 of the same article, whereby a distinction is made between the protection of persons aged 14-18 (para 3) and persons under 14 (para 4). With regard to para 3, it is alternatively prescribed that the offence specified in paras 1 and 2 of this Article shall exist if it resulted in grievous bodily harm of the person against whom the offence is committed, or if the offence is committed by more than one person or in a particularly cruel or particularly humiliating manner or against a juvenile or the act resulted in pregnancy. Para 4 incriminates the commission of the offence referred to in paras 1 and 2 of this Article which resulted in death of the person against whom it was committed or if committed against a child.

When it comes to the act of commission referred to in para 3, and especially 4, their relationship with the act of committing a criminal offense Sexual Intercourse with a Child in Article 180, Sexual Intercourse with a Helpless Person in Article 179 (paras 2 and 3) and Sexual Intercourse through Abuse of Position in Article 181 (paras 2 and 3) is of key importance. Namely, while Article 178 criminalizes the commission of sexual intercourse or an act equated with it by using force or threatening to directly attack the life or body of that or a person close to him/her, Article 180 incriminates sexual intercourse itself or an act equated with it with a child, even if there was no use of force or threat. Although the provision of Article 180 criminalizes the sexual act itself with a person under the age of 14, the legislator considered it necessary to maintain the incrimination under Article 178, para 4, having in mind the manner of execution, i.e. that for the existence of the offense under Article 178, para 4, it is necessary that the perpetrator used force or threat.

In Art. 179, paras 2 and 3, unlike paras 3 and 4 of Art. 178, sexual intercourse or an act equated to it was committed against a minor, i.e. a child, by taking advantage of such person's mental illness,

mental retardation or other mental disorder, disability or some other state of that person due to which the person is incapable of resistance, while in Art. 181, this was done by abuse of position towards a person who is in a subordinate or dependent position in relation to the offender.

The incrimination of Art. 180 is based on the presumption that a child under the age of 14 is not mature enough to make a decision on entering into sexual relations, and that his consent to intercourse or an act equated with it is irrelevant. As we have already stated, the relevant standards follow this direction. With this in mind, the approach or assumption in Art. 179 on the use of force or threat or inability to resist due to mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which the person is incapable of resistance is questionable when it comes to a child under 14 years of age. Although correctly concluding that the legislator sanctions sexual relations with a child because at that age, a child is powerless in terms of mental inability to resist, which is equated with the passive subject from Art. 179 para 3, which makes the latter provision superfluous,[55] Stojanovic justifies, slightly strained, the existence of the disputed provision by saying that its existence could be reasonable in situations when it comes to a child who is quite small, and therefore incapable of providing physical resistance.

Article 180 prescribes two aggravated forms of the offence, if the offence referred to in para 1 of this Article results in grievous bodily harm of the child against whom the act was committed or if the act is committed by several persons or the act resulted in pregnancy. Article 179, in relation to a victim who is a minor or a child, prescribes as aggravated form the occurrence of a fatal consequence (para 4).

With regard to prescribed penalties, in contrast to the problems discussed in relation to the criminal offense of trafficking in human beings, here there is a noticeable gradation in terms of prescribed penalties, so in relation to the prescribed criminal range from five to twelve (para 1), i.e. two to ten years for para 2, the basic form of the criminal offense under Art. 178, for paras 3 and 4 prescribes prison sentences of five to 15 years (para 3) or at least ten years or life imprisonment (for para 4). For the basic form, Art. 180 provides for imprisonment of five to twelve years, in the case of serious bodily injury or pregnancy five to fifteen years, while fatal consequence is punishable by imprisonment of at least ten years or life imprisonment. The same penal ranges are analogically provided for aggravated forms of sexual intercourse with a helpless person and sexual intercourse through abuse of position.

The legislator certainly recognizes the social reality reflected in an early entry of teenagers into sexual relations which is not so rare, envisaging that the offender will not be punished for the offence referred to in para 1 of Art. 179, if there is no significant difference between the offender and the child in terms of mental and physical maturity. Although the legislator keeps the possibility to assess the existence of a significant difference in mental and physical maturity in each specific case, it should be noted that there are still controversies in this regard in practice. This can particularly represent a problem when it comes to victimization in the context of migration, since only the objective determination of the offender's age is often difficult, and in connection with that, the assessment of his maturity. It is similar with members of certain minority groups, especially the Roma population, where problems related to the issuance of personal documents, inclusion in the education system and deeply rooted cultural patterns make the commission of this offence more common than in the general population. The protection of child victims in this context is often hampered by the prejudices of the judicial officials themselves, who treat cultural patterns as a basis for the abolition of the offenders under Art. 180.[56]

Particular attention is also required for a few other issues related to the criminal offense under Art. 181. Namely, unlike the offense under Art. 178, 179 and 180, where any person can be an offender, Art. 181 specifies that it must be a person in relation to which the victim is in a subordinate or

[55] Stojanović, Z. (2007) Commentary on the Criminal Code, Official Gazette, 444.
[56] See: Decision of the Appellate court in Belgrade, Kž1 392/2019.

dependent position, whereby the law, in case of a child victim, particularly emphasizes a teacher, tutor, guardian, adoptive parent, stepfather or other person in a similar relationship when a child is entrusted to him for learning, tutoring, guardianship or care. Namely, although the intention of the legislator was obviously to leave the circle of potential offenders open, the question is whether those categories that have been singled out really represent those that are "most typical" and "most risky" or whether foster parents should also be cited. Also, it is questionable whether this circle should involve multiple other persons who coordinate the free activities of minors, bearing in mind that it is not always easy to distinguish what can be classified as learning, education, care and nursing.

Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography (Article 185 CC), Inducing a Child to Attend Sexual Acts (Article 185a), Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Minor (Article 185b)

Criminal offence **Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 CC** incriminates selling, showing or publicly displaying or otherwise making available texts, pictures, audio-visual or other items of pornographic content to a minor or showing to a minor a pornographic performance (Para 1). Para 2 of the same article prescribes punishment for whoever uses a minor to produce photographs, audio-visual or other items of pornographic content or for a pornographic show. Para 3 incriminates commission of the act specified in Para 1 and 2 against a child. Para 4 stipulates punishment for whoever procures for himself or another and possesses, sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting from abuse of minor person, while Para 5 prescribes punishment of whoever uses the means of information technologies to deliberately access the photographs, audio-visual or other items of pornographic content resulting from the abuse of a minor.[57]

A fine or imprisonment of up to six months is prescribed for the offence referred to in para 1, while the offense referred to in para 2 shall be punishable by imprisonment of six months up to five years. The offense referred to in para 3 shall be punishable by imprisonment of six months to three years (if the offense referred to in para 1 was committed against the child) and from one to eight years (if the offense referred to in para 2 was committed against the child). For the offence referred to in para 4, imprisonment of three months to three years may be imposed, and for the offence referred to in para 5, prescribed punishment is a fine or imprisonment of up to six months.

The question of the adequacy of the prescribed punishment could be raised here, having in mind the mutual relation of the penal ranges from paras 2 and 3 (in connection with para 1).

Criminal offence **Inducing a Child to Attend Sexual Acts in Article 185a** incriminates induces a child to attend rape, intercourse or another act equal to intercourse, or some other sexual act (Para 1) or the offence is committed by the use of force or threat (Para 2). For the offence referred to in Para 1 a punishment of imprisonment of one to eight years is prescribed, while for the offence referred to in Para 2, imprisonment of two to ten years.

Criminal offence **Abuse of Computer Networks or other Technical Means of Communication for Committing Criminal Offences against Sexual Freedom of the Minor (Article 185b) prescribes punishment of whoever** with intent to commit criminal offence specified in Art. 178, para 4, 179, para 3, 180, para 1 and 2, 181, Paras 2 and 3, 182, para 1, 183 para 2, 184 para 3, 185, para 2 and 185a of this Code, by using computer network or communication with other technical devices makes appointment with a minor and appears on the place of the appointment (Para 1). If the offence is committed against a child, the offence referred to in para 2 exists. For the offence referred to in Para

[57] (6) The items of pornographic content resulting from the abuse of a minor (child pornography) shall be considered to include each material that is visually representing a minor involved in actual or simulated sexually explicit behaviour, as well as each instance of displaying of a child's genitals for sexual purposes.

1, the offender shall be punished with imprisonment of six months to five years and with fine, while for the offence referred to in Para 2, imprisonment of one to eight years is prescribed.

Coercion into Marriage (Article 187a CC) and Cohabiting with a Minor (Article 190 CC)

In the context of the global tendency to suppress child marriages, this phenomenon in Serbia, although less represented, is still not eliminated. The problem remains widespread, particularly in the Roma minority community, where, according to recent findings from a comprehensive survey conducted by UNICEF,[58] half of the girls are married before the age of 18. Many of these communities are never formally registered in the form of marriage. This phenomenon is also related to another problem, i.e. the frequent absence of the element of voluntariness when entering into such a (extra)marital union, since marriages are arranged by the parents of future spouses, sometimes in their early childhood, and subsequently solely formalized after adulthood. Often, this practice is accompanied by the contracting of a "dowry", which represents the price at which parents give their own children for the purpose of marriage or the establishment of an extramarital union.

Due to all the above, criminal offences Coercion into Marriage (Art. 187a CC) and Cohabiting with a Minor (Art. 190 CC) are of great importance for the criminal protection of children.

The first offence incriminates the use of force or threat to coerce another person into marriage (Para 1), taking the other person abroad or leading him/her to go abroad for the purpose of coercion into marriage (Para 2). In the case referred to in Para 1, imprisonment of three months to three years is prescribed, while for the offence referred to in Para 2, imprisonment of up to two years.

Unlike the offence referred to in Article 187a, criminal offence Cohabiting with a Minor (Art. 190 CC) incriminates cohabiting of an adult with a minor (Para 1), as well as enabling a minor to cohabit with another person (Para 2) or induction to it by a parent, adoptive parent or a guardian. While for the offence referred to in Paras 1 and 2 imprisonment up to three years is prescribed, if the offence referred to in Para 2 is committed for gain, the offender shall be punished with imprisonment from six months to five years (Para 3).

It is interesting that Para 4 of the same article prescribes that if a marriage is concluded, prosecution shall not be undertaken, and if undertaken it shall be discontinued. Although the legislator clearly intends to adjust the legal text to social reality in situations where criminal prosecution would be counterproductive, it should be borne in mind that marriage is often used as a mechanism to avoid criminal liability in the case of contracted marriages.

Neglecting and Abusing a Minor (Article 193)

Criminal offence Neglecting and Abusing a Minor in Article 193 CC stipulates punishment of a parent, adoptive parent, guardian or other person who by gross dereliction of their duty to provide for and bring up a minor neglects a minor they are obliged to take care of (Para 1) or forces him to excessive labor or labor not commensurate with his age, or to mendacity, or for gain induces him to engage in other activities detrimental to his development (Para 2). For the offence referred to in Para 1, a punishment of imprisonment of up to three years is prescribed, and for the offence referred to in Para 2, imprisonment of three months to five years.

When it comes to this criminal offence, it is important to note that in practice it is sometimes difficult to distinguish between para 2 and the criminal offence of trafficking in human beings, whereby the point of delineation is the nature of "activities detrimental to the development of a child." As we mentioned earlier, while additional discussion will follow below, the exploitation of criminal activities is a form of human trafficking. The commission of the criminal offense of neglecting and abusing a

[58] UNICEF (2017) Child marriages in the Roma population in Serbia, ethnographic research, available at: https://www.unicef.org/serbia/media/921/file/Child%20marriage%20among%20the%20Roma%20population%20in%20Serbia.pdf, accessed July 10 2020.

minor is often an introduction to trafficking in human beings, as juvenile victims, fleeing from their parents, adoptive parents, guardians or other persons who neglect or abuse them, become easy prey for traffickers, thus replacing one form of exploitation with another, more severe.

As mentioned earlier when discussing other criminal offences, the question arises whether, in addition to parents, adoptive parents and guardians, it is necessary to accentuate foster parents in the category of "other persons" to the list of offenders, having in mind an increased number of cases of foster care out of greed. In such situations, the motive for foster care is the monetary compensation that foster parents receive from the state, which is "accompanied" by intensive labor exploitation of the child, especially in rural areas, where this work is presented as "the usual way of life of children in the countryside".

3.2.8. Criminal law protection of children in the Law on Human Organ Transplantation and the Law on Human Cells and Tissues

As mentioned earlier, in addition to the Criminal Code, alignment with the provisions of the CoE Convention and Directive 2011/36 was also performed through secondary criminal legislation, through five criminal offenses contained in the criminal provisions of the Law on Human Organ Transplantation and the Law on Human Cells and Tissues.

Article 51 of the Law on Human Organ Transplantation criminalizes a situation in which someone, for any fee, gives his human organ or another person's human organ for transplantation or offers his or another person's human organ for compensation for transplantation or recruits, transports, transfers, hands over, sells, buys, mediates in the sale or mediates in any other way in the process of human organ transplantation or participates in the process of human organ transplantation which is the subject of commercial trade. The prescribed punishment for this crime is imprisonment of two to ten years.

For the criminal law protection of children, the provision of Para 2 of the same article is relevant, whereby a sentence of imprisonment of at least three years is envisaged for undertaking the action referred to in para 1. Paras 3-5 of the same article prescribe aggravated forms of the offence envisaging that in the case that due to the offence referred to in Paras 1 and 3 of this Art., a serious bodily injury of the organ donor occurred (when a prison sentence of three to 15 years is envisaged), i.e. death (a prison sentence of at least ten years is prescribed). [59]

It is visible at first sight that the legislator sought to follow the provision of Art. 388 of the Criminal Code as faithfully as possible, both in terms of consistent incrimination of actions provided by the Convention and the Directive, and in terms of prescribed punishment.

Precisely this second fact is problematic, having in mind the remarks discussed earlier regarding the penalties prescribed for the offence referred to in Art. 388 of the Criminal Code. The provision of Art. 78 of the Law on Transplantation of Human Organs also lacks gradation in terms of the punishment prescribed for para 2 (when the offence was committed to the detriment of a minor but no serious consequence occurred) and the provisions of para 3 (when a serious bodily injury of a minor occurred), whereby the penalty range is determined so that the special minimums are the same, but in the absence of a special maximum for the offense referred to in para 2, a stricter penalty may be imposed than for para 3, since the general maximum referred to in Article 45, para 1 of the CC is applied.

The gradation is also lacking in terms of the characteristics of the victim, so the Law does not make a difference when prescribing an aggravated form conditioned by the occurrence of a more serious consequence, in relation to the age (minor age) of the victim.

[59] Who is engaged in committing criminal offences under Paras 1-3 of this article or the act was committed by an organized group, shall be punished by imprisonment of at least five years.

The same omission was made in Article 52, which criminalizes human organ transplantation or participation in the procedure of human organ transplantation to a person who orally or in writing for life opposed the donation of human organs, or a person whose family member or other close person in accordance with this by law explicitly opposed the donation of human organs, i.e. taking of a human organ or participating in the taking of a human organ from a deceased person, who orally or in writing for life opposed the donation of human organs, or a person whose family member or other close person in accordance with this law explicitly opposed the donation of human organs, i.e. participating in the taking of human organs from a deceased person whose brain death has not been diagnosed and determined in the manner and in accordance with this Law. The basic forms are punishable by imprisonment of two to ten years, but the aggravated forms are prescribed in the same way as in Art. 51, thus the same objections apply.[60]

It is important to note that the Law on Organ Transplantation in 2009[61] prescribed three instead of the current two criminal offenses, whereby in Art. 78 it incriminated the use of force, threats, misleading or deceiving, abusing authority, trust, dependence, difficult circumstances of another, retaining identity documents or giving or receiving money or other benefits, forcing one person to involuntarily give written consent to donate organs for life for the purpose of transplantation to that or another person and to whom an organ is taken on the basis of that written consent, or if against his will he signs a written consent to donate organs after his death for transplantation to that or another person. Since the taking of organs is an act of commission of the criminal offense of trafficking in human beings under Art. 388 of the CC, the Law on Transplantation of Human Organs actually aligns with the CC in relation to the criminal provisions previously contained in the Law on Organ Transplantation. However, the same questions may still be raised in relation to para 2 as those relevant for Article 184.

The **Law on Human Cells and Tissues** also provides for two criminal offenses in the penal provisions, repeating the previously clarified mistakes of the Criminal Code and the Law on Human Organ Transplantation.

Article 51 provides for the punishment of whoever, for any fee, transports his human cells i.e. tissues or human cells or tissues of another person for use or offers his human cells i.e. tissues or cells or tissues of another person for compensation for use or recruits, transfers, transports, hands over, sells, buys, mediates in the sale or mediates in any other way in the use of human cells or tissues or participates in the process of the use of human cells or tissues that are the subject of commercial trade. The prescribed punishment is imprisonment of two to ten years.[62]

Analogically, the same situation exists in Article 52, which sanctions an offender who uses human cells and tissues or participates in the procedure of applying human cells and tissues to a person who did not give written consent to take human cells and tissues, or if he performs tissue collection or participates in taking tissue from a person who orally or in writing for life opposed the donation of tissue, or from a person whose family member or other close person in accordance with this law

[60] If the offence referred to in para 1 of this Article was committed against a minor, the offender shall be punished by imprisonment of at least three years. If due to the offence referred to in Paras 1 and 2 of this Article, a serious bodily injury of the organ donor has occurred, the offender shall be punished by imprisonment of three to 15 years. If due to the offence referred to in Paras 1 and 2 of this Article the organ donor dies, the offender shall be punished by imprisonment of at least ten years. Whoever is engaged in committing criminal offences referred to in Paras 1 and 2 of this Article or the act was committed by an organized group, shall be punished by imprisonment of at least five years.

[61] Law on Organ Transplantation, "Official Gazette of RS", no. 72/2009.

[62] If the offence referred to in para 1 of this Article was committed against a minor, the offender shall be punished by imprisonment of at least three years. If due to the offence referred to in paras 1 and 2 of this Article, a serious bodily injury of the donor of human cells, i.e. tissues occurred, the offender shall be punished by imprisonment of three to15 years. If due to the offence referred to in paras 1 and 2 of this Article, the death of the donor of human cells or tissues occurred, the offender shall be punished by imprisonment of at least ten years. Whoever engages in committing criminal offence referred to in Paras 1 and 2 of this Article or the act was committed by an organized group, shall be punished by imprisonment of at least five years.

explicitly opposed the donation of tissue, or takes tissue or participates in taking tissue from a deceased person whose brain death has not been diagnosed and confirmed in the manner and in accordance with the procedure prescribed by law, shall be punished by imprisonment of two to ten years. [63]

3.3. Children offenders – hidden victims of criminal offence (exploitation of criminal activities)

As stated earlier, the Directive 2011/36 recognizes the **"exploitation of criminal activities",** i.e. the exploitation of a person who, *inter alia*, commits pickpocketing, theft, drug trafficking and other similar activities subject to penalties and implying financial gain, as a modality of trafficking in human beings.

This is crucial for situations where child victims of exploitation appear as perpetrators of criminal offences. As provided in Art. 11 of the Directive 2011/36 and Art. 4 of the Convention, the **victim's consent to exploitation is irrelevant** if exploitation occurs using any of the means listed in Para a) of Art. 4. The same provision is contained in Art. 388, para 10 of the CC. In that sense, it is important to remind that Art. 388 of the CC provides that the criminal offence of human trafficking shall exist when the offence referred to in Para 1[64] is committed against a minor and the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration, whereby the minimum prescribed sentence in that case shall be imprisonment of at least five years (Art. 338, Para 3).

Thus, exploitation in the form of committing criminal offenses is recognized as a form of trafficking in human beings, but attention should be paid to the fact that the Directive itself recognizes certain types of criminal offenses as "most suitable" for exploitation, underlining pickpocketing, theft and drug trafficking. Undoubtedly, the biggest challenge in this context is to prove that the crime committed by a victim of trafficking in human beings is precisely committed in the context of trafficking in human beings, and that, in accordance with the article of the Convention prescribing that Member States, in line with the basic principles of their legal system, should provide for the possibility **of not imposing penalties on victims for their participation in illegal activities, to the extent they have been compelled to do so**.

Given the aforementioned, two things should be focus:

a) a list of criminal offenses where child victims of trafficking can often be found as perpetrators;

b) mechanisms of impunity in accordance with the CC.

[63] If the offence referred to in para 1 of this Article was committed against a minor, the offender shall be punished by imprisonment of at least three years. If due to the offence referred to in paras 1 and 2 of this Article, a serious bodily injury of the donor of human cells, i.e. tissues has occurred, the offender shall be punished by imprisonment of three to 15 years. If due to the offence referred to in paras 1 and 2 of this Article, the death of the donor of human cells or tissues occurred, the offender shall be punished by imprisonment of at least ten years. Whoever engages in committing criminal offences referred to in paras 1 and 2 of this Article or the act was committed by an organized group, shall be punished by imprisonment of at least five years.

[64] Article 388 para 1: Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labour, forced labour, **commission of offences**, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts, shall be punished with imprisonment of three to twelve years.

a) Regarding the most common criminal offenses where child victims of trafficking can be found as perpetrators, special attention should be paid to the following criminal offenses:

Unlawful Production and Circulation of Narcotics (Article 246 CC), Unauthorized Possession of Narcotics (Article 246a CC), Facilitating the Taking of Narcotics (Article 247 CC)

Regarding the criminal offence **Unlawful Production and Circulation of Narcotics in Article 246 CC,** in the context of the subject of this Analysis, the most attention should be paid to paras 1, 4 and 6.

Para 1 prescribes that whoever unlawfully produces, processes, sells or offers for sale, or whoever purchases, keeps or transports for sale, or who mediates in sale or buying or otherwise unlawfully puts into circulation substances or preparations that are declared narcotics, shall be punished by imprisonment of three to twelve years. In the context of this Para, minors often appear in the role of "small" street dealers, at the bottom of the trafficking chain. The reasons for this should be sought on several levels: First, they come into contact with teenagers more easily, since their presence in places where minors and younger adults gather does not seem suspicious. Moreover, their "services" bring huge profits to traffickers, with minimal or zero expenses, but also a minimal risk of exposure to criminal liability, injuries, and even death.

In this context, Para 4 of Art. 246 is also relevant, as it prescribes punishment of imprisonment of five to fifteen years of whoever is **selling, offering for sale or free of charge, for the purpose of further marketing, give narcotics to a minor,** or a mentally incompetent person, or a person who is temporarily mentally disturbed, or a person who is severely mentally disabled or a person in treatment of drug addiction, or who markets narcotics mixed with a substance that could lead to severe deterioration of health, **or who commits an offence from Para 1 of this Article in an institution for education and upbringing or in its immediate vicinity** or an institution for the enforcement of criminal sanctions or in public premises or at a public event, or if the offence from paras 1 and 2 of this Article is committed by an official, doctor, social worker, priest or a person employed at an institution for education and upbringing, by abusing its position, **or whoever uses a minor for the commission of such offence**

Para 6 of the Criminal Code provides that an offender specified in Paras 1 through 5 of this Article who discloses from whom he obtained narcotics **may be remitted from punishment.** Although the mechanism provided for in this article appears to provide effective protection to victims of exploitation of criminal activities, there are a number of obstacles in practice, largely due to the fact that juvenile victims of exploitation, prior to facing the judiciary, experience possible, extremely severe consequences if identity of the chief/exploiter is revealed. Due to the fear that, if they use the "legal benefits", they could face consequences that are much more severe than deprivation of liberty, they often decide to remain silent. Apart from fear, it should not be overlooked that exploiters often hold them in the belief that they are not exploited, but that they play an important role "in business" and that this role will become increasingly important if they prove loyalty and endurance. This actually masks the status of the victim not only in relation to the state bodies that could help the minor, but also in relation to the exploited minor who does not recognize that he or she is a victim.

All the above mentioned also applies to **Article 246a CC**, known in practice under the colloquial term "possession". This provision incriminates keeping for self-use small quantity (Para 1) or large quantity (Para 2) of substances or preparations that are declared narcotics. For Para 1 fine or imprisonment up to three years is prescribed, and may be remitted from punishment, while for Para 2 imprisonment of three to ten years is prescribed. As in Art. 246, para 6, Art. 246a para 3 also provides that an offender from paras 1 and 2 of this Art who reveals from whom he purchases narcotics, may be remitted of punishment.

The described mechanisms of abuse also apply to a criminal offense **Facilitating the Taking of Narcotics in Article 247 CC**, Paras 1-2 which stipulate the following:

(1) Whoever induces another person to take narcotics or gives him narcotics for his or another's use or places at disposal premises for taking of narcotics or otherwise enables another to take narcotics, shall be punished by imprisonment of six months to five years.[65]

(2) If the offence from Para 1 of this Art. has been committed against a minor, or a mentally incompetent person, or a person who is temporarily mentally disturbed, or a person who is severely mentally disabled or a person suffering from drug addiction, or towards several persons, or who commits such offence in an institution for education and upbringing or in its immediate vicinity or an institution for the commission of criminal sanctions or in a public premises or at a public event, or if the offence from paras. 1 and 2 of this Art. is committed by an official, doctor, social worker, priest or a person employed at an institution for education and upbringing, by abusing his position, the offender will be punished by imprisonment of two to ten years.

Theft (Article 203 CC)[66], Aggravated/Compound Larceny (Article 204 CC)[67], Grand Larceny (Article 205 CC) and Petty Theft, Embezzlement and Fraud (Article 210 CC)

As with criminal offenses related to the unauthorized possession and distribution of narcotics, juveniles often appear as victims of exploitation of property criminal offenses, namely theft, aggravated/compound larceny, grand larceny[68], robbery[69] and petty theft, embezzlement and fraud[70].

Undoubtedly, the most common modalities of this group of criminal offences are pickpocketing and petty theft. While pickpocketing used to prevail, in recent years there have been numerous cases of petty theft committed by minors; given the legal limit of 5.000RSD, items whose value is slightly below that limit (clothing, footwear, cosmetics, petty technical goods) are stolen taking into account the unwillingness of the owners, often large companies that own a chain of stores, to prosecute for petty theft in a private lawsuit in case the offender is caught. It would be an exaggeration to claim that all

[65] (3) If the offences specified in paragraph hereof result in death of a person, the offender shall be punished by imprisonment of three to fifteen years. (4) Narcotics shall be seized.

[66] Article 203 CC: (1) Whoever steals another's movable item with intent to obtain unlawful material gain for himself or another by appropriation thereof, shall be punished with fine or imprisonment of up to three years. (2) The attempt of the offence specified in Para 1 of this Article shall be punished

[67] Article 204 CC: (1) A person committing the offence of theft (Article 203) shall be punished with imprisonment of one to eight years, if the theft was committed: 1) By forcing or breaking into closed buildings, apartments, rooms, safes, cabinets or other closed spaces or by overcoming major obstacles, mechanic, electronic or otherwise; 2) By a group; 3) In a particularly dangerous or brazen manner; 4) By someone having on his person a weapon or dangerous implement for attack or defence; 5) During a fire, flood, earthquake or other calamity; 6) By taking advantage of the helplessness or other grave condition of a person. (2) The penalty specified in para 1 of this Article shall also be imposed to a perpetrator of the offence of theft if the value of stolen items exceeds the amount of four hundred and fifty thousand dinars. (3) The penalty specified in para 1 of this Article shall also be imposed to a perpetrator of the offence of theft, regardless of the value of a stolen item, if a stolen item is a cultural resource, i.e. a resource that enjoys previous protection or a natural resource or a stolen item represents a public device for water, sewage, heat, gas, electrical or other energy or system of public transport and communications devices, i.e. parts of the devices. (4) If the offence from para 1 of this Article is committed by the organized criminal group or if the value of stolen items exceeds one million five hundred thousand dinars, the offender shall be punished with imprisonment of two to ten years.

[68] (1) Whoever caught in the act of theft (Article 203) and with intent to keep the stolen object uses force against a person or threat of direct attack against the life or body, shall be punished with imprisonment of one to ten years. (2) If the value of stolen goods exceeds one million five hundred thousand dinars, the offender shall be punished with imprisonment of two to twelve years. (3) If the offence specified in Paras 1 through 3 of this Article is committed by a group or intentional serious bodily harm is inflicted to a person, the offender shall be punished with imprisonment of three to fifteen years.

[69] (1)Whoever by use of force against a person or threat of direct attack upon the life or body appropriates another's movable object with intent by appropriation thereof to acquire unlawful material gain for himself or another, shall be punished with imprisonment of two to ten years. (2) If the offence specified in Paras 1 of this Article is committed by group or intentional serious bodily harm is inflicted to a person or if the value of appropriated goods exceeds the amount of one million five hundred thousand dinars, the offender shall be punished with imprisonment of three to fifteen years. (3) If the offence specified in Paras 1 of this Article is committed by group, the offender shall be punished with imprisonment of minimum five years. (4) If the value of appropriated goods specified in Para 1 of this Article does not exceed five thousand dinars, and the intent of the offender was to acquire a small material gain, the offender shall be punished with imprisonment of up to three years. (5) The attempt of the offence specified in Para 4 of this Article shall be punished.

[70] (1) Whoever commits an act of petty theft, embezzlement or fraud, shall be punished with a fine or imprisonment of up to six months. (2) A theft, embezzlement or fraud are petty if the value of appropriated or embezzled object, or damages caused by fraud do not exceed the amount of five thousand dinars, and the perpetrator's intent was to acquire a small property gain or cause a small damage. (3) Prosecution for offences specified in Para 1 of this Article if committed against private property is instituted by private action.

such cases involve the exploitation of criminal activities, but there is no doubt that it exists, whereas parents of the minor occasionally appear in the role of the exploiter.

In addition to the above, the appearance of the so-called children's gangs is perceived in recent years, i.e. groups whose members (and sometimes all of them) are younger than 14 and are not subject to criminal liability at all. On the streets of Belgrade, attacks on elderly fellow citizens have been recorded, having all the characteristics of robbery or grand larceny. Although it is clear that the Center for Social Work has obviously failed in these cases, since the escalation is certainly preceded by less serious behavioral problems and family disorders, the question arises as to what extent the first-instance judicial bodies are responsible for not constantly searching for a possible exploiter, but rather finalizing the process with increased supervision of the Center and "waiting" for an interruption of deviant behavior by the reaction of the criminal justice system after a child from the age of 14 becomes criminally liable.

Misdemeanors in the Law on Public Order and Peace

In the context of the exploitation of criminal activities, as well as the previously mentioned neglect and abuse of a minor, it is important to refer to two misdemeanors in the Law on Public Order and Peace (hereinafter: LPOP)

Primarily we refer here to **Begging in Article 12 of the LPOP**, which envisages punishing whoever endangers the peace of citizens or disturbs public order and peace by begging, with a fine of 5,000 to 10,000RSD or imprisonment of up to 30 days (para 1). Aggravated form is provided in para 2 if the offense referred to in para 1 of this Art. is committed in a group of three or more persons, when a fine of 10,000 to 30,000RSD or imprisonment of up to 30 days is prescribed.

Exploitation of children in the form of begging has been a deeply rooted practice for decades. The exploiters often exploit entire groups of children at the same time, often inflicting injuries that lead to permanent disability, in order to collect large sums of money on a daily basis, using compassion that such a phenomenon causes among citizens. Unfortunately, children who are victims of this type of exploitation are usually already victims of human trafficking, as they are handed over to the exploiters by their parents or guardians. This type of exploitation is typically accompanied by other forms of abuse (physical, sexual, starvation…) and as the child grows up, it mostly grows into more severe forms of exploitation (labor, sexual or through severe forms of exploitation of criminal activities).

Despite all the described dangers this brings, children beggars can still be found at every busy intersection or in public transport vehicles, with evident passive conduct of the social welfare service, as well as the police and the judiciary. The influence of prejudices, due to which this phenomenon is attributed to the "normal way of life" of the Roma national minority, should not be neglected either.

Prostitution in Article 16 of the LPOP is certainly one of the most common misdemeanors camouflaging trafficking in human beings, including the victimization of children. Due to the fear of retaliation by the trafficker, victims conceal his identity, claiming that they are "working alone" and returning to the chain of exploitation after serving/paying the sentence[71].

As LPOP incriminates not only engaging in prostitution, but also using the service of prostitution or giving a room for prostitution (para 1), para 2 of the same article criminalizes giving a room to a minor for prostitution, whereby a prison sentence of 30 to 60 days is prescribed. This paragraph represents a kind of "shelter" for exploiters of minors, in situations when there is not enough evidence for their accusation and conviction for human trafficking.

[71] shall be punished by a fine of 50,000 to 150,000RSD or by imprisonment of 30 to 60 days.

b) Mechanisms of impunity of victims of human trafficking

In addition to the mechanisms of remittance of punishment established through individual incriminations, in accordance with the requirement set out in Art. 26 of the Convention. In that sense, first of all, it is important to assess whether the conditions for the existence of the criminal offense of Coercion in Art. 135 of the Criminal Code are met in a specific situation, i.e. the application of Art. 21 of the Criminal Code (Force and Threat) which provides:

> (1) An act committed under irresistible force is not a criminal offence.
>
> (2) If a criminal offence is committed under force which is not irresistible or under threat, the offender may be punished more leniently.
>
> (3) In case referred to in Para 1 of this Art., the person using irresistible force shall be considered perpetrator of the criminal offence.

Considering Para 3 of the Art. 21 CC, the provision of Art. 135 is also relevant as it incriminates coercion:

> (1) Whoever by use of force or threat coerces another to do or refrain from doing something, or to endure, shall be punished with imprisonment up to three years.
>
> (2) Whoever commits the offence specified in Para 1 of this Art. in a cruel manner or by threat of murder or grievous bodily harm or abduction, shall be punished with imprisonment of six months to five years.
>
> (3) If the offence specified in Paras 1 and 2 of this Art. results in grievous bodily harm or other serious consequences, the offender shall be punished with imprisonment from one to ten years.
>
> (4) If the offence specified in Paras 1 and 2 of this Art. results in death of the person under coercion or if committed by a group, the offender shall be punished with imprisonment from three to twelve years.
>
> (5) If the act specified in Para 1and 2 of this Art. is committed by the organized criminal group, the offender shall be punished with imprisonment from five to fifteen years.

In practice, there are several problems related to the application of this incrimination. First of all, it is necessary that the act of committing the offence of coercion, i.e. force or threat existed in relation to a specific act by which the victim committed the criminal offense, which is difficult to prove in practice, especially in a situation where the victim is subjected to trafficking for a long time, after which acting in accordance with the requirements accompanied by force or threat turns into inert acting in line with expectations, even if the force and/or threat is not repeated. Furthermore, victims are often afraid of retaliation or return to the hands of the trafficker in the event of failure of the proceedings that would be conducted for such offence, so they prefer to accept criminal responsibility. Finally, it is not uncommon for difficulties in proving to arise due to the lack of witnesses or their unwillingness to confirm that the victim committed the crime under coercion, precisely because they are in the same position.

Less often than in the case of the use of force and threats, in the case of responsibility and punishment of victims of trafficking in human beings for the committed criminal offense, the issue of acting in self-defense under Art. 19 of the Criminal Code may be raised, which stipulates:

> (1) An act committed in self-defense is not a criminal offence.
>
> (2) Self-defense is such defense as necessary for the perpetrator to repel a concurrent unlawful attack on his person or the person of another.

(3) Punishment of a perpetrator who has exceeded the limits of self-defense may be mitigated. A perpetrator who exceeds the limit of self-defense due to extreme provocation or fear caused by assault may be acquitted.

Commonly, these will be situations when victims commit a criminal offence against life and body in relation to the trafficker.

3.4. Procedural position of children victims and witnesses in criminal proceedings in the Republic of Serbia

According to Art. 32 Para 3 of the Constitution of Serbia (a norm that is a segment of the right to a fair trial), the public may be excluded during the entire proceedings before the court or in part of the proceedings, only to protect the interests of national security, public order and morals in a democratic society, as well as for the protection of the interests of minors or the privacy of participants in the proceedings, in accordance with the law.

Analogically to the approach used by both directives, Serbian legislation provides general provisions relating to the procedural position of the injured party through the Criminal Procedure Code, while special provisions relating to the appropriate modification of general criminal procedure rules when minors appear in criminal proceedings as victims are contained in the **Law on Juvenile Offenders and Criminal Protection of Juveniles (Articles 150-157) (hereinafter: the Law on Juveniles).**

These special rules of procedure, the main purpose of which is to protect the psychological integrity of minors as special categories of victims, apply when criminal proceedings are conducted against adults for a specific criminal offence that harmed a minor, both in case of exhaustively listed criminal offences which commonly cause a high degree of secondary victimization, as well as in cases when the public prosecutor initiates proceedings against adult defendants for other criminal offenses, but considers that this is necessary for the special protection of such minors.

The mentioned special rules, following the requirements set by both directives, could be grouped into several portions: 1) the rule of mandatory specialization of all official actors of such criminal proceedings; 2) general rule of minimizing secondary victimization; 3) application of special rules for interrogation of minor victims; 4) prohibition of confrontation in order to prevent secondary victimization; 5) mandatory legal representation of the minor as an injured party; 6) special rules of recognition, and 7) the general urgency of such criminal proceedings.

When it comes to **mandatory specialization**, it is important to note that it applies to all phases of this process, which means that in the proceedings there are official actors who have acquired special knowledge in the field of children's rights and criminal protection of minors. This refers to: the judge conducting the investigation in such cases; specialized official bodies of internal affairs participating in the investigation; the president of the panel in the trial of adult defendants in such cases; the public prosecutor who prosecutes an adult accused of criminal offenses committed to the detriment of minors; lawyers who are in the function of representatives of minors as injured parties and police officers who act in the investigation of criminal acts to the detriment of minors. In terms of the obligation to specialize in children's rights, these requirements meet the standards of both directives; nevertheless, these training programs insufficiently include the aspect of protection, support and assistance to child victims of trafficking, and the curriculum needs to be harmonized with the Victims Directive. Moreover, the circle of persons whose specialization is required by law is narrower than the circle of persons who need to undergo special training on the rights of child victims, especially children victims of trafficking in accordance with directives, therefore, such training should be continuously provided for other categories, such as health workers, employees in the social protection sector, border police, etc.

The principle rule of minimizing secondary victimization through the modified performance of all actors in the proceedings. This is especially evident in the hearing of a minor, whereby Serbian law recognizes mechanisms such as **mandatory professional assistance to the hearing** (the hearing of a minor is performed with the help of a psychologist, pedagogue or other professional); **limiting the number of hearings in the same criminal proceedings** to a maximum of two times, and exceptionally more times if it is necessary to achieve the purpose of the criminal proceedings. If a minor is heard more than twice, the judge is obliged to take special care of the protection of the personality and development of the minor; enabling **hearings via audio-video link**; possibility to be heard outside the courtroom - if a minor victim of a criminal offense is heard as a witness, in case the offence belongs to the category of offenses that require the application of special rules, the hearing may be conducted using an audio-video link during the hearing of the minor victim. Minors, as witnesses and victims, may be questioned in their apartment or in another room, i.e. an authorized institution-organization, which is professionally trained for hearing of minors, and when hearing such a witness and the victim, the use of audio-video link may be ordered. If a minor is heard outside the courtroom, the minutes containing his testimony shall always be read at the main trial, i.e. a recording of the hearings is played.[72] The **general prohibition of confrontation between the minor victim**, which belongs to the category of particularly sensitive persons, and the accused, has the same meaning.

In accordance with the requirements of both directives, **a minor as an injured party must have an attorney** from the first hearing of the defendant. In case the minor does not have an attorney, he/she will be appointed by the president of the court by a decision from among the lawyers who have acquired special knowledge in the field of children's rights and criminal protection of juveniles, and the costs of such representation shall be borne by the court budget.

Bearing in mind that even though Serbia committed itself to this a few years ago in numerous strategic documents, neither the CPC nor the Law on Juveniles have been amended to eliminate all the shortcomings mentioned. Certain steps have been made in the field of police treatment of minors, i.e. children, through the **Rulebook on the Manner and Conditions of Exercising Police Powers against Minors** (hereinafter: the Rulebook)[73] which, although entirely based on positive legislation, interprets its provisions much more clearly and concretely and allows police officers to apply police powers more adequately, thus enabling improved protection of the rights of minors.

The Rulebook already states in the introductory provisions (Art. 1) that, in terms of the Rulebook, a child is a person who has not reached the age of 14, and a minor is a person who has reached the age of 14 and has not reached the age of 18. The Rulebook also provides a list of police powers that can be applied to a child and a minor (Art. 2), thus stating that the following police powers are applied to a child: warning and order, verification and identification of persons, summoning, bringing, detention and temporary restriction of the freedom of movement, collection of information, temporary seizure of objects, stopping and inspection of persons, objects and means of transport and use of means of coercion under the conditions and with restrictions prescribed by law. In addition to the powers that apply to a child, police powers applied to a minor also involve: detention of a person in cases prescribed by law, questioning of a minor as a suspect and determination of the presence of alcohol and/or psychoactive substances.

The provision of Art. 3 of the Rulebook is of great importance as it prescribes the obligation of all police officers to take into account the legal status, best interests, health and dignity of the minor, psychological, emotional and other personal characteristics and protection of privacy of the minor, as well as to avoid the possible occurrence of harmful consequences for a minor.

[72] Škulić, M. (2015) Normative analysis of the position of the injured party by a criminal offense in the criminal justice system of the Republic of Serbia, OSCE Mission to the Republic of Serbia, 26-27.

[73] Rulebook on the manner and conditions of application of police powers against minors, "Official Gazette of RS", No. 83/2019.

Police powers against a minor shall be applied as a matter of urgency, respecting the principles of legality, professionalism, equality and humanity, in a language understood by the minor, with prior notice of the legal reasons for exercising the powers and his rights, respecting international norms and standards of the United Nations and the Council of Europe. The minor, his/her parent or guardian, a representative of the guardianship authority or the accommodation institution where the minor is placed shall be notified in a language they understand about the police powers undertaken, as well as the reasons for their undertaking.

The Rulebook specifies that, although police powers are applied to a minor by all police officers when the legally prescribed conditions for their application are met, a juvenile police officer shall act in case of a juvenile for whom there is a basis for suspicion of having committed a criminal offense for which prosecution is undertaken *ex officio*. The collection of information in the capacity of a citizen from a juvenile and the interrogation of a juvenile in the capacity of a suspect in the presence of a defense counsel shall be performed by a juvenile police officer. Exceptionally, when, due to the circumstances of the case, a juvenile police officer cannot act, he will be replaced by another police officer who has completed training in the field of children's rights and juvenile delinquency. A juvenile suspected of having committed a misdemeanor is treated by a police officer in uniform or civilian clothes who has completed training in the field of children's rights and juvenile delinquency. A juvenile police officer is a criminal police officer who performs the work of prevention and suppression of juvenile delinquency who has completed training in the field of children's rights and juvenile criminal law. Another police officer is a police officer in uniform or civilian clothes who has completed training in the field of child rights and juvenile criminal law and who acts in relation to a juvenile if due to the circumstances of the case, a juvenile police officer cannot act (Art. 4).

In addition to regulating the application of each power individually, the Rulebook also defines the use of means of coercion against a juvenile (Art. 23), so that it is carried out under the conditions and in the manner prescribed by law, protecting human life, dignity and trying to cause as few injuries as possible and a minimal material damage. The Rulebook stipulates that a police officer will use coercive means against a juvenile only if the official task cannot be performed in any other way, trying to use the mildest means of coercion while avoiding harmful consequences. Before using the means of coercion, whenever possible and without jeopardizing the performance of the official task, the police officer shall warn the juvenile that he will use the means of coercion against him/her. When injuries occur to a juvenile, because of the use of coercive means, the police officer shall ensure that assistance to the injured juvenile is provided without delay and shall immediately notify the parent or guardian. A police officer shall submit a written report on any use of coercive means against a juvenile to a superior police officer as soon as possible, and no later than 24 hours after the use of coercive means.

Article 24 regulates the restrictive application, i.e. restrictions on the use of coercive means and stipulates that physical force may be used against a child only if he/she endangers the life of a person with a cold weapon or firearm or other dangerous object. Chemicals can be used in the vicinity of children's institutions and schools, along with taking special health protection measures. Explosives must not be used against juveniles. The use of firearms is not permitted against juveniles unless it is the only way to defend against an imminent attack or danger that endangers the life of a police officer or the life of another person.

4. CHILDREN MIGRANTS AND ASYLUM SEEKERS

Having in mind the specific context of the position of children of migrants and asylum seekers, on this occasion we also refer to the relevant provisions of the Law on Asylum[74], Law on Foreigners[75] and the Law on Migration Management[76] governing the situation of minors i.e. children, in the context of their compliance with the provisions of the Convention and Directive 2011/36.

In that sense, the **Law on Asylum** in Article 2, which defines the basic terms (meaning of terms in the Law), in item 13 prescribes that **a minor shall be understood to mean a foreigner under 18 years of age**. Therefore, the Law does not use the term child in the sense of the Convention and the Directive, but the rights guaranteed to the child by these documents are guaranteed to a minor, i.e. a person under 18 years of age. The same definition is contained in Article 3, item 15 of the **Law on Foreigners**, which was adopted on March 22, 2018 and regulates, *inter alia,* a temporary residence permit for presumed victims of trafficking (reflection period) and a temporary residence permit for victims of trafficking.

In addition, in Item 14 of the same article, the Law stipulates that the term "**unaccompanied minor"** means a foreigner under 18 years of age who was not accompanied by his/her parents or guardians, nor an adult who is responsible for him/her, on his/her arrival to the Republic of Serbia, or who found himself/herself without the company of his/her parents or guardians, or an adult who is responsible for him/her, after having arrived to the Republic of Serbia. An identical definition is contained in Item 16, Art. 3 of the Law on Foreigners.

In Item15, the term "**separated minor**" is defined and means a foreigner under 18 years of age who was not accompanied by his/her parents or guardians, nor an adult who is responsible for him/her, on his/her arrival to the Republic of Serbia, or who found himself/herself without the company of his/her parents or guardians, or an adult who is responsible for him/her, after having arrived to the Republic of Serbia but not necessarily without the company of his/her other relatives, who are subject to the provisions of this Law where it refers to unaccompanied minors.

The principle of the best interests of a child is prescribed by Art. 10 of the Law. In assessing the best interests of a child, due attention shall be given to the minor's well-being, social development and background; the minor's opinion, depending on his/her age and maturity; the principle of family unity; and the protection and security of the minor, especially if it is suspected that the minor might be a victim of trafficking or a victim of family violence or other forms of gender-based violence.

Article 11 of the Law prescribes that the intention to seek asylum on behalf of a minor shall be expressed by his/her parent or guardian who are authorized to submit a request for asylum on behalf of a minor. Exceptionally, a minor over 16 years of age who is married may participate in the asylum procedure independently.

The Law prescribes that an unaccompanied minor shall have a temporary guardian appointed by the guardianship authority, in accordance with law, immediately after it has been established that he/she is an unaccompanied minor and, in any case, before the submission of his/her asylum application.[77] The temporary guardian shall inform the unaccompanied minor promptly about the asylum procedure, and his/her rights and obligations. An unaccompanied minor shall express the intention to seek asylum exclusively in the presence of his/her temporary guardian. The asylum application on behalf of an unaccompanied minor may also be submitted by his/her temporary guardian, when that is in the best interest of the minor. An unaccompanied minor shall be interviewed in the presence of his/her temporary guardian and the proceedings relating to asylum applications by such person, as

[74] Law on Asylum and Temporary Protection, "Official Gazette of RS", No. 24/2018.
[75] Law on Foreigners, "Official Gazette of RS", no. 24/2018, 31/2019.
[76] Law on Migration Management "Official Gazette of RS", No. 107/2012.
[77] An unaccompanied minor over the age of 16 who is married shall not be assigned a temporary guardian.

well as other proceedings relating to the rights of unaccompanied minors, shall have priority over other procedures (Art. 12).

The law also prescribes the principle of providing special procedural and reception guarantees (Art. 17) in relation to, *inter alia*, minors, unaccompanied minors, single parents with minor children and victims of trafficking. Special procedural and reception guarantees shall serve to provide the appropriate assistance to the applicant who, due to his/her personal circumstances, is not able to benefit from the rights and obligations under this Law without appropriate assistance. The procedure for identifying the personal circumstances of a person shall be carried out by the competent authorities on a continuous basis and at the earliest reasonable time after the initiation of the asylum procedure, or the expression of the intention to submit an asylum application at the border or in the transit zone.

Regulating the control procedure at the entrance to the Republic of Serbia or on the territory of the RS (Art. 35), the Law provides that as part of the registration of a foreigner an authorized police officer shall take his/her photograph and fingerprint him/her, but a minor for whom it can be determined reliably and unambiguously that he/she is under 14 years of age shall not be fingerprinted. Article 2 of this law, even though it does not differentiate between a child and a minor at the level of conceptual definition, i.e. it does not single out children as a special category of minors, still provides for a different legal regime when it comes to this category of persons, applying, by analogy, provisions of the criminal law.

The Law also provides for a special regime for minors in Article 41, which regulates border and transit zone procedures, providing for conditions under which the entire asylum procedure may be conducted at the border crossing, or in a transit zone of an airport or an inland port (Art. 41), prescribing concurrently that asylum procedures relating to asylum applications submitted by unaccompanied minors shall not be conducted at the border or in transit zones. In addition, Art. 52 of the same law stipulates that in the asylum center and other facility intended for the accommodation of applicants, **material reception conditions of unaccompanied minors are provided** pending the adoption of the final decision on their asylum application. Exceptionally, an unaccompanied minor who has submitted an asylum application shall be provided by the Commissariat, based on a decision of the Centre for Social Work, accommodation in a social welfare institution, with another accommodation service provider or in another family, pending the final decision on the application, if the necessary conditions for his/her accommodation cannot be provided at the asylum center or other designated accommodation facility for the applicants. In addition to accommodation, the Law provides that **the Applicant shall have the right to free primary and secondary education**, in accordance with separate regulations, whereby the access to education referred to in para 1 of this Art. shall be provided to the applicant who is a minor immediately and, at the latest, within three months from the date of his/her asylum application, which is in accordance with the standards prescribed by the Convention (Art. 55).

Article 47 of the Law on Foreigners stipulates that temporary residence on the grounds of school, i.e. education in primary or secondary schools, or learning Serbian to continue school or university studies in the Republic of Serbia, may be granted to a foreigner meeting the general criteria referred to in Article 43 of this Law[78] and who submits proof of enrolment into a verified educational institution in the Republic of Serbia, or proof of enrolment in an organization registered for other forms of education or language teaching. For granting temporary residence to a minor foreigner for the

[78] Article 43: (1) Alongside the application for approval or extension of a temporary residence permit, a foreigner shall submit: 1) Valid personal or service passport; 2) Evidence of means for subsistence during the planned stay; 3) Registered address of residence in the Republic of Serbia; 4) Evidence of health insurance during the planned stay; 5) Evidence that the application for temporary residence permit is justified pursuant to the provisions prescribed in Article 40 of this Law, as well as other documents at the request of the competent authority; 6) Proof of payment of the prescribed administrative fee (2) More detailed criteria for approval of temporary residence, the layout of an application for temporary residence permit, as well as the layout and manner of affixing a temporary residence permit sticker into a foreign travel document shall be prescribed by the Minister responsible for internal affairs.

purpose of education in the Republic of Serbia, consent is needed from a parent, guardian, or legal representative, as well as guarantee that an adult living in the Republic of Serbia will be responsible for the foreigner during his stay in the Republic of Serbia, particularly in terms of providing accommodation to the minor foreigner, health care and means of subsistence. If the adult providing guarantee for the minor attending school is a foreign national, temporary residence shall be granted to the minor for the same period as the temporary residence granted to the guarantor.

The provisions of the Law on Foreigners governing **the treatment of foreigners who are granted temporary residence and who are victims of trafficking**, including specific aspects of support, assistance and family reunification, are of particular importance for the subject of this analysis. Temporary residence of a foreigner who is a presumed victim of trafficking in human beings (Art. 62-64). If during a procedure of establishing a foreigner's identity it is presumed, based on special indicators, that the foreigner is a victim of trafficking in human beings, the state authority responsible for identification and coordination of human trafficking victims protection shall assess the situation and needs of the victim, and start the identification of the victim, in accordance with its legal powers in the domain of registered activity. The competent state authority for identification and coordination of human trafficking victims' protection shall inform the Ministry of Interior on the initiation of the procedure and inform the foreigner about the criteria for approving temporary residence and other rights. Temporary residence shall be granted to a foreigner presumed to be a victim of trafficking in human beings without his meeting the general criteria referred to in Article 43 for the period of 90 days. During temporary residence, a period for recovery and elimination of any further influence from the perpetrator of the criminal offence on the victim shall be enabled, as well as the possibility for the victim to, based on timely and complete information on his/her status, make an independent decision, without conditioning him/her to testify, to further cooperate with the competent state authority for identification and coordination of human trafficking victims protection, the court, prosecutor's office or the police. During the validity period of the temporary residence on these grounds, decision on return may not be issued and competent government authority for identification and coordination of human trafficking victims protection shall coordinate the protection of victims of trafficking in human beings, and cooperate with other institutions and organizations to provide safety and protection, appropriate and safe accommodation, psychological and material assistance, access to emergency medical services, access to education for minors, counselling and information-sharing about legal rights and rights available to him, in a language he understands. If there is need for this, translation, interpretation services and assistance in accessing his rights and interests shall be provided, in case of criminal proceedings. When it is determined that a minor foreigner, who is a presumed victim of trafficking in human beings, is not accompanied by parent, guardian or legal representative, the competent authority, guardianship authority and the police, in cooperation with the competent state authority for identification and coordination of human trafficking victims protection, shall determine whether his family is on the territory of the Republic of Serbia, with the aim of family reunification The victim shall not be reunited with his/her family when the state authority responsible for human trafficking victims' protection assesses that reunification of the minor with his/her family is not in his/her best interest, and particularly if there is suspicion that the victim's family is involved in trafficking in human beings. Reuniting a minor with his/her family shall be done only in situations when the competent guardianship authority, in cooperation with the competent state authority for identification and coordination of human trafficking victims' protection, determines that family reunification is in the best interest of the child. If the family of the victim is not or cannot be found on the territory of the Republic of Serbia, a guardian shall be appointed to the minor, in accordance with the law. As provided by Art. 63, if during the procedure referred to in Art. 62, Para (1) of this Law, it is determined that a foreigner is a victim of trafficking in human beings, and that he/she has made an independent decision to further cooperate with the competent state authority for identification and coordination of protection of human trafficking victims, the court, prosecutor's office or the police, the competent authority for protection of human trafficking victims shall inform the Ministry of Interior of the fact, in the form of a professional opinion. The victim of trafficking in human beings

may be granted temporary residence without meeting the criteria referred to in Article 41, Para (2) or Article 43 of this Law. Victims of trafficking in human beings, including minor victims, shall be granted temporary residence if the competent state authority for identification and coordination of protection of human trafficking victims deems their stay necessary for their own protection, recovery and safety, or if the court, prosecutor's office or the police deem their presence necessary for cooperation in the criminal proceedings. A foreigner that has been granted temporary residence as victim of trafficking in human beings, in addition to the rights referred to Article 62 of this Law, without being conditioned to testify, shall have the right to access the labor market, professional training and education. A foreigner with temporary residence permit for victims of trafficking in human beings, who does not have enough material resources for necessary treatment, shall be provided access to medical and other necessary assistance by the competent state authority for identification and coordination of protection of human trafficking victims, independently or in cooperation with the health system, relevant center for social work and other service providers and organizations When granting temporary residence to a minor foreigner, the competent authority shall consider the best interest of the minor, his age and maturity.

Article 64 of the Law regulates the issue of termination of humanitarian stay and temporary stay for victims of trafficking, which can be terminated at any time if the foreigner no longer meets the conditions, and in particular:

> 1) If the foreigner who was granted temporary residence has actively, voluntarily and on own initiative renewed contact with the persons suspected of committing a criminal offence in the area of trafficking in human beings and irregular migration, or if it is determined that the report of these criminal offences was false or unfounded;
>
> 2) If the foreigner who has been granted temporary residence has stopped cooperating, or has used deceit in the process of cooperation;
>
> 3) When this is required by the reasons of safeguarding the security of the Republic of Serbia and its citizens;
>
> 4) When the judicial authorities decide to suspend proceedings.

(2) Temporary residence for humanitarian reasons referred to in Art. 61, Para (1), 1), 2), 4) and 5) shall be terminated if the circumstances under which the foreigner was granted temporary residence cease to exist, or if this is required by the reasons of safeguarding security of the Republic of Serbia and its citizens.

Article 70 of the Law on Asylum stipulates that a person who has been granted the right to asylum shall have the right to reunification with his/her family member, whereby a minor child born in legal or in common-law marriage, a minor adopted child or a minor stepchild of a person who has been granted the right to asylum, who has not founded his/her own family, shall have equal legal status to that of his/her parent who has been granted the right to asylum, as confirmed in a decisions passed by the Asylum Office. It is important to note here that, in accordance with the provision of the same article, a family member for whom there exist grounds to be excluded from the right to refuge shall not have the right to family reunification.

Article 73 prescribes **unaccompanied minors' special rights**, stipulating that such a person who has been granted the right to asylum shall have a guardian, or a legal representative, appointed by the guardianship authority at the earliest possible time and shall be accommodated primarily together with his/her adult relatives or with persons with whom he/she has particularly close bonds, but may also be placed with a foster family or social welfare institution in the procedure described above. When accommodating an unaccompanied minor, whenever it is possible, brothers and sisters shall be accommodated together, in accordance with their best interest, considering their age and maturity. Whenever it is necessary, the competent authorities shall initiate the search for the family members

of an unaccompanied minor, protecting the best interests of the minor. If the life or integrity of the minor or his/her close relatives may be threatened, particularly if they remained in the country of origin, it shall be ensured that the collection, processing, and exchange of information is in accordance with the principle of confidentiality.

Law on Foreigners regulates the matter of temporary residence for family member of a foreigner granted asylum in Article 56, stipulating that in this case it is not required to meet all the general criteria provided in Article 43 of this Law, or criteria referred to in Article 41, Para (2) of this Law, taking into consideration specific and personal circumstances of the foreigner granted asylum and his nuclear family members. If the foreigner granted asylum in the Republic of Serbia is a minor, temporary residence permit on the grounds of family reunification may be given to his parents under the same conditions prescribed in Para (1) of this Article, with the aim to preserve family unity. In case that nuclear family member of the foreigner granted asylum in the Republic of Serbia does not have a valid travel document, temporary residence shall be approved by a decision. Article 57 of the same law prescribes that temporary residence for family reunification shall be granted for the period of one year, and extended for the same period of time, except in the case referred to in Art. 44, Para (5) of this Law[79]. A foreigner granted temporary residence on the grounds of family reunification with a foreigner with temporary residence permit in the Republic of Serbia, shall be granted temporary residence until the expiry of the validity period of the temporary residence permit of the foreigner with whom family reunification is applied for. Article 61 Para 1 Item 4 prescribes that a minor foreigner who has been abandoned, who is a victim of organized crime or has for other reasons lost parental care or company, may be granted temporary residence, taking into account these circumstances. Law on Foreigners regulates principles in the return procedure in Art. 75, providing that the competent authority shall take into consideration the specific situation of vulnerable persons, family and health status of the person returning, as well as the best interest of minors. When undertaking police measures and actions against the foreigners referred to in Para (1) of this article, the competent authority must act in accordance with the regulations governing the position of people with disabilities and international treaties. During the return procedure, actions shall be in accordance with the family unity principle, regarding the unity of all family members present on the territory of the Republic of Serbia. Before issuing a decision on returning an unaccompanied minor, he/she must be provided with adequate assistance of a service for social protection of children and youth. If necessary, during the return procedure, a translator for a language that the foreigner understands, or is rightfully assumed to understand, shall be provided.

When imposing measures for restriction of movement (Art. 78) Law on Asylum prescribes that when movement shall be restricted by ordering accommodation in a social welfare institution for minors, under intensified supervision. The restriction of movement shall last for as long as the grounds[80] prescribed by this Law apply, and maximum for three months. Exceptionally, when the movement is restricted for the reasons referred to in Article 77 Para 1 Items 2) –4) of this Law, that restriction of movement may be extended for an additional three months. A decision on restriction of movement may be appealed to the competent higher court within 8 days from the day the decision served, and the appeal shall not suspend the enforcement of the decision. Additionally, Art. 80 Para 2 provides

[79] (5) The validity period of the travel document must be at least three months longer than the expiry date of the temporary residence permit.

[80] Article 77: The Applicant may have his/her movement restricted by a decision of the Asylum Office when that is necessary to: 1) establish his/her identity or nationality, 2) establish material facts and circumstances underlying his/her asylum application, which cannot be established without the restriction of movement, particularly if there is a risk of absconding; 3) ensure the Applicant's presence in the course of the asylum procedure, if there are reasonable grounds to believe that his/her asylum application was submitted with a view to avoiding deportation; 4) ensure the protection of security of the Republic of Serbia and public order in accordance with law; 5) decide, in the course of the procedure, whether the Applicant has a right to enter the territory of the Republic of Serbia. Movement of the Applicant or a foreigner whose intention to seek asylum has been registered, may be restricted by a decision of the Asylum Office in the case of non-compliance with the obligations from Article 58, Para 1, sub-paragraphs 3) and 7) of this Law. The risk of absconding shall be assessed on the basis of all the facts, evidence, and circumstances in a specific case, particularly taking into account all the Applicant's previous arbitrary attempts of leaving the Republic of Serbia, his/her failures to consent to identity checks or identity establishment procedures, or concealing information or providing false information about his/her identity and/or nationality.

that an unaccompanied minor may be ordered to stay in a social welfare institution for minors under intensified supervision in case the alternative measures cannot be applied effectively

Finally, the Law regulates the issue of **records, collection and processing of personal data** (Art. 98), providing that the Commissariat for Refugees and Migrations, in order to perform the duties specified in this Law, and in accordance with the law governing the protection of personal information, may collect and process personal information relating to foreigners or their related natural and legal persons, and keep records including the following information: 1) the records of foreigners who are asylum seekers and who have been provided with material reception conditions (the foreigner's name and surname; foreigner's date of birth; foreigner's sex; country of birth; nationality; name and surname of one parent; native language; religion; marital status; professional qualifications and level of professional qualifications; occupation; photograph; type, number and validity of travel document and/or other identity document; name and surname, date of birth, address, and unique personal identification number (JMBG) of the foreigner's spouse or common-law partner, children and other immediate family members; last known residence in the country of origin; medical condition of special relevance to accommodation; languages used by the foreigner; date, place and manner of entry to the Republic of Serbia; date of reception to and departure from the Asylum Centre or another designated accommodation facility for the Applicants; personal information relating to persons accompanying the foreigner; the fact of the appointed guardian; name, surname and telephone number of the unaccompanied minors guardian.

Law on Migration Management contains complementary provisions to the guarantees contained in the Law on Asylum and Temporary Protection, prescribing in Article 15 that persons whose right to refuge has been recognized or subsidiary protection has been granted, in compliance with the Law on Asylum, shall be provided with housing space for temporary accommodation, in accordance with the capabilities of the Republic of Serbia. The housing space shall be given for utilization by the decision of the Commissariat, for a maximum period of one year from the date of the final decision on recognizing the right to refuge or granting subsidiary protection Based on the Decision of the Centre for Social Work, the Commissariat shall provide accommodation in the social care facility, with other providers of accommodation services or in another family for the persons referred to in Para 1 of this Article, who are in a special mental and physical condition (old, disabled and ill persons), as well as to the minors without parental care, who cannot use housing space referred to in Para 1 of this Art.. The costs of utilization and maintenance of housing spaces referred to in Para 1 of this Art. and the costs of accommodation, food and necessary clothing and footwear of persons referred to in Para 4 of this Art. shall be borne by the Commissariat.[81]

[81] Law on Migration Management

5. PLANNED MEASURES OF HARMONISATION WITH THE REQUESTS ARISING FROM CHAPTERS 23 AND 24

In the discussion on the planned reform measures under Chapters 23 and 24, it is important to note that some of those measures are contained directly in the action plans for these two negotiating chapters, while other more detailed measures are included in strategic documents focused on reforms in specific areas, such as protection of children from violence, improvement of the position of victims of crime and fight against trafficking in human beings.

5.1. Action plan for Chapter 23

As mentioned earlier, for the purpose of understanding the reform measures aimed at improving the position of children in Chapter 23, it is important to consider both the original content of the Action Plan adopted in 2016, and its revised version adopted in mid-July, during the final stage of drafting this analysis.

5.1.1. Action plan for Chapter 23 in 2016

In order to fulfill the tasks set by the EC for the Republic of Serbia, the Action Plan for Chapter 23 envisages numerous activities that could, in principle, be divided into two large groups: First, the Action Plan envisages a group of activities aimed at improving the situation of victims in general, regardless of the type of criminal offence. In addition, in different segments of the Action Plan, various activities aimed at improving the position of certain particularly vulnerable categories of victims are envisaged.

The activities of the Republic of Serbia in this field could be conditionally divided into three phases: analytical-strategic, legislative and the phase of implementation of previously amended regulations, with the first two overlapping to some extent.

In the analytical-strategic phase, Serbia undertook an obligation to analyze the compliance of the normative framework in order to effectively adopt minimum standards regarding the rights, support and protection of victims of crime/injured parties in accordance with Directive 2012/29/EU, with an aim to determine the direction of changes of the normative framework and incorporate certain rights of victims, such as the right to understand and be understood, the rights of victims when lodging a complaint, the right to receive information, the right to interpretation and translation, the right to access support services, the rights relating to the protection of victims and recognition of their specific protection needs (including individual assessment) (activity 3.7.1.16). It is envisaged that the analysis will include: normative aspect (current normative framework, best comparative solutions, and international standards); Financial assessment (sustainable financing, adequacy of premises and staff, need for training); Access to support services (network coverage, distance, mobile support teams). It is important to note that this analytical part is the only part of the activities of the Action Plan in this field that were implemented within the planned deadline, by the end of 2016.

The Ministry of Justice should integrate the conclusions and recommendations resulting from the analysis into the amended normative framework in order to effectively apply minimum standards regarding the rights, support and protection of victims of crime/injured parties in order to comply with Directive 2012/29/EU (activity 3.7.1.17). One of the basic requirements of the Directive in this sense is the recognition of the concept of victim in national criminal law. Such a request is far more justified in countries that originate from a common law system with traditionally dominant adversarial characteristics. However, when it comes to countries that belong to the continental legal tradition, like Serbia, this process, instead of progressiveness, may have a regressive nature.

In accordance with the Action Plan, the adoption of the amended Criminal Procedure Code was planned for the first half of 2017. Unfortunately, even the work on the preparation of the Law on Amendments to the CPC did not start within the set deadline.

The preparation of amendments to the **Criminal Procedure Code** based on recommendations derived from the analysis of its compliance with relevant EU directives and framework directives on the rights of suspects or accused persons represents one of the biggest challenges (activity 3.7.1.10, 3.7.1.12, 3.7.1.13; the deadline was the first quarter of 2017). It is important to note that AP23 also provides for amendments to the **Criminal Procedure Code** in order to effectively implement minimum standards regarding the concept, rights and protection of victims of crime/injured parties in accordance with the Directive 2012/29/EU and other relevant international agreements. More specifically, in addition to the activities aimed at improving the situation of victims in general, the Action Plan for Chapter 23 contains an impressive number of measures dedicated to particularly vulnerable categories of victims and/or particularly problematic procedural situations in which those categories of victims are predominantly vulnerable.

In that sense, it is planned to conduct training for public prosecutors, deputy public prosecutors, police officers and representative associations of journalists in terms of: preventing information leeks on ongoing or planned criminal investigations, as well as preventing disclosure of sensitive data on victims, children, etc. (activity 3.5.2.21). The Action Plan specifically recognizes the sensitivity of victims of war crimes, as well as the need for special support for persons coming from multiple deprived backgrounds (activity 3.6.2.3). In that sense, it is planned to pilot family support centers in order to: target the population from multiple deprived backgrounds (especially paying attention to the accessibility of Roma families and children); support for parents experiencing domestic violence; support for children at risk of dropping out of school; support for families at risk of separation (children and parents); support for child victims of crime; support for children with disabilities from vulnerable families and at risk of placement in an institution.

The position of children as witnesses and victims of crime is addressed in the Action Plan through a series of activities. It is important to mention that Serbia has committed itself in the Action Plan to define practical guidelines for hearing children, based on examples of good practice in EU countries and provide conditions for uniform application of protection measures to protect child victims/witnesses in criminal proceedings from secondary victimization (activity 3.6.2.15). It is also planned to conduct trainings and information sessions on the protection of child victims/witnesses in criminal proceedings for police officers, public prosecutors, deputy public prosecutors, judges and employees of social work centers, as well as to distribute educational material to avoid secondary victimization (activity 3.6.2.16.). The Action Plan also places support for this category of victims in the context of the already discussed general support regime, through the introduction of post-traumatic counseling and support for child victims/witnesses in criminal proceedings within family support services provided by the support service for victim protection, established in four residential institutions in transformation (activity 3.6.2.21).

In addition to these specific activities, continuity in the strategic approach to protection of children from violence is planned through the analysis of achieved results and identification of obstacles in the implementation of the National Strategy for Prevention and Protection of Children from Violence 2008-2015, as well as the development of a new multiannual strategic framework for prevention and protection of children from violence (activities 3.6.2.23-3.6.2.25). Moreover, it is envisaged to improve the existing General Protocol for the Protection of Children from Abuse and Neglect in order to comply with EU best practices, including the special protocols on: the conduct of judicial authorities in the protection of minors from abuse and neglect; protection of children in social protection institutions from abuse and neglect; actions of police officers in the protection of minors from abuse and neglect; health care system in the protection of minors from abuse and neglect; protection of children and students from violence, abuse and neglect in educational institutions (3.6.2.26-3.6.27).

5.1.2. Revised Action plan for Chapter 23 in 2020.

At the very end, the development of this analysis, the Government of the Republic of Serbia adopted the Revised Action Plan for Chapter 23. Unlike the document in 2016, this document is focused on meeting the requirements of the Interim benchmarks, as well as the implementation of measures that were delayed in the previous period. In the introductory part preceding each subchapter, a summary of the results achieved in the period 2016-2020 is given, as well as a concise vision of the plans for the forthcoming period.

In the area of improving the rights of the child, it is planned to strengthen the role of the Council for the Rights of the Child, thus enabling a higher level of coordination of all state bodies responsible for the implementation of strategic documents in the field of the rights of the child (activity 3.4.4.1.). The emphasis is placed on the monitoring and implementation of the new Strategy for Prevention and Protection of Children from Violence for the period 2020 to 2023 and the accompanying action plan. Also, it is planned to continue the work on increasing the number of children who benefit from family support measures, in order to reduce the need for alternative care i.e. placement of children in residential institutions or foster care; in case of necessity for alternative care, efforts will be made to use accommodation in family-like local community, with a gradual increase in the availability of different alternative care options to be selected on a case-by-case basis. Efforts will be made to strictly control and reduce the number of children in residential institutions. Likewise, efforts will be made to increase the number and type of services designed for children in a vulnerable position (children living and working on the streets, children with disabilities, children living in poverty, etc.). Through the adoption of the Strategy for de-institutionalization and development of community-based services and capacity building of social protection service providers, mechanisms for social reintegration will be improved (activities 3.4.4.2-3.4.4.9).

Special attention in this document is paid to the continuation of work on the improvement of juvenile justice in order to fully implement European standards, especially through annual increase of the number of children who benefit from child-friendly judiciary, a wider use and introduction of new diversion schemes, specially tailored preparation for release carried out by trained judicial and other experts, infrastructure improvements and the wider use of alternative sanctions. It is important to note here that the priorities are practically the same as four years ago, since there has been no significant progress meanwhile, even in terms of the first step i.e. the normative alignment with the relevant standards. First of all, the amendments to the Law on Juveniles have been excessively postponed, while the law is still not even harmonized with the Criminal Procedure Code from 2011, as well as with the relevant international standards in the field of procedural position of children, which was discussed earlier (activity 3.4.4.10).

The Action Plan, in addition to the need to strengthen the role of the Council for the Rights of the Child, recognizes that the same trend is necessary when it comes to the Council for Monitoring and Improving the Work of Criminal Procedure Bodies and Enforcement of Criminal Sanctions against Juveniles (Juvenile Council), to enable coordination of the state authorities, the judiciary and the non-governmental sector in acting with juvenile offenders, through:

- holding regular meetings of the Council;

- holding regular meetings of the Council with other relevant bodies and the non-governmental sector;

- launching initiatives for changes in the normative framework, adoption of best practices and other steps necessary for the development of child-friendly justice (activity 3.4.4.11)

The Action Plan still includes activities aimed at improving the situation of child victims that are complementary to those contained in the Action Plan accompanying the Victims Strategy. This

primarily refers to the introduction of post-traumatic counseling and support for child victims/witnesses in criminal proceedings within family support services (activity 3.4.4.17).

In addition, the adoption of a new General Protocol for the Protection of Children from Abuse and Neglect is envisaged in order to harmonize with EU best practices, as well as the development of new special protocols for the protection of children from abuse and neglect and the creation of preconditions for their mandatory implementation, particularly in the field of:

- actions of judicial bodies in the protection of minors from abuse and neglect;

- safeguarding children in social protection institutions from abuse and neglect;

- actions of police officers in the protection of minors from abuse and neglect (activities 3.4.4.21-3.4.4.22).

5.2. Revised Action plan for Chapter 24

Unlike the Action Plan for Chapter 23, the revision of the Action Plan for Chapter 24 resulted in the adoption of the final document on the day of submission of this analysis, hence the last publicly available draft of this document served as a basis.

The previously analyzed provisions of the Law on Asylum, the Law on Foreigners and the Law on Migration Management indicate that the process of normative harmonization with the Convention in this segment has been successfully completed; hence in the context of the subject of this analysis, the **Subchapter governing migration** is mostly focused on capacity building, strengthening interstate cooperation and readmission. Similar stands for the Subchapter **Asylum;** except the drafting of accompanying bylaws in 2021, further normative interventions are not of major importance for the subject of this analysis.

5.2.1. Subchapter human trafficking

The draft of the revised AP 24 is primarily aimed at the implementation phase of the Strategy for Prevention and Suppression of Trafficking in Human Beings, especially Women and Children, and Protection of Victims (activity 6.2.8.1). Concurrently, it is planned to assess the effects of its implementation and develop a new strategy.

It is also interesting that the AP (activity 6.2.8.4) envisages a comprehensive analysis of the harmonization of domestic legislation with the *acquis* in the field of combating trafficking in human beings, with special focus on Directives 2011/36/EU, 2011/92/EU on combating sexual trafficking, violence and exploitation of children and child pornography, including the European Commission Communication of 4 December 2017 and the "Amber Alarm" system. Given the plans for full harmonization of legislation with the relevant EU standards by 2022 in accordance with the NPAA, this activity, planned for the 3rd quarter of 2021, is scheduled rather late, as it was supposed to be an integral part of the process accompanying the drafting and adoption of the Victims Strategy, while changes in the relevant legislation are envisaged in the one-year period after that.

5.3. Key national strategic documents

5.3.1. New national strategic framework for improvement of the position of victims and witnesses of criminal offences in the Republic of Serbia

Acknowledging the importance of the planned activities envisaged by the Action Plan for Chapter 23, within the IPA 2016 program, the EU approved funds for the implementation of the Project of Support and Assistance to Victims and Witnesses of Crimes in the Republic of Serbia, implemented by the OSCE Mission to the Republic of Serbia in the period 2018-2021.[82] Within the project activities, *inter alia*,

[82] See more at: https://www.podrskazrtvama.rs/en/about-the-project.php, accessed February 25 2020.

expert support was provided to the relevant working group in charge of drafting the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Offenses in the Republic of Serbia (hereinafter: the Strategy)[83] and the accompanying action plan.[84] The working group established by the decision of the Minister of Justice included representatives of all relevant institutions (Ministry of Justice, High Judicial Council, State Prosecutors' Council, Supreme Court of Cassation, Republic Public Prosecutor's Office, Ministry of Interior, Ministry of Labor, Employment, Veterans and Social Affairs), as well as representatives of civil society organizations[85] selected through a public call, with the support of the Office for cooperation with civil society. In the period July 2018-November 2019, after numerous meetings of the working group and two cycles of public consultations, the final draft of these strategic documents was prepared and forwarded to the Ministry of Justice, pending adoption by the Government of the Republic of Serbia until July 30, 2020.

The proposer opted for the five-year validity of the Strategy (2020-2025), whereby its implementation would be specified through two action plans with a two-and-a-half-year validity. The main source of EU standards and the basis of the goals of these strategic documents and planned measures is the Victims Directive.

The improvement of the position of victims and witnesses in the criminal justice system of the Republic of Serbia is defined as a general goal of the Strategy, in accordance with the EU standards contained in the Directive (2012) 029.

To achieve the general goal, three special goals have been set:

- Specific objective 1: Establishment of a sustainable National Network of Support Services for Victims and Witnesses of Criminal Offenses in the Republic of Serbia, while preserving and continuously improving the achieved standards of quality and availability of support services.
- Specific objective 2: Improving the availability, quality and efficiency of the implementation of measures for the protection of victims and witnesses of criminal offences in the Republic of Serbia, with special attention to the protection of particularly vulnerable categories of victims and witnesses.
- Specific objective 3: Raising the awareness of victims and witnesses of criminal offenses about their rights in the legal system of the Republic of Serbia, as well as continuous provision of information to the public in this area.

Detailed implementation of reform steps is planned through the definition of special measures, through a series of activities contained in the proposed Action Plan.

5.3.1.1. Amendments of criminal legislation prescribed by the Strategy and the Action plan

For the subject of this analysis, measure 2.1 is of key importance; it involves planned amendments to the normative framework in the field of criminal legislation in accordance with the provisions of the Directive (2012)029. This process is more closely defined through the activities in the Action Plan which primarily envisage the formation and work of an expert group for drafting the necessary amendments to criminal legislation and accompanying bylaws in the part related to alignment with the Directive (2012)029, as well as the establishment and operation of the National Network of Victim and Witness Support Services in the Republic of Serbia (activity 2.1.1.). The basic idea of this activity is adequate preparation of concrete solutions regarding the basic shortcomings of our criminal legislation, which were identified by the working group that worked on the development of the Strategy and Action Plan. In that sense, the Action Plan envisages amendments to the Criminal Code,

[83] Available in Serbian at: https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php, accessed February 25 2020.
[84] Available in Serbian at: https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php, accessed February 25 2020
[85] YUCOM, ASTRA and the Serbian Association for Criminal Law Theory and Practice

the Criminal Procedure Code, the Law on Special Measures to Prevent Crimes against Sexual Freedom against Minors, the Law on Enforcement of Criminal Sanctions and the Law on Enforcement of Extrajudicial Sanctions and Measures.

Regarding the amendments to the Criminal Code and the Criminal Procedure Code, the following issues have been identified as key points that require legislative intervention:

- harmonization with the definition of victim in the Directive [86];
- the right of victims to be accompanied by a trusted person during evidence taking;
- prohibition of cross-examination and suggestible questions in the examination of particularly sensitive victims and witnesses;
- improving the right of victims to submit relevant acts in criminal proceedings;
- improving the right of victims to a legal remedy in criminal proceedings;
- the scope, availability, and procedure for using the data from the questionnaire on the assessment of the individual needs of the victim during the criminal proceedings;
- a minor as a witness and the status of a particularly vulnerable witness;
- the utilization of a video link;
- the conditions for exclusion of the public from the main trial;
- protection of data on particularly vulnerable witnesses;
- the use of language in criminal proceedings;
- jurisdiction and procedure of informing the victim about the release of the accused from custody.

Regarding the amendments to the Law on Juvenile Offenders and Criminal Protection of Juveniles, which harmonizes the relevant provisions of this Law with the provisions of EU Directive (2012)29, the following issues have been identified as particularly important:

- the scope of implementation of the right to the injured party's attorney;
- limitation of the number of examinations of the injured party who is a minor;
- prohibition of confrontation of the injured party who is a minor younger than 14 years of age.

During its work, the working group for drafting the Strategy also recognized the fact that after the latest amendments to the Criminal Code, there was a lack in the necessary amendments to the Law on Amendments and Supplements to the Law on Special Measures to Prevent Crimes against Sexual Freedom against Minors (Maria's Law) which would harmonize that law with the Criminal Code. Having in mind its importance in the segment of protection of child victims, the Action Plan also envisages the amendments to this law.

Since the Directive also envisages the obligation to inform the victim about the fact that the offender is released, the Action Plan envisages amendments to the Law on Enforcement of Criminal Sanctions and the Law on Enforcements of Extrajudicial Sanctions and Measures, in the part that regulates mechanisms for informing victims of release. More precisely, the need for such mechanisms to be established in practice has been recognized.

[86] This amendment is provided for in both the Criminal Code and the Criminal Procedure Code, while the others refer only to the CPC.

Given the scope and number of planned amendments, it is evident that explaining each of these changes would require a much broader examination than the scope of this analysis. Therefore, we focus below on the issues that have attracted the most attention in the scientific and professional public. In addition to the previously clarified alignment of the Criminal Procedure Code with the term victim in the sense of the definition contained in the Victims Directive, the exercise of the right to compensation i.e. the exercise of compensation claim in criminal proceedings, is of great importance. Equally important is the matter of amendments to the regulations governing the organization of judiciary in the Republic of Serbia, given that the position of victims cannot be substantially improved without their compatibility with the amended criminal legislation.

5.3.1.2. The victim's right to compensation

The need to undertake emergent measures that would facilitate the exercise of the victim's right to compensation in practice represents one of the issues in connection to which there is an absolute agreement of the scientific and professional public. Namely, Art. 16 of the Directive stipulates the obligation of the state to ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceeding. It is important to note that despite the undoubtedly clear content of this provision, there is still a certain amount of misinformation or semi-information in the public discourse, mostly caused by insufficient knowledge of the content of the Directive, along with the desire to constantly criticize everything in public. In that sense, the two most common misconceptions refer to the need to amend the CPC in the part concerning decision making on compensation claims, while the other is related to the obligation to establish a kind of a fund for compensation of victims of crimes.

When it comes to the need to amend the CPC, it is quite clear that the provision of Article 258 of this Law provides exactly what Article 16 of the Directive requires, stipulating that in a decision convicting a defendant or ruling on pronouncing a security measure of compulsory psychiatric treatment, the court shall award compensation to the authorized person in full or in part, and refer him to civil litigation for the remaining part.[87] If the facts of the criminal proceedings do not provide a reliable basis either for full award of partial award, the court shall refer the authorized person to submit the compensation claim in full in civil litigation. Therefore, deciding on a compensation claim in criminal proceedings is the rule prescribed by the law.

However, in practice, the situation is completely different, so the decision on compensation claim in criminal proceedings is a real rarity, whereby the court's reasoning is always the same - such a decision would require the collection of additional evidence, which would further delay the criminal proceedings. Nevertheless, what is constantly neglected in this context is the obligation under Art. 256 of the CPC, which stipulates that the authority conducting the proceedings shall question the defendant in respect of facts in connection with a compensation claim and examine the circumstances of importance for adjudicating it. The authority conducting the proceedings shall be required to collect evidence for adjudicating a claim even before it is submitted.[88] Therefore, this obligation also lies with the public prosecutor, in the investigation phase, and there is no need to prolong the collection of this evidence for later stages of the proceedings, thus becoming a cause of potential delay in the

[87] If the claim for restitution relates to the return of objects, and the court determines that an object belongs to an injured party and that it is held by the defendant or other participant in the criminal offence or a person to whom they gave it for safekeeping, it shall, in the judgment or ruling referred to in para 4 of this Article, order the object transferred to the injured party. If the claim for restitution relates to the annulment of a certain legal transaction, and the court finds the claim justified, it shall pronounce in the judgment or ruling referred to in para 4 of this Article, a full or partial annulment of that legal transaction, with consequences emanating from that, without affecting the rights of third persons(Article 258, Paras 2-3 CPC)

[88] Concurrently, Article 257 provides for the option to apply the provisions of the law regulating the procedures of enforcement and security in the context of ordering temporary measures of security regarding the compensation claim arising from a criminal offence or a wrongful act designated by law as a criminal offence. If an injured party has a claim against a third person because he/she holds things acquired by a criminal offence or a wrongful act designated by law as a criminal offence, or because due to such act he/she acquired material gains, the court may order temporary measures of security in criminal proceedings against the third person as well.

proceedings i.e. a reason to refer the injured party to compensation claim in civil litigation. However, in the implementation of the aforementioned provision of Art. 256, Para 2 of the same article is used as a "safe exit", which states that if the collection of evidence and examination of circumstances regarding a compensation would substantially prolong proceedings, the authority conducting the proceedings shall limit itself to collecting those data whose determination at a later date would be impossible or substantially difficult.

Given that the working group drafting the Strategy recognized that there is no problem at the legislative but rather at the practical level, it is not planned to amend the provisions of the CPC, but to develop and adopt Guidelines for improving judicial practice in proceedings for compensation of victims of serious criminal offences in criminal proceedings [89] (measure 1.5). The Guidelines were adopted by the Supreme Court of Cassation in November 2019, which provided concrete guidelines to "criminal" judges, based on the experiences of their colleagues who decide on compensation claims in civil proceedings on a daily basis, with the aim to facilitate decision making on compensation claim already in criminal proceedings. This is only the first in a series of planned measures aimed at improving practice in this area, since the trainings for the implementation of Guidelines have started, while it is also planned that the Supreme Court of Cassation monitors their implementation and reports on an annual basis.

Taking also into account the frequent lack of motivation of victims to submit and determine the compensation claim, including the fact that they rarely have the professional help of lawyers, the Action Plan envisages the development of a single form, which would be completed with the support of employees in Services for the support for victims and witnesses in order to submit and determine the compensation claim.

Nevertheless, it seems that another aspect is still missing in this set of measures, which is the enhancement of the role of the public prosecutor's office that could be achieved by transferring a significant part of the Guidelines dealing with the collection of evidence relevant to deciding on compensation claim in a binding instruction issued by the Republic Public Prosecutor.

As for the second mentioned misconception or misinformation circulating in the public discourse, frequently even mentioned as a central obligation arising from the Victims Directive, which concerns the obligation to establish a victim compensation fund, it is important to note that this obligation is not provided in the Directive. This does not mean that this obligation has no basis in other sources of international standards, but the fact is that, due to the fact that the Republic of Serbia has still not ratified them[90] or it has placed a reservation on the relevant provisions of those instruments[91] anticipating this obligation, this obligation continues to represent the future, not the present. This certainly does not diminish the importance of the fact that mechanisms should be found to provide victims who cannot obtain compensation from the perpetrator or the perpetrator is unknown. It seems that an adequate approach would be to work on the establishment of this type of fund in parallel with the intensive work on changing the negative practice regarding the decision on the compensation claim in criminal proceedings.

5.3.2. Strategy for Prevention and Protection of Children from Violence for the period from 2020 to 2023

As mentioned earlier, the Government of the Republic of Serbia adopted the Strategy for Prevention and Protection of Children from Violence for the period from 2020 to 2023 with the accompanying Action Plan for 2020 and 2021 at its session on May 21, 2020, while the remaining two-year period

[89] Supreme Court of Cassation, Guidelines for the Improving Court Practice in Compensation Proceedings for Victims of Serious Crime in Criminal Proceedings, available in Serbian at: https://www.osce.org/sr/mission-to-serbia/437726 , accessed March 20 2020

[90] European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24.XI.1983

[91] Council of Europe Convention on preventing and combating violence against women and domestic violence, available at: https://rm.coe.int/168046031c, accessed March 20 2020.

will be more precisely defined through a separate action plan. The adoption came after a break of almost five years following the expiration of the National Strategy for Prevention and Protection of Children from Violence which covered the period from 2009 to 2015. The Strategy contains a definition of violence that is in line with Art. 19, Para 1 of the UN Convention on the Rights of the Child and defines violence as "any form of physical or mental violence, injury or abuse, neglect or negligence, harassment or exploitation, including sexual abuse." In addition to this definition, the operational definition of violence adopted by the World Health Organization is also accepted and used in the document, according to which "child abuse or maltreatment includes all types of physical and/or emotional ill-treatment, sexual abuse, neglect, negligence and commercial or other exploitation, which results 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".[92]

The document recognizes and defines different **types of violence** such as: physical, emotional, sexual, peer, gender-based, structural, institutional violence, neglect and negligence, child, early and forced marriages and child exploitation. In relation to child exploitation, the following **types of exploitation** have been identified: 1. child abuse in child trafficking, prostitution and pornography, 2. exploitation of a child for prostitution, 3. exploitation of a child for pornography, 4. trafficking for adoption, 5. child abuse in medical or scientific purposes, 6. social exploitation of a child[93]. In relation to the protection of children from violence **in different environments**, the document emphasizes the importance of protecting children from domestic violence, violence in educational institutions, violence in social protection institutions, violence in the community, abuse of child labor, violence in the digital space and violence in the media, which is a step forward in terms of recognizing the different environments in which it is necessary to provide protection from violence.

The strategy also recognizes the special **sensitivity of children who suffer from multiple victimization,** and as particularly vulnerable groups of children recognizes, *inter alia*, children in the situation in the street, refugee children, migrant children, LGBTI children, Roma children. However, although it would be expected that adequate measures would be defined for each of the identified, particularly vulnerable groups, this is lacking, neither the indicators have been developed to measure the achieved level of improved special protection of children from vulnerable groups.[94]

The importance of the Strategy also lies in the recognition of the significance of introducing an **explicit prohibition of corporal punishment in all environments** and clear emphasis that corporal punishment aimed to correct or control behavior represents child abuse, which is specified in measure 3.1., that refers to the amendments to the Family Law in a way that it contains, *inter alia*, an explicit prohibition of corporal punishment and clearly formulated measures within the framework of corrective supervision over the exercise of parental rights.

When it comes to the structure of goals, the Strategy defines **one general and three specific goals**. **The general goal** of the Strategy is to ensure a continuous comprehensive response of the society to violence against children, in accordance with the dynamics of challenges, risks and threats, through an improved system of prevention, protection and support. **The specific goals of the Strategy** are: 1. prevention and systematic work on changing attitudes, values and behavior in relation to violence

[92] Centre for the Rights of the Child (2020), Summary analysis of the Strategy for Prevention and Protection of Children from Violence for the period 2020 to 2023, available in Serbian at: https://cpd.org.rs/wp-content/uploads/2020/06/Analiza-Strategija-za-prevenciju-i-zastitu-dece-od-nasilja_PDF.pdf, accessed July 15 2020.

[93] As correctly noted in the analysis of the Centre for the Rights of the Child, in relation to the previous strategic document, the National Strategy for Prevention and Protection of Children from Violence, the new strategic document more clearly defines various forms of violence and introduces types of violence that were not sufficiently recognized. However, the part focusing on the types of violence should be better structured. Thus, for example, in the current structure, peer and gender-based violence are probably mistakenly placed in the part related to the exploitation of the child, even though they should not be in that place, which can lead to misinterpretations in practice.

[94] Centre for the Rights of the Child (2020), Summary analysis of the Strategy for Prevention and Protection of Children from Violence for the period 2020 to 2023, available in Serbian at: https://cpd.org.rs/wp-content/uploads/2020/06/Analiza-Strategija-za-prevenciju-i-zastitu-dece-od-nasilja_PDF.pdf, accessed July 15 2020

against children, 2. interventions aimed at protecting children from violence, 3. normative framework, institutional and organizational mechanisms for prevention and protection of children from violence.

In order to achieve the first specific goal, **five measures have been defined**, **namely**: improving the capacity of professionals in the sectors of education, social and health care, police and judiciary, for the prevention of violence against children; improving the capacity of children to prevent violence; improving the capacity of parents, guardians and caregivers to prevent violence against children; early intervention, support for children and families at risk; stabilization of the public for the prevention of violence against children.

In order to achieve the second special goal, **three measures are defined, namely**: protection and support to children victims and witnesses of violence and their families; developing support mechanisms for perpetrators of violence; improving the competencies of professionals for the protection and support of children.

In order to achieve the third special goal, three measures have been defined, namely: strengthening systematic and institutional mechanisms for responding to all forms of violence against children; establishing, developing and ensuring the sustainability of measures aimed at protecting children from violence; improving the system for collecting and managing data on violence against children.

It is important to note that the Strategy recognized the importance of improving and strengthening the role of the Council for the Rights of the Child, whose role has been marginalized for years by the mismatch of needs, powers and capacities.

Link with the Victims Strategy

Although the Strategy contains measures and activities related to the protection and support of child victims and witnesses of violence and their families in order to prevent secondary victimization of the child, it seems that in writing these activities, the principles, measures and activities (publicly available at that time) of the Draft Victims Strategy were not taken into account. One of the defined activities within Measure 2.1, which is mostly related to the prevention of secondary victimization of children, involves improvement of the work of services providing support and assistance to witnesses and victims in order to facilitate access of children victims and witnesses of domestic violence. This indicates that the authors did not consider the planned establishment of the National Network, discussed earlier, having in mind its concept based on the involvement of actors from the governmental and non-governmental sector. The same stands for the performance of trainings. Namely, while the Victims Strategy contains clear quantitative indicators in this area, they are not contained in the Strategy for Prevention and Protection of Children from Violence. There is no doubt that there is a shared responsibility of line ministries in charge of coordinating and/or participating in both working groups, as well as giving a positive or negative opinion on drafts, as well as the Secretariat for Public Policies.

“It is particularly unclear whether this improvement implies the upgrading of the work of the Units for Support of Children Victims and Witnesses in Criminal Proceedings and their integration into the system. These units were formed within the project "Improving the rights of the child through strengthening the justice and social protection system in Serbia" implemented by UNICEF in partnership with the Ministry of Justice and the Ministry of Labor, Employment, Veterans and Social Affairs, which was implemented from 2014 until 2017. Their method of working has proven to be effective in practice and has seriously contributed to the enhancement of the prevention of secondary victimization of children victims and witnesses of crimes. However, this service was project-based and did not become part of the state system of budget-funded services, so the units ceased to operate after the completion of this project. Having in mind their importance and achieved results, their integration into the system should have been especially emphasized and specified in the Action Plan as a special activity or within the activity 2.1.1. This especially stands because in the part related to

the measurement of specific goal 2: Interventions aimed at protecting children from violence, defines as an indicator "increase in the share of children witnesses who were supported through the cooperation of courts with child support units in criminal proceedings, in relation to the total number of children witnesses", indicating that the work of the units has been recognized as an important part of the support system for children victims and witnesses"[95].

5.3.3. *Strategy for Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children, and Protection of Victims for the period 2017 to 2022*

As defined in the Strategy, this document aims to ensure a comprehensive and continuous response of the society to human trafficking, in line with the dynamics of new challenges, risks and threats, by improving the system of prevention, assistance and protection of victims and combating trafficking in human beings, especially women and children.

The Strategy takes over the definition of a child from the Convention and the Directive 2011/36, stating that in terms of the strategy, any person under the age of 18 is considered a child. With regard to the specific areas identified by the Strategy in the context of the prevention and protection of children from trafficking in human beings, it should be noted that Chapter 5 identifies this issue as such that it requires to be addressed in a systematical, thorough and a synchronized manner. „Taking into account the dimensions, frequency, specific forms of children trafficking, as well as the age, maturity, vulnerability and consequences that the experience of a victim has on children, it is evident that the problem of trafficking in children and exploitation of children in pornography and prostitution, as well as their comprehensive protection should be singled out as a special goal that will determine the directions of further action in accordance with the specific needs of the child".[96] In order to respond to these demands, the Strategy envisages special activities and tasks that will ensure that children in the Republic of Serbia grow up in an environment safe from human trafficking, exploitation in pornography and prostitution. These programs are derived from the Convention on the Rights of the Child, which comprehensively guarantees the rights of the child based on fundamental principles: the right of the child to life, survival and development; non-discrimination; the best interests of the child and the participation of children in matters concerning children.[97]

The Strategy recognizes the importance of strengthening the capacity of institutions and their employees, as a mechanism to improve prevention and reduce the impact of the causes of trafficking, exploitation in pornography and prostitution on children, ensuring in this way that those civil servants who can come into contact with child victims undertake trainings that are in line with trends such as migration of children (voluntary and forced) and abuse of communication and information technologies for child trafficking and exploitation in pornography and prostitution (participatory prevention programs are especially adapted to children belonging to vulnerable groups), implementation of programs for children in primary and secondary education which emphasize the inadmissibility of gender discrimination and its consequences. The detection and prosecution of trafficking in children and exploitation in pornography and prostitution will be in line with a proactive approach aimed at facilitating the position of children as victims and injured parties in the proceedings. The protection of children victims will be ensured by establishing emergency care facilities, enhancing the cooperation of all those working with children and developing specialized services by implementing specific participatory programs for the protection and sustainable social inclusion of children victims of trafficking and exploitation in pornography and prostitution"[98].

[95] Centre for the Rights of the Child (2020), Summary analysis of the Strategy for Prevention and Protection of Children from Violence for the period 2020 to 2023, available in Serbian at: https://cpd.org.rs/wp-content/uploads/2020/06/Analiza-Strategija-za-prevenciju-i-zastitu-dece-od-nasilja_PDF.pdf, accessed July 15 2020.

[96] Strategy for Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children and Protection of Victims for the period 2017 to 2022, "Official Gazette of RS", No. 77/17, Chapter 5.

[97] *Ibidem*

[98] Strategy for Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children and Protection of Victims for the period 2017 to 2022, "Official Gazette of RS", No. 77/17, Chapter 8.5.

An overview of the activities envisaged in the Action Plan demonstrates that they are mostly aimed at capacity building. The fact that there is full coherence with the measures envisaged by the Victims Strategy and the AP 23 is of great importance; hence it is planned to improve the system of informing victims of trafficking about the rights arising from the Article 4 of EU Directive 2012/29, especially with regard to exercising the right to request compensation in criminal proceedings. It is also planned to conduct training for public prosecutors and judges on deciding on the compensation claim of a victim in criminal proceedings (activities 3.3.-3.3.2), as well as on improved mechanisms for identifying victims of trafficking. The action plan also identifies needs in the context of urgent care and information for children victims of trafficking.

6. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS
Although the legislator has taken significant steps in recent years to harmonize substantive criminal legislation with relevant international standards in the field of child protection, it is still necessary to align the Criminal Code and the Criminal Procedure Code with the concept of the child and the victim, in the way these terms are defined in the main sources of international standards. In addition, there remains a problem of internal incoherence of the Criminal Code, as well as the Law on Human Organ Transplantation and the Law on Human Cells and Tissues in terms of prescribed penalties in the case of children victims, but also in terms of the child's consent to various forms of exploitation. When it comes to criminal procedure legislation, the position of victims and witnesses of criminal offences, both in accordance with the Criminal Procedure Code and the Law on Juveniles, still does not meet the standards in terms of systemic protection, assistance and support during the entire criminal proceedings, or following its termination, in the context of the restorative justice concept. A special problem is the lack of implementation of existing legal solutions in terms of compensation claims, including the lack of a national network of victim support and assistance services and a limited use of video links. This problem also affects the inadequate protection of juvenile offenders who are in fact hidden victims of the exploitation of criminal activities. Even though positive legislation in the field of asylum and migration has recently been harmonized with the relevant standards, it is necessary to work intensively on providing adequate financial and material resources for its consistent implementation. With regard to key public policy documents governing the position of child offenders, victims and witnesses of criminal offences, it is important to note that, despite some progress in terms of their mutual coherence, there remain discrepancies indicating a lack of cooperation between line ministries/authorized proposers. In addition, it has been noticed that all analyzed strategic documents are focused almost entirely on the requirements of the negotiation process, while other issues identified through scientific research and practice are almost completely marginalized. Although it is not disputed that changes in criminal legislation should be guided by the requirements of the negotiation process, numerous contradictions indicate that it is time for a more systematic approach to changes, contrary to the existing *ad hoc* principle which, in addition to internal incoherence of criminal legislation, also resulted in complete marginalization of urgent needs such as the amendments to the Law on Juveniles. Concurrently, unnecessary, and often populist-oriented changes to the key laws are being adopted. There is also a certain amount of passivation and marginalization of the role of the Council for the Rights of the Child and the Council for Juveniles, which could be partly attributed to the lack of legal authority.

RECOMMENDATIONS	
1.	Amend the Criminal Code and the Criminal Procedure Code to align with the relevant international standards which define the concept of the child and the concept of the victim.
2.	Amend the Criminal Code to eliminate existing illogicalities regarding sanctioning ranges for criminal offenses that may be committed to the detriment of a minor.

3.	Amend the Law on Human Organ Transplantation and the Law on Human Cells and Tissues, eliminate existing illogicalities regarding the sanctioning ranges for criminal offenses prescribed by these laws when they are committed to the detriment of a minor.
4.	Adopt a new Law on Juvenile Offenders and Criminal Protection of Juveniles or adopt fundamental and comprehensive amendments to the existing law in accordance with the requirements contained in the key strategic documents, UN CRC recommendations and recommendations of the Council for Monitoring and Improving the Work of Criminal Procedure Bodies and Enforcement of Criminal Sanctions against Juveniles and the Council for the Rights of the Child.
5.	Amend the Criminal Procedure Code in order to fully transpose the standards regarding the protection, support and assistance to victims and witnesses of criminal offenses contained in the Directive (2012) 029EU and the Directive (2011) 036EU, identified and specified in relevant national strategic documents.
6.	Provide adequate financial and human resources for the implementation of relevant standards in the field of protection, support and assistance to victims and witnesses of criminal offences contained in the Directive (2012) 029EU and the Directive (2011) 036EU, which would ensure sustainability and continuity, particularly when it comes to particularly vulnerable categories of victims and witnesses, primarily those with multiple vulnerable factors, such as migrant children and asylum seekers, unaccompanied children and children of victims of trafficking.
7.	Continuously work on improving the curriculum and training for police officers and holders of judicial functions, in order to facilitate the identification, empowerment and provision of adequate treatment for juvenile offenders who are hidden victims of trafficking in human beings in the form of exploitation of criminal activities.
8.	Continue to strengthen administrative capacity for the consistent implementation of guarantees of adequate treatment of migrant and asylum-seeking children, especially unaccompanied children, and ensure timely implementation of the recommendations of national and international monitoring mechanisms.
9.	Improve the mutual harmonization of reform measures contained in the national strategic documents, through the strengthened role of the Council for Monitoring and Improving the Work of Criminal Procedure Bodies and Enforcement of Criminal Sanctions against Juveniles and the Council for the Rights of the Child.
10.	Ensure *evidence-based policy making* approach to criminal law reform, based on the recommendations of academia, the judiciary, and the supporting professions, with an aim to fully implement the principle of the best interests of the child.

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- National Strategy for Gender Equality for the period 2016 - 2020, "Official Gazette of RS", No. 4/16.
- Strategy on Prevention of Drug Abuse for the period 2014 - 2021 "Official Gazette of RS", No. 1/15.
- Strategy for social inclusion of Roma men and women in the Republic of Serbia for the period 2016 - 2025, adopted by the Government of the Republic of Serbia in 2016, “Official Gazette of RS”, No. 26/16.
- Strategy for Prevention and Suppression of Trafficking in Human Beings, Especially Women and Children and Protection of Victims for the period 2017 - 2022, “Official Gazette of RS”, No. 77/17.
- Strategy for the Development of Information Security in the Republic of Serbia for the period 2017-2020. "Official Gazette of RS", No. 53/17.
- Strategy for the Development of the System of Enforcement of Criminal Sanctions in the Republic of Serbia until 2020, “Official Gazette of the RS”, No. 114/13.
- General Protocol for the Protection of Children from Abuse and Neglect adopted by the Government on 5 August 2005.

RELEVANT NORMATIVE FRAMEWORK IN THE REPUBLIC OF SERBIA

- Law on Lawyers, "Official Gazette of the FRY", no. 24/98, 26/98, 69/00, 11/02 and 72/02 and - "Official Gazette of Serbia and Montenegro", 1/03.
- Law on Asylum and Temporary Protection, "Official Gazette of RS", No. 24/2018.
- Law on Public Prosecution, "Official Gazette of RS" no. 116/08, 104/09, 101/10, 78/11 – oth. law, 101/11, 38/12 - CC decision, 121/12, 101/13, 111/14 - CC decision, 117/14, 106/15 and 63/16 - CC decision.
- Criminal Procedure Code, "Official Gazette of RS", no. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14, 35/19.
- Law on Human Cells and Tissues, "Official Gazette of RS", No. 57/2018.
- Law on Juvenile Offenders and Criminal Protection of Juveniles, "Official Gazette of RS", No. 85/2005.

- Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, "Official Gazette of RS - International Agreements", No. 19/2009.
- Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, "Official Gazette of RS - International Agreements", No. 12/2013.
- Law on Ratification of the Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, "Official Gazette of RS - International Agreements", No. 1/2010.
- Law on Ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, with the Convention on the Rights of the Child "Official Gazette of the FRY - International Agreements", no. 7/2002.
- Law on Ratification of the Optional Protocol on the Participation of Children in Armed Conflict to the Convention on the Rights of the Child "Official Gazette of the FRY - International Agreements", no. 7/2002.
- Law on Ratification of the Convention on the Protection of Children and Cooperation in the Field of International Adoption, "Official Gazette of RS - International Agreements", No. 12/2013.
- Law on Human Organ Transplantation, “Official Gazette of RS”, No. 57/2018.
- Law on Ratification of the United Nations Convention on the Rights of the Child, "Official Gazette of the SFRY - International Agreements", no. 15/90 and "Official Gazette of the FRY - International Agreements", no. 4/96 and 2/97.
- Law on Ratification of the International Covenant on Civil and Political Rights, "Official Gazette of the SFRY", No. 7/71.
- Law on Ratification of the International Covenant on Economic, Social and Cultural Rights, "Official Gazette of the SFRY", No. 7/71.
- Law on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, amended in accordance with Protocol No. 11, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms ensuring certain rights and freedoms not included in the Convention and its First Protocol, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances: Official Gazette of Serbia and Montenegro - International Agreements, No. 9 / 2003-16.
- Law on Judges, “Official Gazette of RS”, no. 116/08, 58/09 - decision CC, 104/09, 101/10, 8/12 - decision CC, 121/12, 124/12 - decision CC, 101/13, 111/14 - decision CCS, 117 / 14, 40/15, 63/15 - decision CC and 106/15, 63/16 - decision CC and 47/17.
- Law on Foreigners, "Official Gazette of RS", no. 24/2018, 31/2019.
- Law on Organ Transplantation, “Official Gazette of RS”, No. 72/2009.
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- Criminal Code, “Official Gazette of RS”, no. 85/05, 88/05 - correction, 107/05 - correction, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19.
- Rulebook on the manner and conditions of application of police powers against minors, "Official Gazette of RS", No. 83/2019.
- Court Rules of Procedure, "Official Gazette of RS", no. 110/09, 70/11, 19/12, 89/13, 96/15, 104/15, 113/15 - corrected, 39/16, 56/16, 77/16 and 16/18.
- Constitution of the Republic of Serbia, "Official Gazette of RS", No. 98/06. Law on Lawyers, "Official Gazette of RS", no. 31/11 and 24/12 - CC decision.

PART 2: HUMAN TRAFFICKING VICTIMS IN CRIMINAL PROCEEDINGS

- Analysis of Judicial Practice for 2019 for the Crimes of Mediation in Prostitution, Trafficking in Human Beings and Trafficking in Minors for Adoption –

Tanja Drobnjak

1. INTRODUCTION

ASTRA – Anti-trafficking action is dedicated to eradicate all forms of exploitation and trafficking of human beings, especially women and children, as well as to provide support in missing children cases. It was founded in 2000 and since its establishment it has been comprehensively addressing the problem of human trafficking and working to eradicate various forms of this phenomenon, i.e. simultaneously acting in the field of prevention, education, provision of direct assistance to victims, reintegration, research and reporting, public advocacy, at the strategic and operational level, and support to development of a functional and effective anti-trafficking system, with full respect of the human rights of victims.

As part of the activities aimed at improving the position of victims of trafficking in human beings and related crimes, the Association ASTRA – Anti-Trafficking Action, has continuously, since 2011, monitored judicial practice for the crimes of trafficking in human beings, mediation in prostitution and trafficking in minors for adoption. The annual analysis of judicial practice with an emphasis on all the most important aspects of exercising the rights of victims in criminal proceedings continues with the analysis of court decisions rendered in criminal proceedings during 2019, based on the data and decisions obtained from competent public prosecutor's offices and courts in Serbia. As in the previous period, the analysis has been conducted in order to monitor the degree of realization and respect for the protection of rights of victims in court proceedings, which is important not only from the aspect of individual cases but also as an indicator of respect for human rights of victims in court proceedings and the compatibility of legal, strategic and institutional framework with obligations from ratified international documents.

The annual analysis of judicial practice in this area seeks to provide an objective view of the current situation and challenges, in order to correct the deficiencies and identify key areas that require improvement, either through changes of the existing legislation or more consistent implementation of the existing standards. The analysis is aimed at monitoring the respect of the rights of victims in criminal proceedings in order to improve their position and at the same time evaluate the results of previous legislative and institutional reforms and conducted trainings. Continuous monitoring of practice in this area from the aspect of the position and the rights of victims in criminal proceedings provides insight into the effectiveness of certain legal solutions, the degree of uniformity of court practice and possible progress in exercising the rights of victims in certain areas. Compatibility of the legal, strategic and institutional framework with international standards in this area and consistent implementation of the existing legal framework are clear indications of a state's commitment to fulfilling its obligations, combating trafficking in human beings and striving to protect the victim's position in criminal proceedings with an increased care for minor victims.

Although the *Strategy for Prevention and Suppression of Trafficking in Humans, Especially Women and Children, and Protection of the Victims from 2017 to 2022*[99] recognizes the need to improve the support of victims of trafficking and other obstacles such as the inefficiency of the victim compensation process, and the need to further develop the competencies of staff in the field of trafficking, in practice there are still problems in various aspects of the protection and realization of victims' rights. Despite the improvement of the legal, strategic and institutional framework, certain aspects of the protection and the rights of victims are still difficult to achieve, as indicated by relevant international reports. *The Second GRETA Report on Serbia*[100] points to the problems of protection of victims in court proceedings, compensation and access to legal aid, with the need to better use available measures to protect victims from re-traumatization during court proceedings. *The 2019*

[99] "Official Gazette of RS", No. 77/2017

[100] Report of the expert group of action against trafficking in human beings, which monitors implementation and realization of the obligations of the states signatories of the Council of Europe Convention on Action against Trafficking in Human Beings of 2005, GRETA(2017)33 is available at https://rm.coe.int/greta-2017-37-frg-srb-en/16807809fd

Trafficking in Persons Report of the US State Department of 20 June, 2019[101] emphasizes the need to implement a victim-centred approach and measures to protect victims who are witnessing at courts, in order to reduce intimidation and re-traumatization of victims, especially children, with special emphasis on the need to apply the institute of especially vulnerable witness, as well as the inability of victims to obtain compensation in criminal proceedings.

Monitoring of the court practice for the crime of trafficking in human beings and related crimes (mediation in prostitution and trafficking in minors for adoption) continues through the analysis of the court decisions obtained from the competent first and second instance courts in Serbia, which were reached in criminal proceedings in 2019. Based on the available data from the decisions, the analysis seeks to present the position of victims of these crimes in relation to their position in criminal proceedings and the degree of exercise of their rights, especially taking into account the position and rights of minor victims in the proceedings. Objectives and methodology of the monitoring and the analysis of the court decisions have been distinctly presented (Chapter II point 1), as well as the data received by relevant public prosecutor's offices and courts (Chapter II point 2). General statistical data obtained from the court decisions are presented in relation to the types of criminal offenses, types of decisions and sentences imposed, duration of proceedings, with a special overview of available data on the accused and injured parties (Chapter III, point 1). The position of victims in court proceedings is analysed in relation to the most important aspects such as protection of the victims' privacy, counselling and information, security and protection, and the aspects of victims' hearings in court proceedings and the position and protection of minors are especially highlighted, as well as the right to compensation, i.e. damage claim (Chapter III, item 2). In addition to these aspects of protection and recognition of the rights of victims in criminal proceedings, the analysis also deals with penal policy, which is an indicator of the attitude of the judicial system and, thus, the government to certain crimes (Chapter III, point 3), as well as the plea agreement institute in the judicial practice (Chapter III, point 4).

The results of the analysis of judicial practice for 2019 presented in the concluding remarks (Chapter IV), indicate that in practice there are still impediments in exercising the rights of victims in criminal proceedings, which were specified by the findings of the analysis for previous years. Inconsistent application of the provisions related to exclusion of the public from the trial and few cases in which victims have been granted the status of an especially vulnerable witness continue to be recorded in practice. The right to compensation of victims is not exercised in criminal proceedings, so all injured parties are still instructed to pursue compensation claims in civil proceedings. In addition, a lenient penal policy and an increasing practice of plea agreements make it even more difficult for victims to exercise their rights.

Improving the position of victims in the area of privacy protection, counselling and information and the manner of interrogation, is especially important given a sensitive position of victims of trafficking and related crimes, who are the subject of the analysis, as well as a significant number of minor victims. The trend of mild penal policy, which continued in 2019, as well as the impossibility of realizing the compensation claims in criminal proceedings, further endangers the position of victims and deepens their distrust in institutional protection. Achieving a higher level of the protection and the rights of injured parties in criminal proceedings in some areas (such as protection of privacy, security and information, court hearing, and the issue of penal policy) is conditioned by a degree of application of the existing legal solutions, so a consistent implementation of the existing legal provisions and a change in the attitude of the authorities in the proceedings towards the position of the victim would bring a significant change. With regard to other key segments, such as the right to compensation, it is necessary to improve the existing legal and institutional framework. Special attention should be paid to the prevention of sexual and labour exploitation of minors in order to reduce risk factors and vulnerability, especially of at-risk groups such as members of ethnic minority groups, residents of

[101] Available at https://www.state.gov/reports/2019-trafficking-in-persons-report/serbia/

social welfare institutions and families in the records of the social welfare system. Finally, significant progress in protection of the interests and rights of victims in court proceedings cannot be achieved without respecting international standards in this area and without a coordinated response involving cooperation between the state and the civil society organizations in implementing and improving the existing legal framework, education of all actors involved in the criminal legal protection, and preventive action aimed at reducing vulnerability and risk factors.

2. MONITORING AND ANALYSIS OF JUDICIAL PRACTICE

2.1. Objectives and methodology

Similarly to the previous years, the analysis of judicial practice for 2019 is directed towards a comprehensive review of the position of victims of human trafficking and related crimes, such as the crime of mediation in prostitution and trafficking in minors for adoption. The position of victims, i.e. the injured parties in criminal proceedings, has been analysed in relation to the basic standards of protection, exercise of rights and assistance to victims of trafficking as specified by the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000*[102] (Palermo Protocol) and *Council of Europe Convention on Action against Trafficking in Human Beings of 2005*[103].

Continuity in monitoring and analysis of annual judicial practice in this area is necessary in order to objectively review and improve the position of victims in criminal proceedings, as well as possible obstacles and problems that arise in practice - either due to deficiencies in domestic legislation or to inconsistent application of existing legal solutions. The data and conclusions presented in the analysis can therefore provide a relevant basis for recommendations and further improvement of the victims' legal protection. Bearing in mind that despite improvement of the legal, strategic and institutional framework, the observations and conclusions of the previous annual analyses for 2011-2018 indicate significant and continuous deficiencies in implementation of the existing legal norms, the continuation of monitoring and analysis of judicial practice proves to be justified in order to further improve the position of victims at courts. As in previous years, the main goal of the analysis of judicial practice in 2019 is to objectively review the position of victims of trafficking, mediation in prostitution and trafficking in minors for adoption in court proceedings, in order to assess the compliance of domestic legal, strategic and institutional framework with international standards in this area. Monitoring and assessing effective implementation of existing legal norms in practice is also important from the aspect of standardization of court practice in terms of exercising the rights of victims and assessing the need for continuous education of judicial staff, with the eventual goal of improving the position of victims in the criminal proceedings.

The analysis of judicial practice for 2019 follows the goals and methodology of previous analyses from 2011-2018 and is based on quantitative (statistical) and qualitative analysis of court decisions rendered during 2019 in criminal proceedings in the first instance or in the appeal proceedings. Information on the number of proceedings conducted or resolved before the competent prosecutor's offices and courts, as well as the court decisions that have been subjects of the analysis, were obtained from these authorities in accordance with the Law on Free Access to Information of Public Importance. The information were requested from the relevant public prosecutors' offices (on the number of pressed criminal charges, indictments and concluded plea agreements), the first instance courts (on the number of proceedings, final and fist instance decisions, and the number of accepted plea agreements) and the appellate courts (on the number of appellate proceedings) in 2019 for criminal offences of mediation in prostitution under Article 184 of CC, human trafficking under Article 388 of CC and trafficking in minors for adoption under Article 389 of CC.

The analysis comprises 29 court decisions, i.e. delivered decisions, in criminal proceedings in 2019 by the relevant first instance courts (Basic Courts in Belgrade and Subotica; Higher Courts in Belgrade, Smederevo, Novi Sad, Valjevo and Vranje) and the second instance court decisions after appeals (Appellate Courts in Belgrade, Niš and Novi Sad). Out of the total number of verdicts, the analysis included 16 first instance decisions, of which 8 decisions were passed based on a plea agreement as per the provisions of Articles 313-319 of the Criminal Procedure Code. There are is a total of 13 second-

[102] "Official Gazette FRY – International treaties", no. 6/2001
[103] "Official Gazette RS – International treaties" , no. 19/2009

instance decisions rendered on appeal, of which 5 relate to the analyzed first-instance decisions. The analyzed first instance decisions refer to the crimes of mediation in prostitution under Article 184 of CC, human trafficking under Article 388 of CC and trafficking in minors for adoption under Article 389 of CC. The most second-instance decisions relate to the crime of human trafficking.

During the analysis of court decisions rendered in criminal proceedings, parameters important for assessing the position of the victim in terms of protection and exercise of fundamental rights in court proceedings were used. The data obtained from the collected decisions have been the subject of quantitative (statistical) as well as qualitative analysis, which focused on data or indicators relevant to assessing the position of the victim in terms of the protection and exercise of fundamental rights in the court proceedings. The quantitative (statistical) analysis (presented in Chapter III, point 1) refers to the type of criminal offenses, the type of decisions and the length of sentences imposed, the length of proceedings, as well as the data on defendants and injured parties, and was based on decisions rendered in first instance proceedings. Second-instance decisions were the basis for determining the type of decisions (confirmation, revocation, and modification of first-instance decisions) and the duration of proceedings. Qualitative analysis, based on available statistics, as well as on detailed analysis of available data from the first instance decisions, deals with the position and rights of victims through the most important aspects, such as protection of the victim privacy, counselling and information, security and protection; and the aspects of the hearing of victims in court proceedings and the position and protection of minor injured persons were singled out, as well as the right to compensation or damage claim (Chapter III, point 2). In addition to these aspects of protection and realization of victims' rights in court proceedings, the analysis also deals with penal policy (Chapter III, point 3) and the application of the institute of plea agreements, which is being increasingly applied in practice (Chapter III, point 4).

The annual analysis of judicial practice is aimed, as before, at a more comprehensive view of the position and exercise of victims' rights in court proceedings in relation to basic international protection standards. The structure of the 2019 analysis, as in the previous years, follows the guidelines from the most important international documents regarding measures to provide assistance and protection to the victims in order to improve their position, such as protection of privacy and identity of victims (Article 6 of the *Palermo Protocol* and Article 11 of the *Council of Europe Convention on Action against Trafficking in Human Beings*), assistance to victims – informing and assisting in realization of rights and interests of the victim in court proceedings, and the measures for the victim's safety (Article 6 of the *Palermo Protocol* and Article 12 and 15 of the *Council of Europe Convention on Action against Trafficking in Human Beings*) and compensation (Article 6 of the *Palermo Protocol* and Article 15 of the *Council of Europe Convention on Action against Trafficking in Human Beings*), with special reference to the position and rights of minor victims in the above aspects of protection. Alongside each individual segment of the rights and position of the victims, possibilities and legal solutions have been specifically considered, as per the Criminal Code (CC),[104] the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles,[105] as well as the Criminal Procedure Code (CPC).[106]

For victims of trafficking in human beings and other crimes, who are the subject of analysis, the text uses the terms "victim", "injured party" or "injured person", as appropriate. In the case of injured parties under the age of 18, the terms "minor" or "minor injured person" are used. The term "perpetrator" is used as a general term for a suspect, accused, defendant and convicted person, as per the meaning of the term under Article 2 of the Criminal Procedure Code.

[104] "Official Gazette of RS", No. 85/2005, 88/2005-corr., 107/2005-corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019
[105] "Official Gazette of RS", No. 85/2005
[106] "Official Gazette of RS", NO. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019

2.2. Data obtained from the competent prosecutor's offices and courts

With the aim of gathering reliable and relevant data and as many verdicts as possible, which would be the subject of the analysis, the competent public prosecutor's offices and courts were sent a request for data for 2019 in accordance to the Law on Free Access to Information of Public Importance. The information were requested from the relevant public prosecutors (on the number of pressed criminal charges, indictments and plea agreements), the first instance courts (on the number of proceedings, final and first instance court decisions and plea agreements) and the appellate courts (on the number of appellate proceedings) for 2019 and for criminal offences of mediation in prostitution under Article 184 of CC, human trafficking under Article 388 of CC and trafficking in minors for adoption under Article 389 of CC.

The responses received from the **Basic Public Prosecutor's Offices** (BPPO) show that during 2019, criminal charges and / or plea agreements for the crime of mediation in prostitution under Article 184 of CC were filed before 11 BPPOs, and that there were a total of 25 criminal charges for the criminal offense under Article 184 of CC. Out of that number, 3 criminal charges were rejected, 8 indictments were filed (of which, according to available data, two were proposed indictments), 3 plea agreements were concluded (all 3 in BPPO Niš).

The following data can be determined from individual documents received from the BPPOs before which the proceedings took place:

BPPO Loznica	1 criminal charge against 1 person, with a decision to reject the criminal charge
BPPO Subotica	3 criminal charges against 3 persons, in 1 case an indictment was filed
First BPPO in Belgrade	5 criminal charges and 1 indictment
Second BPPO in Belgrade	Conducted 6 proceedings upon criminal charges, 4 indictments
Third BPPO in Belgrade	2 criminal charges
BPPO Vrbas	1 criminal report given in the minutes (decision on rejection)
BPPO Novi Sad	1 criminal charge (report) against 1 person (decision on rejection)
BPPO Niš	3 criminal charges concluded by 3 plea agreements (1 confirmed, 2 unconfirmed)
BPPO Zrenjanin	1 criminal charge
BPPO Čačak	1 criminal charge upon which 1 indictment was filed against 1 person
BPPO Požarevac	1 procedure where evidentiary actions were performed

According to the submitted responses, there were no recorded criminal charges or concluded plea agreements for the crime of mediation in prostitution under Article 184 of CC before other BPPOs.

The responses received from the **Higher Public Prosecutor's Offices** (HPPOs) show that during 2019, for the crimes of mediation in prostitution under Article 184 of CC, human trafficking under Article 388 of CC and trafficking in minors for adoption under Article 389 of CC, 28 criminal charges were filed (24 related to the crime under Article 388, and 4 for crimes under Article 389 of CC), of which the charges for 2 persons were rejected. Indictments were filed against 23 persons, of which 19 related to Article 388, 1 to Article 184, 3 to Article 389 of CC. Two plea agreements for a criminal offense were concluded, one related to Article 389 and one to Article 184 of CC.

The individual responses received from the HPPOs, before which the proceedings took place, the following data can be determined:

HPPO Vranje	1 criminal charge according to which an order was issued to conduct investigation related to the crime under Article 388 paragraph 3 in connection with paragraph 1 of CC, ongoing investigation
HPPO Jagodina	1 indictment related to the order to conduct investigation of 2018 for the criminal offense under Article 388 paragraph 3 in connection with paragraph 1 of the CC, the indictment has not been confirmed, but the case has been returned to supplement the investigation, the investigation is ongoing
HPPO Subotica	1 criminal charge against 1 person for a criminal offense under Article 388 paragraph 2 in connection with paragraph 1 of the CC, 1 indictment filed
HPPO Zrenjanin	In relation to Article 388, criminal charges were filed against 4 persons, of which 1 indictment was filed, and for the remaining 3 persons the case is under investigation
HPPO Valjevo	In relation to Article 388, 2 proceedings were conducted, in one case a draft indictment was submitted against 2 persons, in another case orders to conduct investigation were issued against 2 persons and the investigation procedure is in progress
HPPO Novi Sad	In relation to Article 388 in relation to 3 persons, orders were issued to conduct investigation, in relation to Article 389 pertaining to 3 persons an indictment was filed and pertaining to 1 person a plea agreement was accepted (final verdict), pertaining to 1 person a decision to reject the criminal charge was issued
HPPO Požarevac	In relation to Article 388 paragraph 2 in connection with paragraph 1 of the CC, an investigation procedure was initiated, which is still ongoing
HPPO Sombor	In relation to Article 389, 4 criminal charges
HPPO Prokuplje	In relation to Article 388, 3 criminal charges, and for 1 person the procedure was transferred to HPPO Belgrade, for 2 persons investigation was initiated, which is still ongoing, for 1 person the evidence are being collected
HPPO Belgrade	In relation to Article 388, proceedings were initiated in relation to 6 persons and 5 indictments were filed, while for 1 person investigation is underway, in relation to Article 184 an indictment was filed against 1 person
HPPO Novi Pazar	In relation to Article 388, 1 criminal charge was filed against 3 persons, for 1 person the criminal charge was rejected, and an indictment was filed against 2 persons
HPPO Šabac	In relation to Article 388, 1 indictment was filed against 2 persons
HPPO Smederevo	In relation to Article 388, 1 criminal charge was received
HPPO Zaječar	In relation to Article 388, 2 criminal charges received
HPPO Niš	In relation to Article 388, 5 persons were reported, and 5 persons indicted, for Art. 184, 1 plea agreement was concluded

According to the responses submitted, no criminal charges nor plea agreements were recorded before other HPPOs for the criminal offense of mediation in prostitution under Article 184 of CC, human trafficking under Article 388 of CC and trafficking in minors for adoption under Article 389 of CC.

The responses received from the **Basic Courts** (BC) show that during 2019, 11 proceedings were conducted for the criminal offense of mediation in prostitution under Article 184 of CC, of which 2 are still ongoing and 9 verdicts were passed, 2 of which were final.

The individual responses received from the BCs, before which the proceedings took place, show the following:

First BC in Belgrade	2 proceedings were conducted, of which 1 is still ongoing, and the other has been finalized

Second BC in Belgrade	A total of 6 proceedings were conducted and 6 decisions were reached
Third BC in Belgrade	1 proceeding terminated by a final decision
BC in Subotica	1 court decision and 1 unresolved case

According to the submitted answers, there were no proceedings before other BCs for the stated crime.

The responses received from the **Higher Courts** (HC) show that during 2019, for the crimes of mediation in prostitution under Article 184 of CC, human trafficking under Article 388 of CC and trafficking in minors for adoption under Article 389 of CC, a total of 7 decisions were reached, of which 5 are final.

The individual responses received from the HCs, before which the proceedings took place, show the following:

HC in Belgrade	Conducted 16 proceedings in relation to Article 388 and 2 decisions (final) were reached, conducted 2 proceedings in relation to Article 184
HC in Smederevo	1 procedure in relation to Article 388 and Article 184 and 1 non-final decision reached
HC in Novi Sad	In relation to Article 388, 1 case has been legally resolved, 1 procedure has been suspended, 1 is in progress, in relation to Article389, 1 plea agreement was concluded and 1 is in progress
HC in Valjevo	1 procedure was conducted in relation to Article 388, which was finalized
HC in Vranje	1 decision reached in relation to Article 388

According to the submitted answers, there were no proceedings before other HCs for the stated crime.

The responses received from the **Appellate Courts** on the number of conducted and completed appellate proceedings, show that during 2019, a total of 13 verdicts and 5 decisions were passed for criminal offenses of mediation in prostitution under Article 184 of CC and human trafficking under Article 388 of CC.

The individual responses received from the Appellate Courts, before which the proceedings took place, show the following:

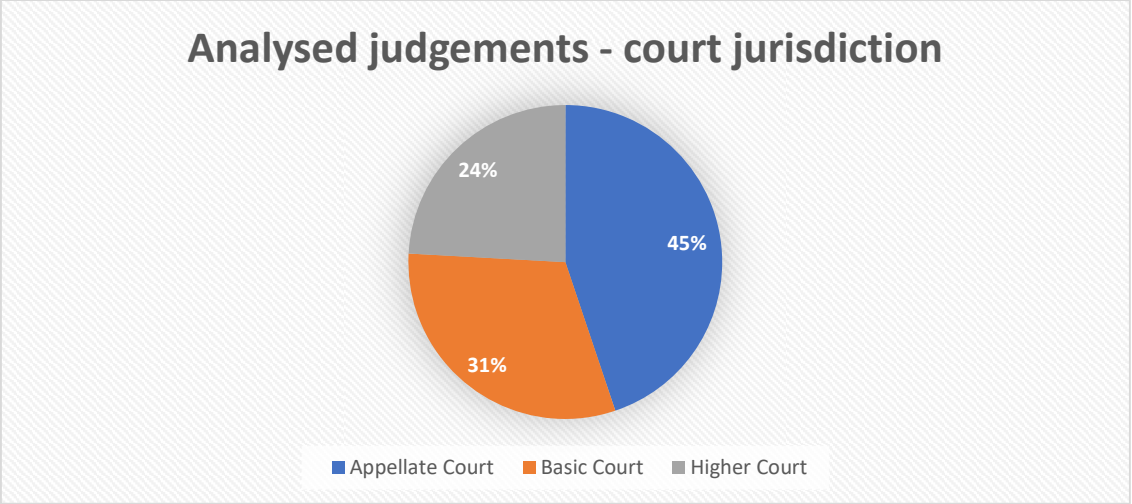
Appellate Court in Niš	In relation to Article 388, 3 decisions were reached
Appellate Court in Belgrade	In relation to Article 388, 4 proceedings were conducted, of which 3 ended with a verdict being passed and 1 other procedure was initiated, while in relation to Article 184, 2 proceedings were conducted, of which 1 ended with a verdict being passed and 1 other procedure was initiated
Appellate Court in Novi Sad	In relation to Article 388, 6 verdicts were passed (of which 1 in relation to Articles 388 and 184);
Appellate Court in Kragujevac	In relation to Articles 388 and 184, 5 decisions were reached regarding the appeals against the decision to reject the application for release on parole, the decision to extend the detention, the decision to reject the indictment, the decision to confirm the indictment, the decision replacing the fine with imprisonment sentence.

3. ANALYSIS OF COURT DECISIONS

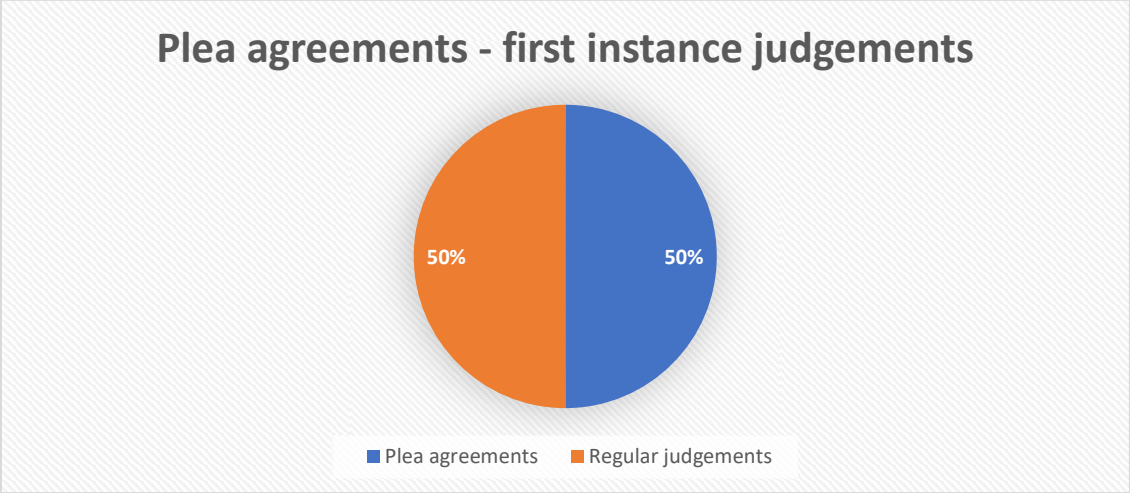
3.1. General data and observations

Collection and analysis of the court decisions in order to monitor and assess the position of victims in criminal proceedings continued in 2019. The subjects of the quantitative (statistical) and qualitative analysis are collected court decisions, which were reached in 2019 in the first or second instance criminal proceedings, and the focus of the analysis, as before, was on the crimes of mediation in prostitution under Article 184 of CC, human trafficking under Article 388 of CC and trafficking in minors for adoption under Article 389 of CC of RS. The presented quantitative (statistical) analysis is based on available data that could be obtained from first instance court decisions related to the type of criminal offenses, the type of decisions and the length of the sentences imposed, the duration of proceedings, as well as the data on perpetrators and injured parties. In addition, the second-instance decisions were the basis for determining data on the type of criminal offenses, the type of decision (confirmation, revocation, or alteration of first instance decisions), as well as the length of proceedings. Qualitative analysis, using statistical data, deals with the position and rights of victims in criminal proceedings through the most important aspects of protection of their rights. The analyzed issues pertain to aspects of protection of the victim privacy, counselling and information, security and protection, hearing of victims in court proceedings, the right to compensation or damage claims and the position of minor victims in court proceedings, with special reference to the penal policy and the review and application of the institute of plea agreements.

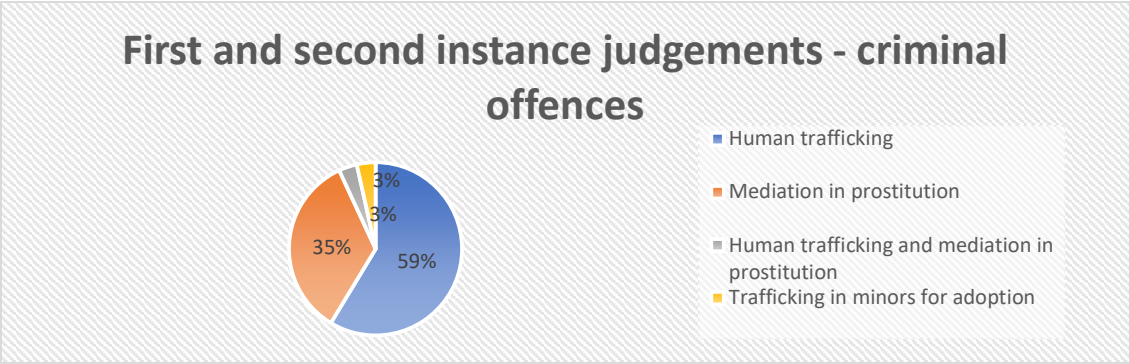
The analysis **includes a total of 29 court decisions** reached in criminal proceedings during 2019, which were obtained from the Basic, Higher and Appellate Courts in the Republic of Serbia. Of the total number of judgments included in the analysis, **16 judgments were rendered in the first instance proceedings**, 9 judgments by the competent Basic Courts (First Basic Court in Belgrade, Second Basic Court in Belgrade, Third Basic Court in Belgrade and Basic Court in Subotica) and 7 judgments by the competent Higher Courts (Higher Court in Belgrade, Smederevo, Novi Sad, Valjevo and Vranje). The subjects of the analysis were also **13 judgments rendered in the second instance or appellate proceedings** by the competent Appellate Courts (Appellate Court in Belgrade, Niš and Novi Sad), of which 5 refer to the analyzed first instance verdicts.

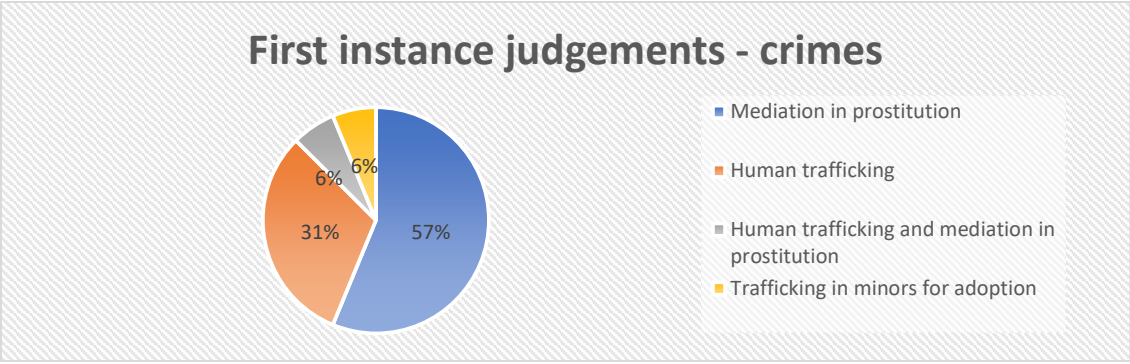


Out of the total number of 16 first instance decisions, **8 judgements were rendered by accepting plea agreements** related to the provisions of Articles 313-319 of CPC, which is 50% of the total number of first instance decisions. Out of the number, 7 judgments were passed before the Basic Courts and 1 before the Higher Court on this basis.



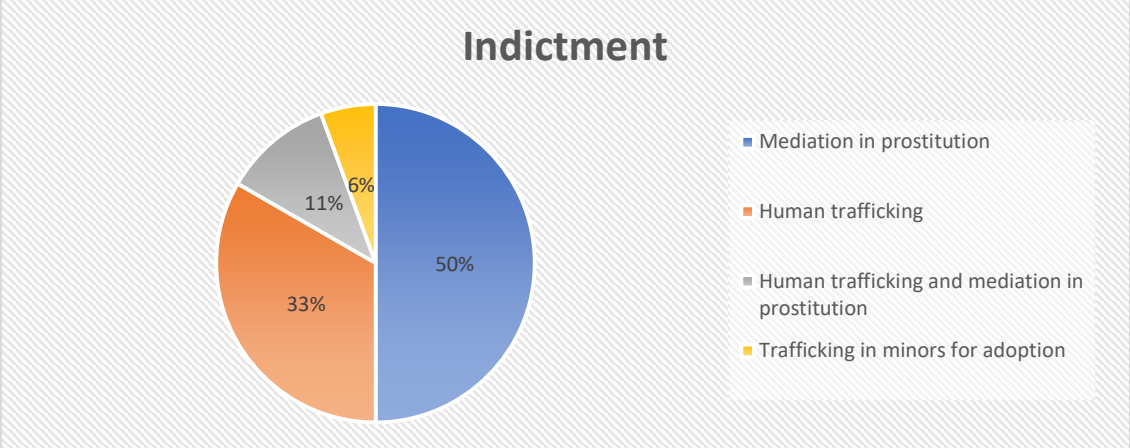
The analyzed decisions refer to the **criminal offenses** of mediation in prostitution under Article 184 of CC and human trafficking under Article 388 of CC, with one criminal offense under Article 389 of CC of RS. Pertaining to the total number of first and second instance verdicts, 10 judgements (35%) were rendered related to mediation in prostitution - Article 184 (9 first instance decisions of the Basic Courts and 1 second instance decision); 1 judgement (3%) was passed related to mediation in prostitution and human trafficking - Articles 184 and 388 (1 first instance decision); 17 judgements (59%) related to human trafficking - Article 388 (5 first instance and 12 second instance decisions); while only 1 judgment (3%) refers to trafficking in minors for adoption - Article 389 of CC (1 first instance judgment). Viewed only in relation to the first instance judgements, 9 judgements (57%) refer to mediation in prostitution – Article 184; 1 decision (6%) to mediation in prostitution and human trafficking - Articles 184 and 388; 5 decisions (31%) only to human trafficking – Article 388 and 1 judgement (6%) to trafficking in minors for adoption - Article 389 of CC of RS.



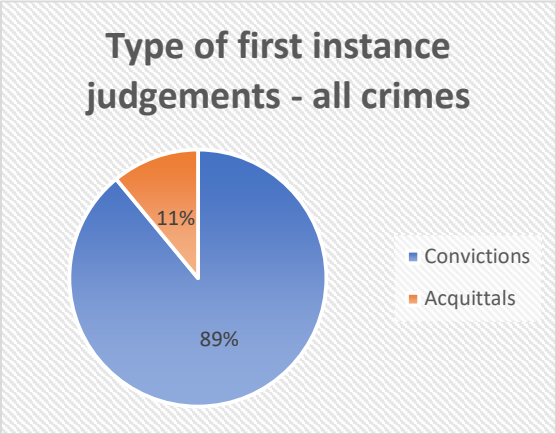


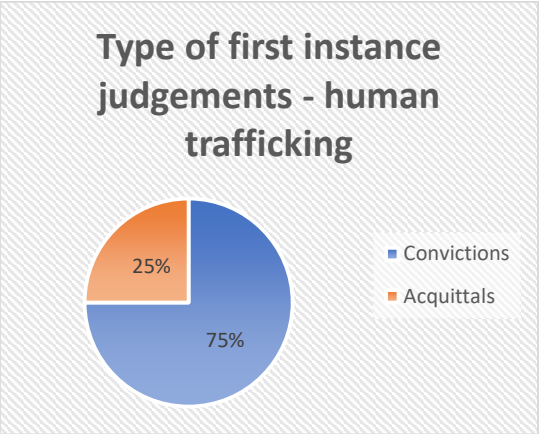
3.1.1. First instance judgements data

The analysis of the first instance verdicts includes 16 judgements, of which 9 are judgments of Basic Courts and 7 judgments of Higher Courts. Pertaining to the **indictments**, the first-instance judgements covered a total of 18 perpetrators, of which 6 persons were charged with the crime of human trafficking (33%), 2 persons were charged with human trafficking and mediation in prostitution (11%), 9 persons were charged with mediation in prostitution (50%) and 1 was accused of trafficking in minors for adoption (6%).

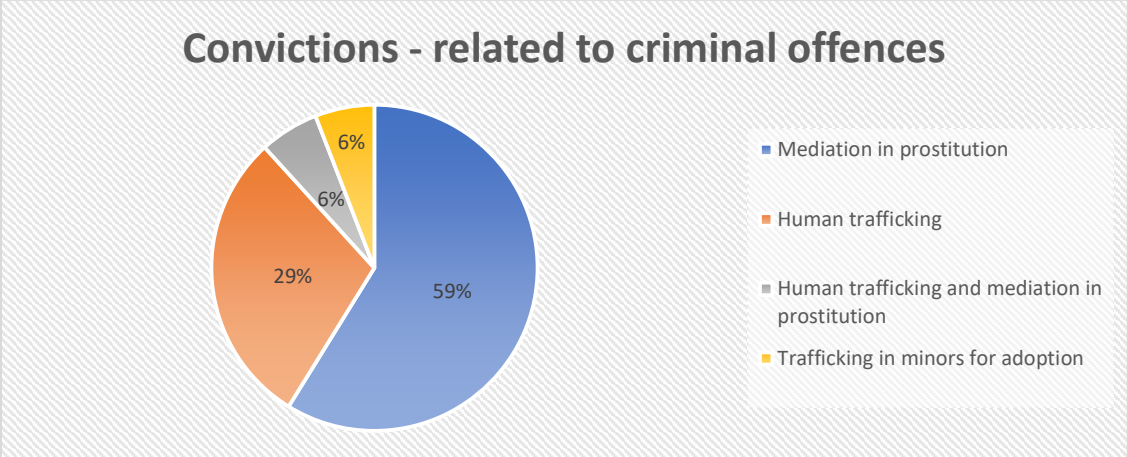


Pertaining to the **type of judgement**, the first instance courts in the most cases passed convictions for the relevant criminal offenses, so out of the total number of 18 perpetrators, 16 persons were found guilty, 1 person was found guilty of mediation in prostitution and acquitted of the crime of human trafficking, while 1 person was acquitted of the criminal offense of trafficking in human beings. In percentages, this means that in 89% of cases a conviction was passed for all criminal offenses, while if observed only in relation to the crime of trafficking in human beings, a conviction was passed in 75% of cases.

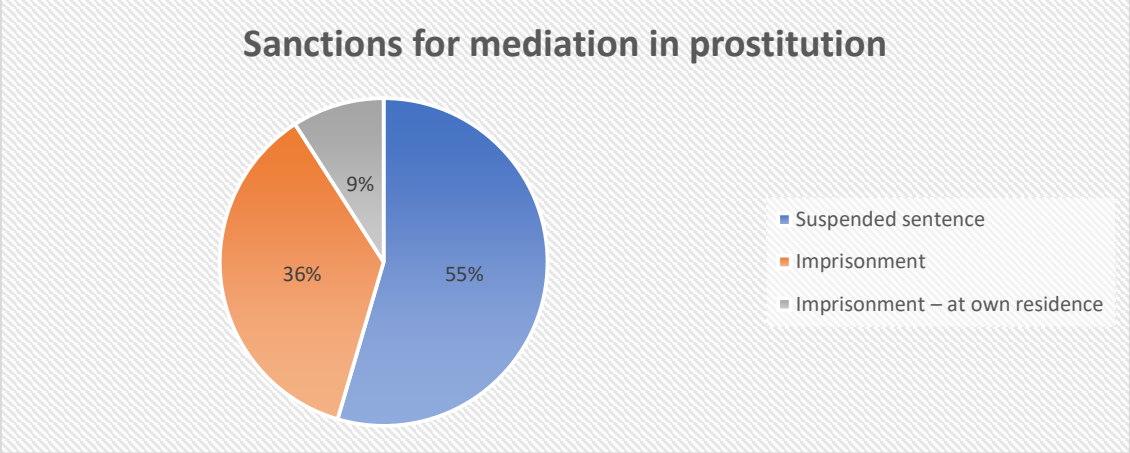




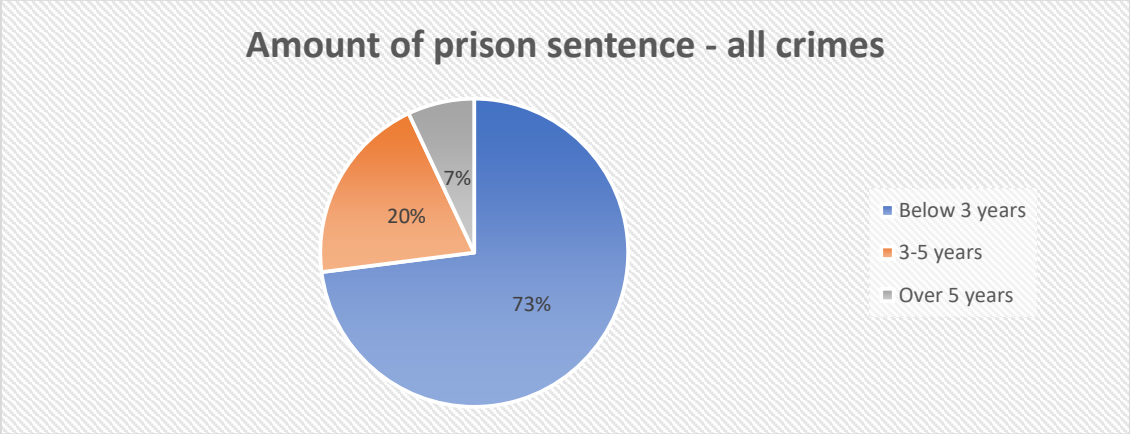
If only the **convictions** are analyzed, the data indicate that convictions for mediation in prostitution were passed in 10 cases (59%), for trafficking in human beings in 5 cases (29%), in 1 case for trafficking in human beings and mediation in prostitution (6%) and in 1 case for trafficking in minors for adoption (6%).



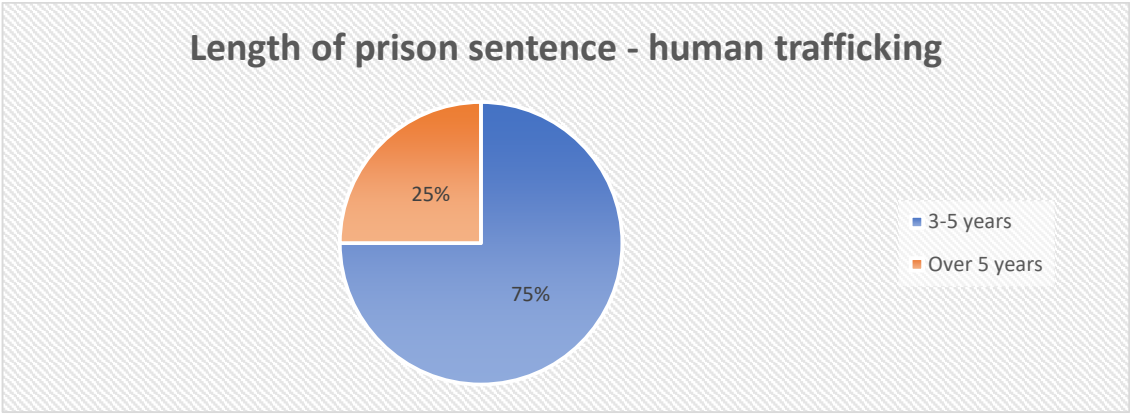
Data on **types of sanctions** indicate that persons found guilty were sentenced to imprisonment, whether imposed as an "effective" prison sentence (all cases related to trafficking in human beings) or as a suspended sentence - a warning measure from Article 65 of CC (in 7 cases, of which in 6 cases for the criminal offense of mediation in prostitution and in 1 case for the offense of trafficking in minors for adoption). Only in 1 case it was determined that the defendant would serve the prison sentence in the premises of his residence (in accordance with Article 45, paragraph 3 of CC) for the crime of mediation in prostitution. In case of 9 defendants, in addition to the imprisonment sentence or suspended sentence, a fine in the range of 20,000-300,000 RSD was also imposed. Furthermore, a security measure of the seizure of objects from Article 87 of CC was imposed to 2 defendants, and in 1 case, the permanent confiscation of material gain in accordance with Articles 91-92 of CC.



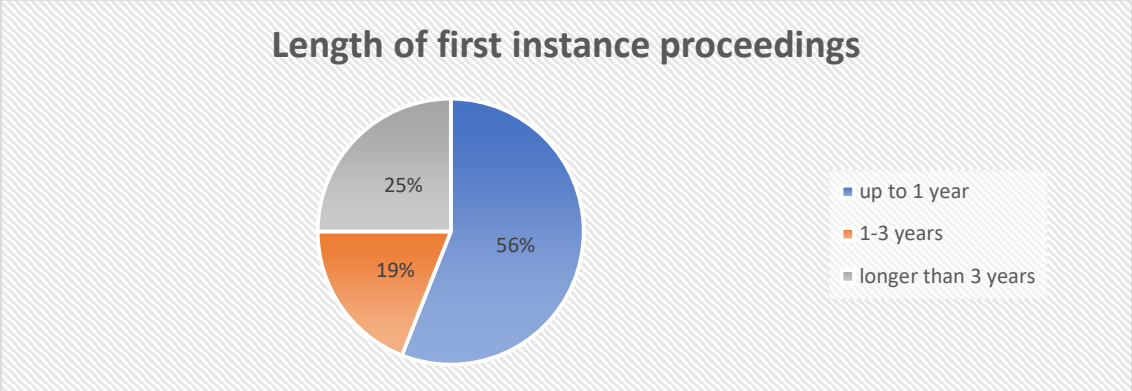
Regarding the **length of imprisonment for all criminal offenses** that are the subject of the analysis, and which the court determined for the defendants (regardless of whether the defendants were sentenced to "effective" prison sentences, or the security measures institute was applied - suspended sentences), data indicate that the highest determined individual sentence was 9 years, the shortest 6 months, while the average length of an individual sentence was 2 years and 1.5 months. The longest single sentence was 5 years and 6 months, and the shortest one was 1 year and 6 months. This means that imprisonment under 3 years was determined in 73% of cases, imprisonment in the range of 3-5 years in 20% of cases, and imprisonment over 5 years in 7% of cases.



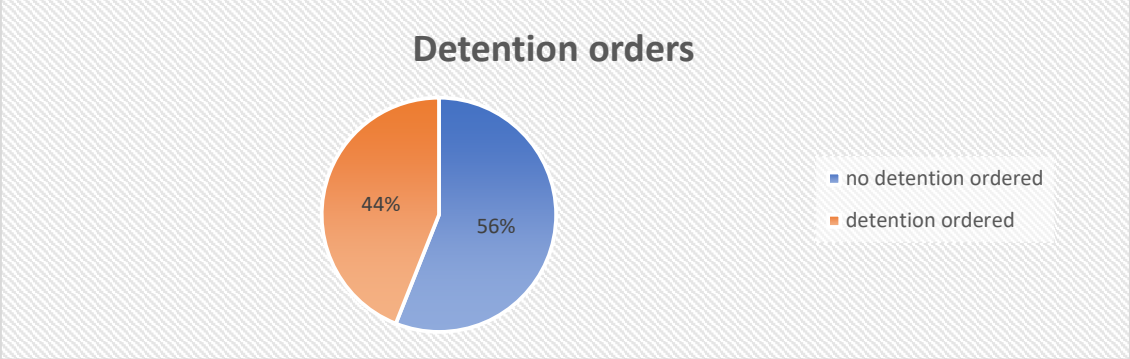
Analysis of the length of punishment for the criminal offense of mediation in prostitution indicates that the highest prison sentence was determined and imposed in the length of 1 year and 6 months. For the criminal offense of trafficking in minors for adoption, the sentence of 1 year of imprisonment suspended for 3 years was imposed. Regarding the **number of sentences imposed for the crime of human trafficking**, the analysis of the first instance judgements indicates that the lowest sentence was 3 years, while the highest sentence was 9 years. It may be concluded that in 75% of cases, the criminal offense of trafficking in human beings was penalized by 3-5 years in prison and in 25% of cases by more than 5 years. Compared to the data from the previous analysis for 2018, it can be concluded that there was an increase in the number of imprisonment sentences of 3-5 years compared to 2018, when the share had been 50%, as well as a decrease in the share of sentences over 5 years, which had been 38% in the previous year. A detailed overview of the sanctions is presented in tables in Chapter 3 "Penal Policy".



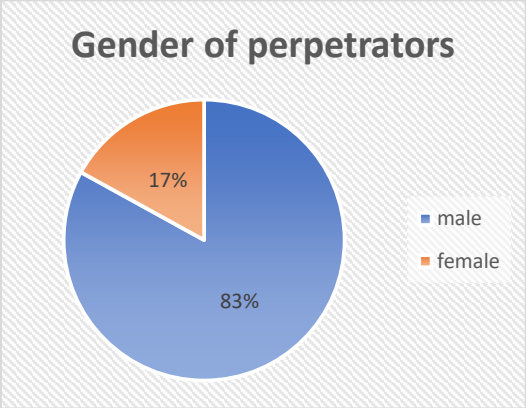
Length of first instance proceedings was analyzed in relation to the time from the indictment to the day of the first-instance decision. According to the stated criteria and according to the available data, the maximum duration of the court proceeding was 15 years, while the shortest one lasted 1 day (plea agreement). The average duration of the proceedings was 3 years and 2 months, which is longer than the average for 2018 when the average duration of the proceedings had been 2 years and 3 months. In 56% of cases the first instance proceedings lasted up to 1 year, from 1-3 years in 19% of cases, while 25% of the proceedings lasted longer than 3 years (if compared, the analysis for the previous 2018 noted that in 22% of cases the proceedings lasted up to 1 year, 45% of the proceedings lasted from 1-3 years, while 33% of the proceedings lasted longer than 3 years, which is certainly a consequence of a large number of judgements passed in 2019 following a plea agreement, especially for the criminal offense under Article 184 of CC).

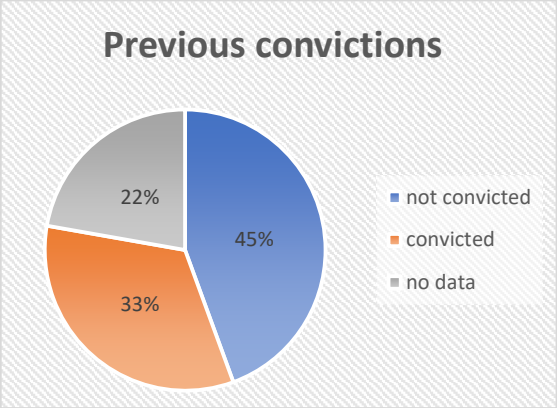


Based on available data in the first instance judgements, it can be determined that detention was ordered in 44% of cases, with the longest duration of detention being 1 year and 4 months, and the shortest 2 days.



Analysis of the data on perpetrators (a total of 18 persons), which were available in the first instance judgements, show that of the total number of perpetrators, 83% were male and 17% female. In terms of the age distribution, data were missing in most of the judgments. Regarding the data on previous convictions, the available data from the analyzed judgements show that 6 defendants were previously convicted (33%), 8 were not previously convicted (45%), while for the rest of the defendants the data could not be determined from the text of the judgements (22%).

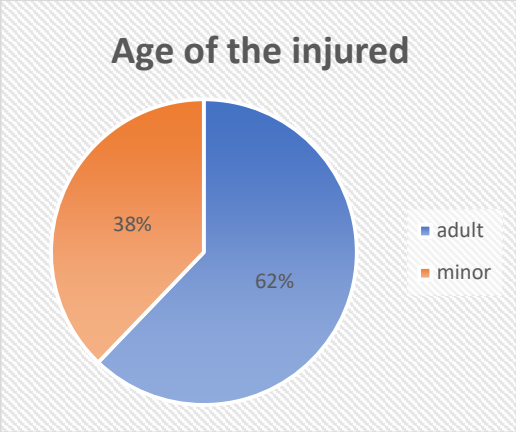


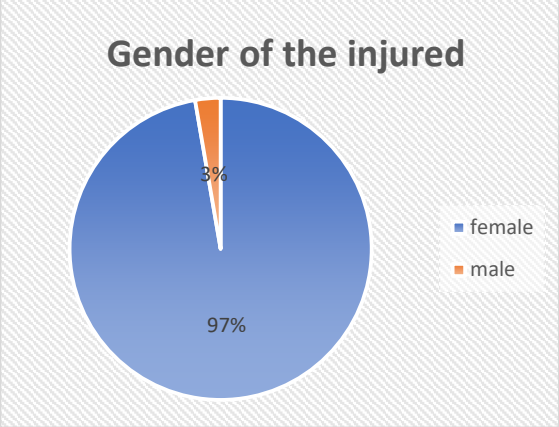


Based on the first instance decisions, it is mostly not possible to determine the data on marital and family status of the defendants (available data: 1 married, 3 out of wedlock, 1 divorced), as well as on their parental status (for more than half of the defendants there is no data available, it can be determined that 7 defendants have children, of which 4 defendants have more than 1 child, and 4 have minor children). Due to the anonymization of the collected first instance decisions, the statistical

analysis of the educational and employment status of the defendants is also challenging. Regarding the education of the perpetrators, the available data indicate that 2 persons have completed primary school, 1 person has completed secondary school and 1 person has not completed any school. The analysis of the employment status of the perpetrators, according to the available data, indicates that 6 perpetrators were employed, 2 were not, and 1 person had no occupation.

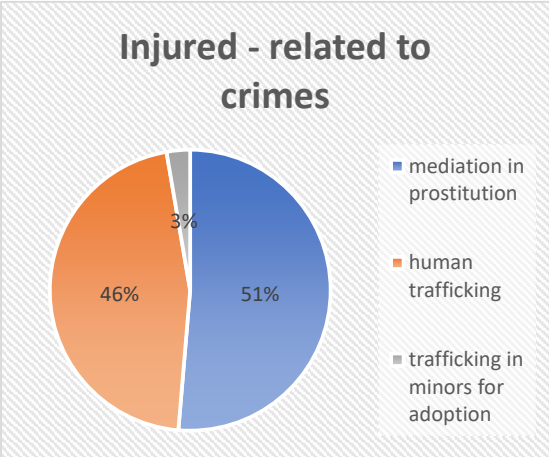
There were a total of 37 **injured** parties in the first instance decisions, of which 19 injured in the proceedings before the Basic Court (all 19 persons were victims of the criminal offense of mediation in prostitution under Article 184 of CC) and 18 victims in the proceedings before the Higher Court (17 of the crime of trafficking in human beings under Article 388 of CC and 1 of the criminal offense of trafficking in minors for adoption under Article 389 of CC of RS). Out of the total number of 37 victims of all criminal offenses, 14 injured parties (38%) were minors at the time of the commission of the criminal offense. Out of that number, there were 3 minor injured persons in the proceedings before the Basic Court (crime of mediation in prostitution) and 11 minor victims in the proceedings before the Higher Court (10 of the crime of trafficking in human beings and 1 of the criminal offense of trafficking in minors for adoption). According to the available data from the analyzed first instance decisions related to the injured parties, 36 injured persons (97%) were female, while only 1 injured person was male (3%).





Out of the total number of 37 victims in the first instance decisions, the criminal offense of mediation in prostitution injured 19 persons (51%), the criminal offense of trafficking in human beings 17 persons (46%) and the criminal offense of trafficking in minors for adoption 1 person (3%).

When it comes to the **type of exploitation** related to the crime of trafficking in human beings under Article 388 of CC, according to the data from the first instance decisions, 82% or 14 victims were exposed to sexual exploitation (of which 7 were minors), and 12% or 2 injured (in both cases minors) to labor exploitation (begging), while 6% or 1 injured person (minor) was forced to commit the crime of theft. The crime of human trafficking was most often committed by deception of the injured, as well as abusing the trust and difficult material, social or family circumstances of the injured (in all 17 cases of trafficking in human beings). In addition to these circumstances, the abuse of authority and the relationship of dependence and the age of the injured party, were also recorded in 7 cases, while the restriction of movement, threats and use of force were as well recorded in 9 cases.

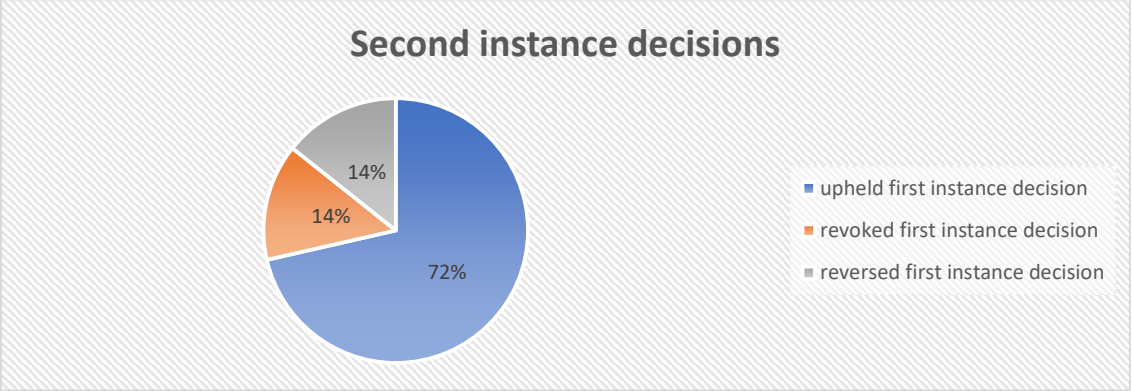


Regarding decisions on the **compensation claim**, decisions on the compensation claim were contained only in 7 first instance decisions, whereby all the injured parties in these proceedings were referred to litigation in order to realize a damage claim (17 injured out of the total number of 37 damaged). In the proceedings before the Basic Court, out of a total of 9 judgments, the decision whereby the injured parties were referred to litigation in order to realize a property claim was contained only in 5 judgments (for 8 injured persons). Out of 7 proceedings before the Basic Court, which were concluded by plea agreement, only in 4 cases the injured parties were referred to litigation to realize a compensation claim (a total of 7 injured parties). In other cases, there was no data on this issue. In the judgments of the Higher Courts, data on the referral of injured parties to litigation could be found in only 2 proceedings (9 injured parties), and in the remaining 5 proceedings before the Higher Courts, in 4 judgments there was no information on whether the injured parties filed compensation claims and whether they were referred to litigation (only in 1 proceeding it was stated that the injured party filed a compensation claim, which was not determined), while 1 judgment was an acquittal. Only in one proceeding, an attorney of the injured parties determined a part of the compensation claim with a proposal that the court made a decision in the part that referred to the violation of honor and reputation in the amount of 500,000 dinars.

3.1.2. Second instance judgements data

The analysis also includes 13 court decisions rendered during 2019 in the second instance proceedings by the Appellate Courts in Belgrade, Niš and Novi Sad, which related to the criminal offenses of human trafficking under Article 388 of CC and mediation in prostitution under Article 184 of CC of RS. In addition to the aforementioned criminal offenses, in individual cases the decisions also referred to the criminal offenses of the copulation with a child under Article 180 of CC; the sexual intercourse through abuse of position under Article 181 of CC; the exhibition, procurement and possession of pornographic materials and exploiting juveniles for pornography under Article 185 of CC; the domestic violence under Article 194 of CC of RS. The total number of perpetrators in these judgements was 21. The analyzed first instance decisions are related to 5 second instance analyzed decisions.

Regarding the **type of decision**, the Appellate Court upheld the first instance judgements in 72% of cases (for 15 perpetrators, of which 12 for trafficking in human beings and 3 for mediation in prostitution). First instance decisions were revoked and returned to the first instance court for reconsideration in 14% of cases (3 accused of human trafficking), and in 14% of cases first instance decisions were reversed (in case of 3 defendants - 1 defendant accused of trafficking in human beings; 1 accused of mediation in prostitution in respect of the sentence, which was reduced; for 1 defendant for trafficking in human beings, the legal qualification was changed and the sentence was increased). Compared to the data of previous years, an increase in the percentage of confirmatory judgments can be noted (72% in 2019, 55% in 2018 and 37% in 2017).



The longest **decision-making period** in the second instance proceedings (calculated from the day of passing the first instance decision to the day of rendering the second instance judgement) was 7 months and 10 days, while the shortest decision-making period was one month. The average decision-making period is 4 months and 27 days.

3.2. Position and rights of victims

As in previous years, the analysis of judicial practice through the analysis of court judgements rendered in criminal proceedings during 2019 has primarily been focused on the position of victims of criminal offenses of trafficking in human beings, mediation in prostitution and trafficking in minors for adoption, by following fundamental standards of protection and realization of the rights and support of the victims as per the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized* Crime of 2000 *(Palermo Protocol) and Council of Europe Convention on Action against Trafficking in Human Beings* of 2005. With the aim of improving the position of the trafficking victims and protecting their rights, a special attention is paid to the measures for granting support and protection to the victims in order to advance their position, such as the protection of privacy and identity of victims, support to victims – information and assistance in realization of the rights and interests of the victim in court proceedings, safety measures, and measures to realize damage claims. Special attention is paid to the position and protection of minor injured persons in the proceedings.

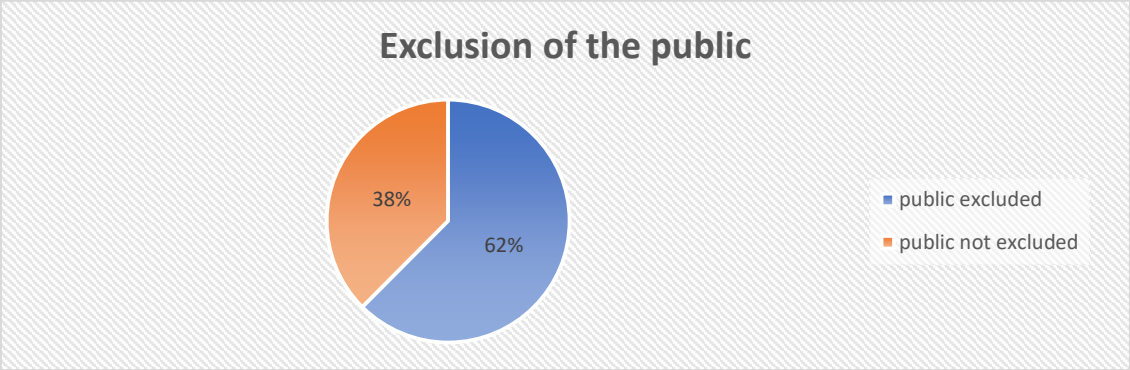
3.2.1. Protection of the victim's privacy

Protection of privacy and identity of victims, under Article 6 of the *Palermo Protocol* and Article 11 of the *Council of Europe Convention on Action against Trafficking in Human*, is one of the basic prerequisites for the protection of trafficking victims in court proceedings.

Nevertheless, the existing provisions on the exclusion of public, as well as the provisions on the protection of witnesses in the proceedings for human trafficking are not fully implemented in practice, which is especially surprising given that, according to the Criminal Code, the crime of trafficking in human beings is classified as a particularly grave crime. Inadequate implementation of the legal provisions, which would allow victims the protection of identity and privacy, as well as safety, is mainly a consequence of a failure to understand the vulnerable status of victims of trafficking and related crimes by the authorities in the proceedings.

This aspect of the protection of human trafficking victims is especially important considering the data on the age of the victims – the data from the analysis of first instance judgments in 2019 show that out of 37 injured, 14 were underage at the time when the offence was committed, which is 38% of the total number of injured. As 8 first instance decisions, out of 10, refer to plea agreements, in those cases according to Article 315(3) of CPC, the trial takes place without the presence of the public, and the prosecutor, the defendant and his attorney are summoned to the court. In the remaining cases (8

first instance decisions), information available in the court decisions indicated that the public was excluded in 2 proceedings (1 before Basic and 1 before Higher Court) where the injured were minors. In the other cases, the public was not excluded, or it cannot be established based on the decisions with certainty.



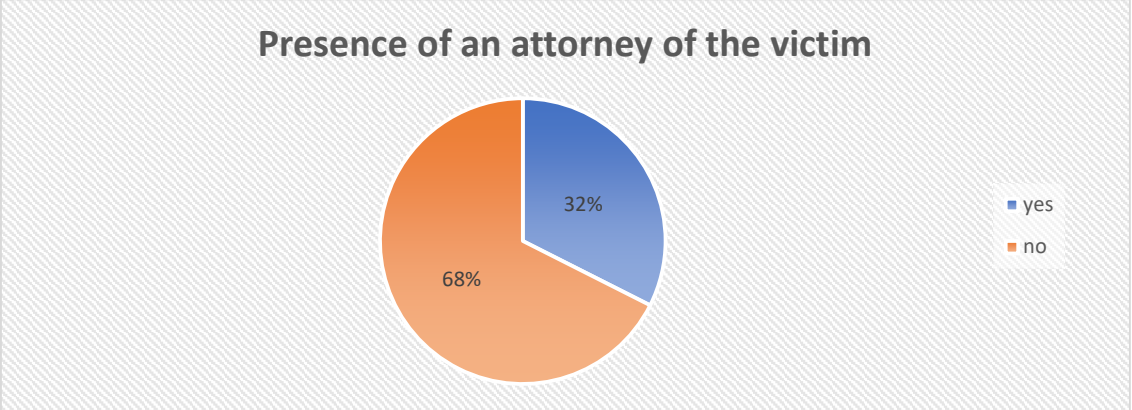
These data indicate that measures to protect the privacy and identity of victims are insufficiently applied in criminal proceedings. Provisions of the Criminal Procedure Code allow for this, as it stipulates (Article 363) that the panel may *ex officio* or upon a motion by a party or the defense counsel exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting public order and morality, the interests of minors or privacy of the participants in the proceedings. In this case, however, the panel may permit the presence of informed public, and at a request of the defendant also his spouse or close relatives, who are required to maintain the confidentiality of everything they learn at the proceedings (Article 364). In addition, provisions of this Code on especially vulnerable witnesses (Article 104) permit examination of the witnesses without the presence of the parties and other participants in the proceedings in premises where the witness is examined, if he/she is examined by use of technical equipment for video and audio transmission, and this should be implemented more consistently in cases of trafficked persons.

It may be concluded that domestic legislation contains all necessary institutes to ensure the protection of privacy and identity of trafficked persons in criminal proceedings, and therefore, this aspect of victim protection is another example of inconsistent implementation of the existing legal provisions.

3.2.2. Assistance to victims – counselling and information

Assistance to victims, i.e. providing information and assistance in realizing the rights and interests of the victim in a court proceeding (Article 6 of the *Palermo Protocol* and Articles 12 and 15 of the *Council of Europe Convention on Action against Trafficking in Human Beings*) is an important aspect in considering the position of the victim in criminal proceedings. Analysis of the court decisions in majority of the cases cannot provide detailed data on this aspect, considering that court decisions by their nature, lack information potentially significant for informing and counselling on the victim's rights and interests in the court proceedings.

According to the available data from the analyzed first instance decisions, it can be established that only 12 persons, out of 37 injured had attorneys in the proceedings (of which, 5 minors out of 14 in total). In case of 15 injured persons, the decisions show participation of the Centre for Social Work and the Centre for Human Trafficking Victims Protection, either through reports on victims obtained and used in the proceedings, or through presence of the Centre for Social Work during the hearing. The total of 6 injured had the status of an especially vulnerable witness in 2 proceedings before the Higher Court. In the first proceeding, the status of an especially vulnerable witness was granted to 4 adult injured parties and 1 minor injured (by the decision of the Higher Public Prosecutor's Office), and in the second proceeding to 1 minor injured person.



It is important to bear in mind that the Code stipulates that the authorities in the procedure shall inform the participants in the proceedings on their rights, and caution the participants in the proceedings who might omit to perform an action or fail to exercise a right due to ignorance, about the consequences of the omission (Article 8 of CPC). In addition, the public prosecutor and the court should inform the injured person on his/her rights in the proceedings (Article 50). Considering that the Constitution guarantees the right to a legal counsel in cases stipulated by law, one of the priorities in improving the position of especially vulnerable victims in court proceedings is the right to timely information.

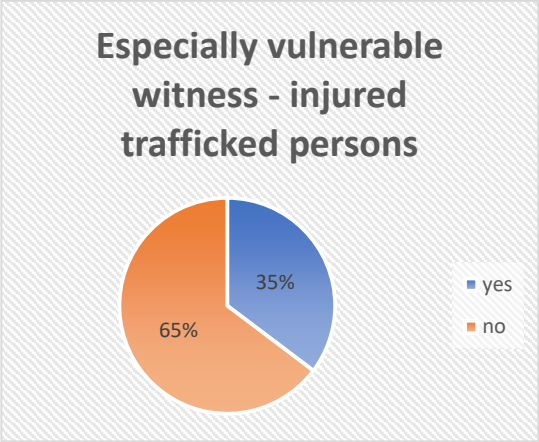
Considering the gravity of the consequences and the overall delicate position of the trafficking victims, it is necessary to pay more attention to this aspect of the victim protection. The situation could be largely improved if authorities in the proceedings considered the possibility of assigning the status of especially vulnerable witnesses to the victims more often. The majority of the trafficking victims meets one or more requirements for this status stipulated by law (age, way of life, gender, health status, nature, manner, or consequences of the crime, and other circumstances of the case), and the authority of the proceedings may, should they consider it necessary to protect the interests of a particularly vulnerable witness, decide to appoint an attorney to the witness (Article 103, paragraph 3 of CPC). Further, in order to improve the position of underage victims in court proceedings, it is necessary to fully implement the Law on Juvenile Offenders and Criminal Protection of Juveniles, especially provisions under which a minor as an injured party must have an attorney from the first hearing of the perpetrator, and in case when the minor does not have an attorney, the president of the court shall appoint one from the list of lawyers who have acquired specialized knowledge in the area of the rights of the child and criminal protection of minors, whereby the costs of such representation shall be paid out of the court's budget (Article 154).

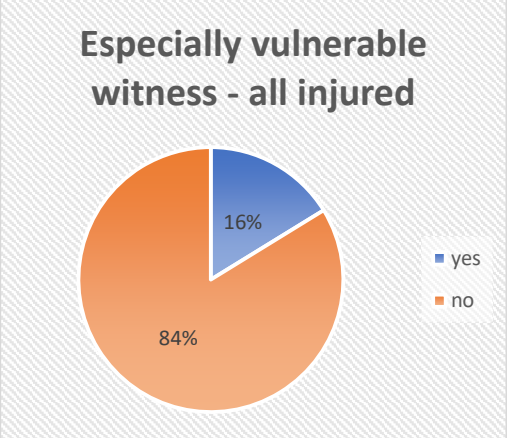
3.2.3. Safety and protection of victims

The obligation to provide the trafficking victims with a system of measures for their safety, security, and protection (Article 6 of the *Palermo Protocol* and Article 12 of the *Council of Europe Convention on Action against Trafficking in Human Beings*) is one of the most important aspects in realizing victims' rights in court proceedings. The analysis of the court decisions indicates that this aspect is still not given sufficient attention, despite the existing legislation, which may help to improve the rights of injured parties.

Safety and protection of the victim in and outside the court is best ensured when the perpetrator is detained, providing that legal conditions were met. Available data of the first instance decisions during 2019 indicate that during the first instance proceedings, defendants were detained in 44% cases, which is significantly less than in the previous year (when this number was 60%).

Data from the analyzed court judgments for 2019 regarding the status of an especially vulnerable witness still cannot be considered satisfactory when it comes to the aspect of safety and protection of the victim. Out of the total number of 37 injured parties in the analyzed first instance decisions, only 6 injured parties received the status of especially vulnerable witnesses in 2 proceedings conducted before the Higher Court for the criminal offense of trafficking in human beings. In the first proceeding, the status of an especially vulnerable witness was granted to 4 adults and 1 minor injured person by a decision of the Higher Public Prosecutor's Office, and in the second proceeding to 1 minor injured person. This data is worrying given the significant share of minor victims who amount to 38% of the total number of all victims, or 59% of the victims of the crime of trafficking in human beings. In the analyzed first instance decisions, no security measures were imposed, i.e. there were no other recorded cases of measures provided by law, which would ensure the safety and protection of the victim.





The analysis of the decisions of the two mentioned proceedings, in which the injured parties were granted the status of an especially vulnerable witness, it can be established that in the first proceeding (4 adult injured parties and 1 minor), the court in the repeated procedure read the previous testimonies of the injured parties, which had been given in the premises of the Centre for Social Work, and the judgement stated that the injured parties were controlled and intimidated by the defendant's threats. In the second proceeding, for the minor victim, who is the stepdaughter of the defendant, it was stated that she was placed with her mother in a safe house, that is, the Shelter for Women and Child Victims of Violence and Human Trafficking, as well as that the testimony during the investigation and at the main trial was given "via video".

The absence of the status of an especially vulnerable witness in a great number of cases can hardly be explained, having in mind that victims of trafficking in the majority of cases meet legal conditions for this status in the proceedings (age, life experience, way of life, gender, health status, nature, manner, or consequences of the crime). Out of the total number of injured persons, all persons were injured by the criminal offense of mediation in prostitution and human trafficking, except for one injured by the criminal offense of trafficking in minors for adoption. Regarding the type of exploitation of the victims of trafficking, out of 17 victims of the crime of human trafficking, in 14 cases they were sexually exploited, in 2 cases there was labor exploitation (begging), while in 1 case there was coercion to commit crime (theft). The criminal offense of trafficking in human beings was most often committed by deception of the injured persons, as well as by abusing the trust and difficult material, social or family circumstances of the victims (in all 17 cases of trafficked victims). In addition to these circumstances, the abuse of authority and the relationship of dependence and age of the injured person were recorded in 7 cases, while restriction of movement, threats and use of force were additionally recorded in 9 cases.

Bearing in mind the specific position of the victims of these crimes, the actions of the authorities in the procedure, more precisely the competent prosecutor's offices and courts, must be directed towards ensuring the safety and security of the victim, especially during the hearing, in order to protect the rights of the victims and avoid re-traumatization of the victims, but at the same time provide a meaningful and a quality statement in the interest of a proper proceedings and determination of the criminal responsibility. This is especially important given that victims of trafficking, in many cases, are exposed to threats and physical and psychological violence during the commission of the crime, which leaves serious consequences.

The provisions of the Criminal Procedure Code provide for the obligation of the court to protect the victim from insult, threat, or any other kind of attack (Article 102). This, in addition to the provisions on especially vulnerable witness (Articles 103 and 104), may ensure higher degree of safety and protection of trafficking victims. Additionally, there are other measures which can contribute to the protection of the victims' safety, such as the measures concerning the presence of the defendant and proper conduct of criminal proceedings under Article 188 of CPC, which, besides detention, also provides for the possibility of other measures, such as the prohibition of approaching, meeting or communicating with a certain person, or visiting certain places. The Law on Juvenile Offenders and Criminal Protection of Juveniles stipulates that, in view of the characteristics of the offence and personality of a minor, if the court deems necessary, it may order the examination of the minor by use of audio and video transmission technology and without the presence of the parties and other participants in the proceedings (Article 152).

3.2.4. Hearing

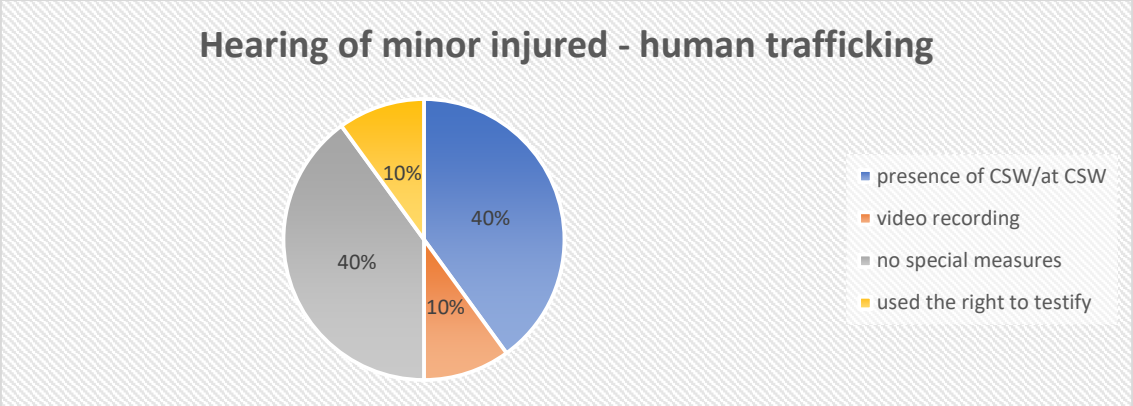
The provisions of the *Palermo Protocol* and the *CE Convention* concerning the protection of the rights of victims and exercising their rights in the proceedings must be especially prominent during the hearing of the victim. Actions of the competent prosecutor's offices and courts must be directed at ensuring the safety and security of the victims, especially during the hearing, in order to protect their rights and to avoid secondary victimization, while at the same time providing a quality statement in the interests of proper conduct of the proceedings and determining criminal responsibility.

The analysis of judicial practice for 2019, based on available data, indicates that no sufficient attention was given to the position of the victims in criminal proceedings, in relation to the rights of victims of trafficking, such as information and protection of privacy and safety. The analysis of the first instance judgments indicates that, according to available data, the public was mainly not excluded from the main hearing to protect the victims' interests. As a half of the total number of 16 first instance verdicts refers to plea agreements, in these cases in accordance with Article 315 paragraph 3 of CPC, the hearing is held without presence of the public, and the public prosecutor, the defendant and his attorney are summoned to the hearing. In the remaining cases (8 proceedings) the data available in the judgments indicated that the public was excluded in only 2 proceedings, and in both proceedings the victims were minors. Out of the total number of 37 injured persons, only 6 (of which 2 minors) received the status of an especially vulnerable witness, and that was in 2 proceedings for the criminal offense of trafficking in human beings before the Higher Court. This aspect of protection of victims of trafficking is especially important when taking into account the data on the age of victims - data of the analysis of the first instance decisions for 2019 indicate that out of a total of 37 victims, 14 were minors at the time of the commission of the crime, which makes 38 % of the total number of the injured.

As before, the injured parties are questioned in the investigation and at the main trial, sometimes even twice. One decision only states that the motion for re-examination of the injured parties was rejected, with the explanation that "they were interrogated several times, each time they made a detailed and clear statement about the relevant circumstances, so re-hearing would be inexpedient, would lead to a prolongation of the procedure and would certainly lead to secondary victimization". When it comes to the hearing of minor injured parties, in the proceedings before the Basic Courts,

only 2 decisions were not rendered upon a plea agreement, whereby in the first case it was stated that the court "was familiar with the contents of the minutes of the examination of the minor injured party", while in the second case there was no information on the manner of hearing of the minor injured person.

In the proceedings before the Higher Courts, it can be established, based on the first instance decisions, that 3 minor injured parties were heard in the presence of an attorney and a representative of the Centre for Social Work, 1 minor injured party with the status of an especially vulnerable witness testified in the investigation and at the main trial as stated "via video", while 1 minor and 4 adult victims also with the status of especially vulnerable witnesses were heard in the premises of the Centre for Social Work. Furthermore, 4 minor injured parties were questioned in the investigation and at the main trial without information on whether any special measures were applied, and 1 minor injured party exercised the right not to testify against the defendant who was her father. When the reports of the Centre for Human Trafficking Victims Protection were obtained in the proceedings, the court stated in the judgments that these reports corroborated the testimony of the injured parties.



It is important to note that in a number of cases the data from first instance decisions do not provide sufficient information regarding the manner or number of hearings of victims at various stages of the proceedings, as well as the presence of attorneys or other measures to protect the victim's position in court proceedings. The fact that in the most cases in the reasoning of the judgement, the court focuses on the content of the testimony of the injured parties, without providing information on the act of hearing (number of hearings, possible reading of previous statements, manner of hearing, presence of attorney, etc.) indicates that injured parties continue to be treated primarily as a source of information on crimes, while all aspects of the protection with regard to the position and rights of victims are being neglected. It must also be taken into account that the judgements passed by accepting a plea agreement constitute 50% of the total number of the first instance decisions, and that their content cannot determine the relevant data on the position of the injured parties in this respect.

The change in the statements of the injured during the procedure was recorded based on available data in cases of 3 injured persons. An injured person, who was questioned twice during the investigation and twice during the main trial, changed her statement during the last hearing so as not to charge one of the defendants; when asked by the investigating judge "why it took her two months to report the whole event to the police", she stated that she was afraid and that the police inspector encouraged and supported her. In the second procedure, the decision states that one minor injured person changed her statement at the main trial "as a result of a possible influence of the defendants", and although, in addition, the report of the Centre for Human Trafficking Victims Protection identified her as a victim of trafficking in human beings, no measures were taken in the proceedings to protect her. In the third case, one minor victim changed his statement at the main trial so as not to charge

the defendant, stating that he testified in the investigation as a minor and that he was "afraid of a correctional facility".

In view of the provisions of the Criminal Procedure Code pertaining to the status and the method of examination of an especially vulnerable witness (Article 103-104 of CPC), it is clear that the trafficking victims in the majority of cases meet the conditions for being granted this status in the proceedings (age, life experience, way of life, gender, health status, nature, manner, or consequences of the crime). Careful analysis of the court decision data shows that it is extremely important to grant the status of an especially vulnerable witness to the victims, particularly based on their age, way of life and poor living conditions, as well as the consequences of the crime of trafficking in human beings.

The data from the analyzed decisions in relation to the hearings of injured persons in the proceedings show lack of understanding for the delicate position of the victims, and the negligence of the rights and interests of victims in the proceedings. Authorities in the proceedings treat injured parties as sources of information about the criminal offence in the most cases, which takes away their guaranteed rights and protection in the proceedings and especially compromises protection of minors. As the results of the so far analyses indicate similar problems in practice, which is obviously a consequence of the lack of understanding of the specific position of trafficked persons, especially minors, by the authorities in the proceedings, it is reasonable to ask whether the protection standard of trafficked persons in the court proceedings can be improved only through consistent implementation of the existing legislation, or it is necessary to improve specific legal solutions in accordance with ratified international documents in this area and recommendations from the bodies monitoring the implementation thereof.

This especially relates to the provisions of the Criminal Procedure Code, which pertain to the rules for the hearing of persons with the status of particularly vulnerable witnesses (treating with particular care, examining in the presence of a psychologist or a social worker, testifying using technical devices for video and audio transmission with no other participants present, examining the witness in their residence or in an authorized institution, prohibition of confrontation), as well as to the provisions of the Law on Juvenile Offenders and Criminal Protection of Juveniles (the possibility to examine the witness by using technical devices for video and audio transmission with no other parties or participants present). Results of the analysis for 2019, as for the previous years, demonstrate that these solutions are rarely used.

It is important to bear in mind that the provisions of the Criminal Procedure Code, which relate to the status and manner of examining an especially vulnerable witness (Articles 103-104 of CPC) can be used for improvement of the position of trafficked persons in general, but are of special importance for the protection of the rights of minor persons, who are victims of a crime. In most cases, trafficked persons meet conditions to be granted such a status in the proceedings, and this especially applies to the minors. Pursuant to Article 103 of CPC, in view of the mentioned criteria, the court may grant the status of an especially vulnerable witness. Provisions of CPC, which refer to the rules on examination of the persons with the status of especially vulnerable witness, require acting with special care, while the examination can be conducted with assistance of a psychologist, social worker or other professional, with a possibility of conducting the questioning by use of technical devices without presence of other participants, questioning in their residences or other competent institution. However, none of these provisions is mandatory (Article 104). Even the prohibition of confrontation of especially vulnerable witness with the defendants is conditioned by the defendant’s request for confrontation, and the court shall allow it taking care of the extent of vulnerability of the witness and the rights of the defense (Article 104).

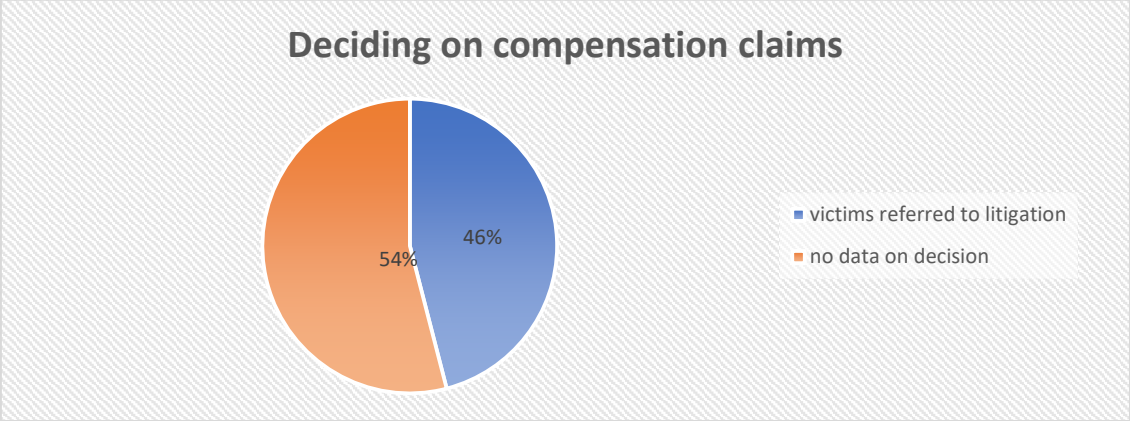
The provisions of the Law on Juvenile Offenders and Criminal Protection of Juveniles also envisage only a possibility, and not an obligation to examine minor victims by use of technical devices for video and audio transmission and without the presence of parties and other participants in the proceedings.

The authorities in charge of the proceedings for the offences committed against a minor are obliged to treat the victims with consideration of their age, personality, education and living circumstances, especially trying to avoid possible harmful consequences of the proceedings to their personality and development, and minor victims shall be questioned with assistance of a psychologist, pedagogue or another professional (Article 152). If a minor, who is a victim of the crime referred to in Article 150 of this Law (including the crime of human trafficking) is questioned as a witness, the questioning may be conducted two times at most and exceptionally more times, if it is necessary for achieving the purpose of the criminal proceedings. Inconsistent implementation of these provisions leads to the situations when minors are questioned multiple times. If, in view of specific characteristics of the offence and personal characteristics of the minor, the court finds it necessary, the judge shall order that the minor is questioned with the use of technical devices for video and audio transmission, and the questioning is conducted without the presence of parties and other participants in the proceedings, in the room in which the witness is accommodated, so that the parties and other entitled persons, may ask questions through the judge, psychologist, pedagogue, social worker or another professional. If a minor is questioned as a witness, who, due to the nature of the crime, consequences or other circumstances, is especially vulnerable, that is, is in an especially grave psychological state, in contrast to the solutions stipulated by CPC, it is forbidden to conduct the confrontation between such a witness and the defendant (Article 153), but the question of assessing these circumstances still remain. An underage injured person must have an attorney from the first questioning of the defendant.

3.2.5. Compensation – deciding on compensation claims in criminal proceedings

Right to compensation, as one of the important issues in the field of human trafficking victims' rights, has been included in the international standards of protection through Article 6 of the *Palermo Protocol* and Article 15 of the *Council of Europe Convention on Action against Trafficking in Human Beings*. Although the existence of an appropriate legal framework, which guarantees the victims of human trafficking the realization of their rights to compensation is indisputable on the level of national legislation, the case law in this area is almost non-existent. The analysis of the decisions in criminal proceedings in 2019 indicates that the situation in this field has not changed compared to the previous years, and that human trafficking victims are deprived of this aspect of protection.

Regarding deciding on **compensation claims**, only 7 first instance judgements contain decision on the compensation claim, in a way that all injured parties in these proceedings were referred to civil proceedings in order to realize the compensation claim (17 injured out of the total number of 37 injured parties). In the proceedings before the Basic Court, in 5 out of a total of 9 proceedings, the injured parties were referred to civil proceedings to realize a compensation claim (8 injured parties). Out of 7 proceedings concluded before the Basic Court upon the plea agreement, only in 4 cases the injured parties were referred to litigation in order to realize a compensation claim (a total of 7 victims), while in the other cases there is no data. In the judgments of the Higher Courts, data on the referral of injured parties to litigation can be found in only 2 proceedings (9 victims), and of the remaining 5 proceedings before the Higher Courts, in 4 judgments there is no information on whether the injured parties filed a compensation claim and whether they were referred to litigation (only in 1 procedure it was stated that the victim submitted a compensation claim, which she did not determine), while 1 judgment was an acquittal. Only in one proceeding, the attorney of the injured parties determined a part of the compensation claim with a proposal that the court made a decision in the part that referred to the violation of honor and reputation in the amount of 500,000 dinars.



Bearing in mind the provisions of the Criminal Procedure Code, a consistent implementation of the existing legal provisions, would certainly encourage the victims to claim compensation in all cases, and their attorneys to request that the damage claims are decided upon in the criminal proceedings. The Criminal Procedure Code (Article 252-260) provides for the obligation of the authorities in the proceedings to collect evidence needed to decide on the claim before the claim itself is filed, unless it significantly prolongs the proceeding. The provisions of the law regulating the procedure of enforcement and security allow for a possibility that in a criminal proceeding provisional measures may be ordered to secure the compensation claim arising from the commission of the crime. It is stipulated that in the decision pronouncing the defendant guilty, the court shall award full or partial compensation, and refer potential surplus to civil suit, with restrictions that, if the data of criminal proceedings do not provide a reliable basis for either full or partial judgment, the court shall refer the authorized person to claim the full compensation in a civil suit.

The results of the analysis of judicial practice for 2019, which follow up the results of the analyses for the previous years, indicate that it is necessary to change the practice so as to resolve compensation claims in criminal proceedings, to avoid lengthy and expensive civil procedures and spare the victims from having to repeat the proceedings, testifying, and forensic expertise. So far analyses demonstrate that in the period since 2011 until today, there have been only 2 final decisions on compensation in the civil proceedings.

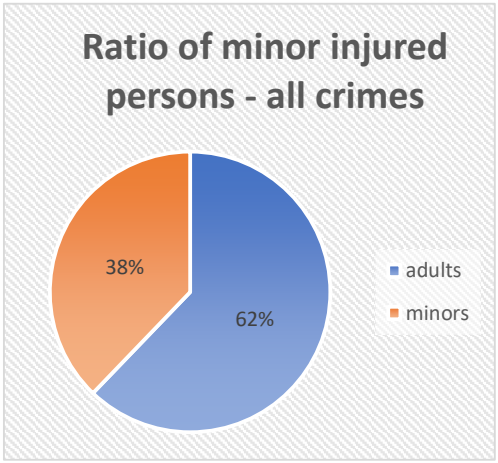
3.2.6. Position of minor victims

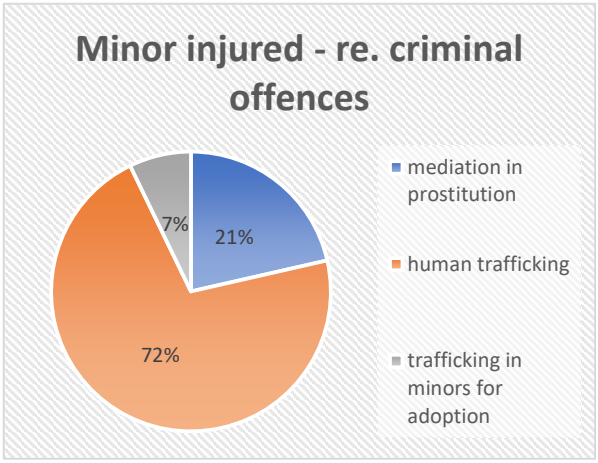
As part of the analysis of the position of victims in criminal proceedings, in the previous sections the available data from the first the instance judgements related to all victims have been analyzed (both adults and minors). This section offers data and observations concerning the position and exercise of the rights of minor injured persons and in relation to the existing standards of protection. A special review of the position and rights of minor victims is important from the aspect of prevention and protection of victims of human trafficking, bearing in mind that the results of the analysis of the first instance decisions reached during 2019 indicate that minors make up to 38% of the victims of all crimes, or 59% of the victims of trafficking.

The rights relevant to the protection of victims such as the protection of the privacy and identity of victims (Article 6 of the *Palermo Protocol* and Article 11 of the *Council of Europe Convention on Action against Trafficking in Human Beings*), assistance to victims - providing information and assistance in exercising the rights and interests of the victim in court proceedings and measures for the safety of the victim (Article 6 of the *Palermo Protocol* and Articles 12 and 15 of the *Council of Europe Convention on Action against Trafficking in Human Beings*), are particularly important when it comes to minor victims, including the obligation to implement special prevention measures (Article 5 of the *Council of Europe Convention on Action against Trafficking in Human Beings)*. In addition, the protection of minors is further ensured by a number of international instruments such as the *UN Convention on the*

Rights of the Child [107], *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*[108] and *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*[109], also with regard to the protection of privacy, the right to assistance and information, security and interrogation.

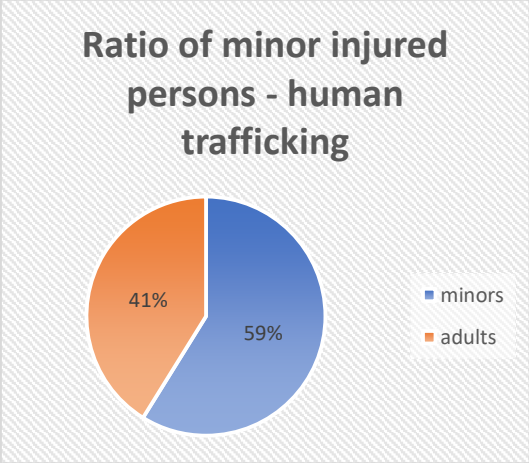
Out of the total number of 37 injured persons in the first instance judgements for the crimes of mediation in prostitution, trafficking in human beings and trafficking in minors for adoption, 14 injured persons (38%) were minors at the time of the commission of the crime (3 minor injured parties in proceedings before the Basic Court and 11 minor injured in proceedings before the Higher Court). Of that number, 3 minors (21%) were injured by the criminal offense of mediation in prostitution, 10 minors (72%) by the criminal offense of trafficking in human beings and 1 minor by the criminal offense of trafficking in minors for adoption (7%). In the case of minor victims, 2 judgments were rendered upon the plea agreement in terms of the provisions of Articles 313-319 of the Criminal Procedure Code (1 judgement before the Basic Court for the criminal offense of mediation in prostitution - 1 minor injured party, and 1 before the Higher Court for the crime of trafficking in minors for adoption - 1 minor injured party).

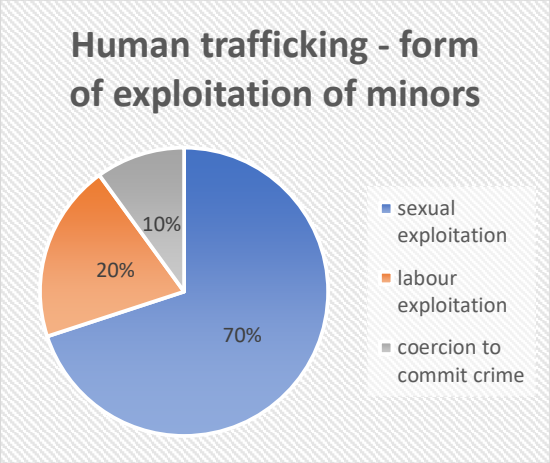




Of the total number of victims for the crime of human trafficking, 59% are minor victims. Regarding the type of exploitation of minor victims of the criminal offense of human trafficking under Article 388 of the Criminal Code, in first instance decisions, sexual exploitation was recorded in 70% of cases (7 minor injured persons), labor exploitation (begging) in 20% of cases (2 minor injured persons), while coercion to commit the crime of theft was recorded in 10% of cases (1 minor injured person).

[107] "Official Gazette SFRY – International treaties", No.15/90 and "Official Gazette FRY – International treaties", no. 4/96 and 2/97
[108] "Official Gazette FRY – International treaties", no. 7/2002
[109] "Official Gazette RS – – International treaties", no. 1/2010





Protection of privacy as a particularly important aspect of the rights of minor victims is not sufficiently provided. Pertaining to minor victims, in 2 cases the first instance verdicts were passed upon a plea agreement, and in these cases in accordance with Article 315 paragraph 3 of the CPC the hearing was held without presence of the public. In the remaining cases, the data available from the first instance judgements indicate that in the case of minor injured parties, the public was excluded from 2 proceedings (1 before the Basic and 1 before the Higher Court). In other cases, the public was not excluded, or it cannot be established from the decisions with certainty.

Provisions of the Criminal Procedure Code allow for this, as it stipulates (Article 363) that the panel may *ex officio* or upon a motion by a party or the defense counsel exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting public order and morality, the interests of minors or privacy of the participants in the proceedings. In this case, however, the panel may permit the presence of informed public, and at a request of the defendant also his spouse or close relatives, who are required to maintain the confidentiality of everything they learn at the proceedings (Article 364). In addition, provisions of this Code on especially vulnerable witnesses (Article 104) permit examination of the witnesses without the presence of the parties and other participants in the proceedings in the premises where the witness is examined, if he/she is examined by use of technical equipment for video and audio transmission, and this should be implemented more consistently in cases of trafficked persons.

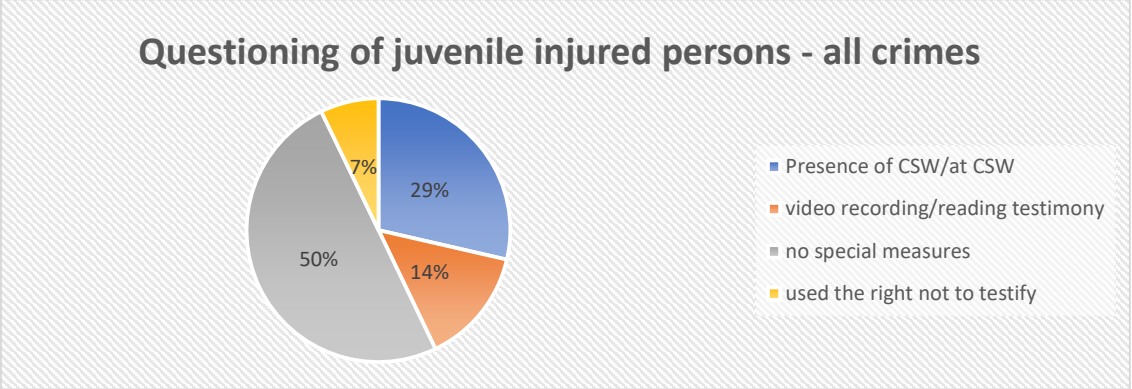
The data available in the analyzed first instance decisions show that 5 minor injured persons, out of a total of 14, had attorneys. In the case of 10 minor victims, the decisions show participation of the Centre for Social Work and the Centre for Human Trafficking Victims Protection, either through reports on victims obtained and used in the proceedings or through the presence of the Centre for Social Work during the hearing. Only 2 minor victims had the status of an especially vulnerable witness in 2 proceedings before the Higher Court for the criminal offense of trafficking in human beings. This data is worrying given the significant share of minor victims who amount to 38% of the total number of all victims, or 59% of the victims of trafficking. In the analyzed first instance decisions, there were no security measures imposed, i.e. there were no other recorded cases of other measures provided by law that would ensure the safety and protection of the victim.

The situation could be significantly improved if the authorities in the proceedings considered more often to grant the status of an especially vulnerable witness to victims, especially in view of the determined criteria such as age, way of life, gender, health condition, nature, manner or consequences of committing the criminal offense, or other circumstances of the case, and the authorities in the proceedings may, if they deem necessary to protect the interests of an especially vulnerable witness, decide on the appointment of a proxy for the witness (Article 103, paragraph 3 of CPC). Further, it is necessary to fully implement the Law on Juvenile Offenders and Criminal Protection of Juveniles, especially provisions under which a minor as an injured party must have an attorney from

the first hearing of the perpetrator, and in case when the minor does not have an attorney, the president of the court shall appoint one from the list of lawyers who have acquired specialized knowledge in the area of the rights of the child and criminal protection of minors, whereby the costs of such representation shall be paid out of the court's budget (Article 154).

Regarding the hearing of minor injured parties in criminal proceedings, in 2 proceedings that ended with a plea agreement, and in which minors were injured parties, it is not possible to establish any information on this aspect. In other cases, 2 decisions before the Basic Courts were not rendered by accepting a plea agreement, one of which stated that the court "was acquainted with the contents of the minutes of the examination of the minor injured party", while in the other there was no information on the manner of questioning the minor victim. In the proceedings before the Higher Courts, it can be established from the first instance decisions that 3 minor injured persons were heard in the presence of an attorney and a representative of the Centre for Social Work; 1 minor injured party with the status of an especially vulnerable witness testified in the investigation and at the main trial "via video"; 1 minor injured person also with the status of an especially vulnerable witness was heard at the premises of the Centre for Social Work. Furthermore, 4 minor injured parties were questioned in the investigation and at the main trial without information on whether any special measures were applied, and 1 minor injured party exercised the right not to testify against the defendant who was her father.

The Law on Juvenile Offenders and Criminal Protection of Juveniles stipulates that, if, in view of specific characteristics of the offence and personal characteristics of the minor, the court finds it necessary, the judge shall order that the minor is questioned with the use of technical devices for video and audio transmission (therefore as a possibility but not an obligation of the court), and the questioning is conducted without the presence of parties and other participants in the proceedings, with the obligation of the authorities of the procedure to treat the injured party taking into account his age, personality characters, education and circumstances in which he/she lives, especially trying to avoid possible harmful consequences of the procedure for his personality and development, provided that the interrogation of minors shall be conducted with the help of a psychologist, pedagogue or other professional (Article 152).



The analysis of the forms of exploitation and other circumstances of the crime of trafficking in human beings indicates that the crime of human trafficking was most often committed by deception of the minor injured persons, as well as by abusing the trust and difficult material, social or family circumstances (in all the cases), and often by abuse of authority and the relationship of dependence and age of the injured person, threats and use of force. These data further indicate the vulnerable position of minor victims of trafficking, and the fact that the lack of a stable family environment, i.e. adequate care of guardianship authorities and other services to ensure the best interests of minors, makes this group particularly vulnerable.

Available data from the analyzed first instance verdicts of the Basic and Higher Courts, in the case of all 10 minor injured persons by the crime of trafficking in human beings, indicate to circumstances of difficult family and social conditions: 1) a minor victim, with no contact with his father, stated at the hearing that in the investigation he had charged the defendant for fear of being sent to a correctional facility; 2) family on CSW records, a minor victim exhibited antisocial behavior, ran away from home, begged and socialized with a delinquent group of peers; 3) divorced parents, minor victim dropped out of school at the age of 14; 4) tendency to elope and antisocial behavior, theft, opposition to authorities, dysfunctional family and psychological and physical violence, minor victim identified as a victim of trafficking, without parental care; 5) a minor victim was placed under temporary guardianship due to negligence by her father and mother, and was later sent to a youth detention facility for the purpose of implementing the imposed educational measure; 6) a minor victim comes from a poor family; 7) a minor victim of her stepfather forced to beg, placed in a safe house with her mother, dropped out of primary school and was forced to marry (out of wedlock) at the age of 12; 8) a minor victim forced to beg by his father; 9) a minor victim grew up in the family where she was neglected; 10) a minor victim was abused by her father, at the time of the commission of the criminal offense she was in a shelter within a facility under the direct care of the CSW.

The analysis of the family and social circumstances of minor victims of the criminal offenses in question, establishes that all the victims have difficult family and / or social circumstances that the defendants have used in committing the criminal offense. Therefore, it is necessary to keep in mind not only the obligation to provide protection to minor victims and the full exercise of their rights in court proceedings, but also the obligation to take preventive action, especially when it comes to the criminal offense of trafficking in human beings. Article 11. *Council of Europe Convention on Action against Trafficking in Human Beings* stipulates that each contracting party shall take measures to establish or strengthen national coordination of the various bodies responsible for the prevention and suppression of trafficking in human beings, i.e. to take special measures to reduce children's exposure to trafficking in human beings, primarily by creating a climate favorable to child protection. These measures should include, as appropriate, non-governmental organizations, other relevant organizations and other civil society organizations dedicated to the prevention of trafficking in human beings and the protection and assistance of victims.

3.3. Penal Policy

3.3.1. Sanctions and sentencing

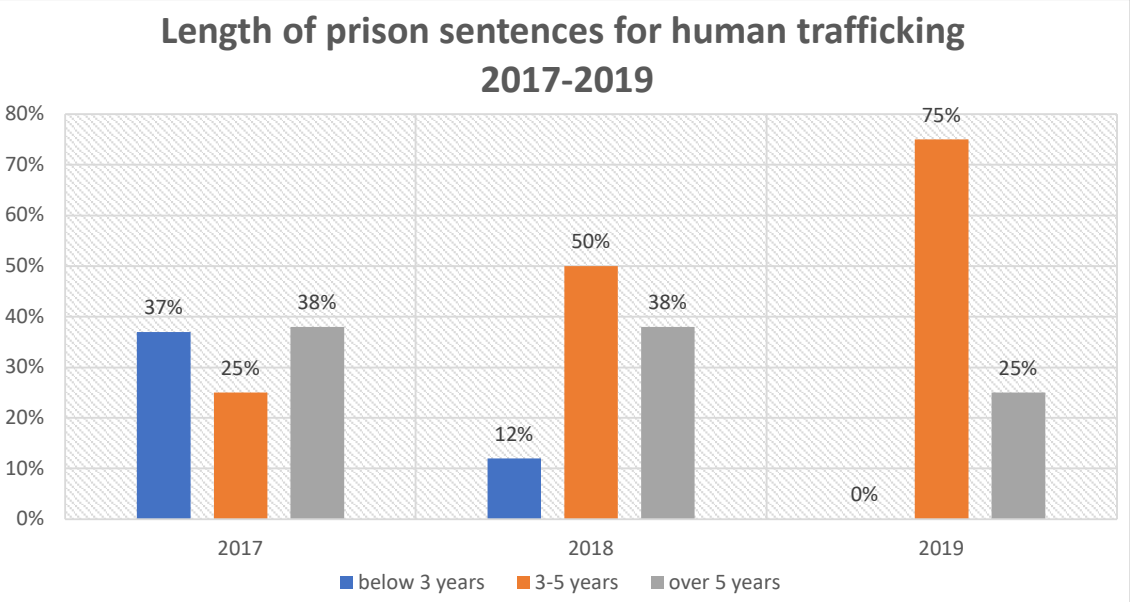
Data obtained from the first instance court decisions show that in the most cases the court rendered convictions for relevant criminal offenses covered by the analysis, so out of the total number of 18 indicted, 16 persons were found guilty, 1 person was found guilty of mediation in prostitution and acquitted of human trafficking, while 1 person was acquitted of the criminal offense of trafficking in human beings. In percentages, this means that in 89% of cases a conviction was passed for all criminal offenses, while related only to the criminal offense of trafficking in human beings a conviction was passed in 75% cases. When analyzing convictions by type of the crime, the data indicate that convictions for mediation in prostitution were passed in 10 cases (59%), for trafficking in human beings in 5 cases (29%), in 1 case for trafficking in human beings and mediation in prostitution (6%) and in 1 case for trafficking in minors for adoption (6).

All perpetrators, who were also found guilty, were convicted to a prison sentence, whether it was imposed as an "effective" prison sentence (all cases related to human trafficking) or the court determined the imprisonment of the defendants with the simultaneous application of a warning measure - a suspended sentence from Article 65 of CC (in 7 cases, of which in 6 cases for the criminal offense of mediation in prostitution and in 1 case for the offense of trafficking in minors for adoption). Only in 1 case it was determined that the defendant would serve the prison sentence in the premises where he lives (in accordance with Article 45, paragraph 3 of CC) for the crime of mediation in

prostitution. In the case of 9 defendants, in addition to the prison sentence or suspended sentence, a fine in the range of 20,000-300,000 dinars was also imposed. Furthermore, 2 defendants were imposed a security measure of the seizure of objects (from Article 87 of CC), and in 1 case, the permanent confiscation of material gain (from Articles 91-92 of CC).

Regarding the length of imprisonment for all criminal offenses that are the subject of the analysis, and which the court determined for the defendants (regardless of whether the defendants were sentenced to "effective" prison sentences or the institute of security measures was applied - suspended sentences), data indicate that the highest determined individual sentence was 9 years, the lowest 6 months, while the average length of an individual sentence was 2 years and 1.5 months. The longest single sentence was 5 years and 6 months, and the shortest one was 1 year and 6 months. This means that imprisonment under 3 years was determined in 73% of cases, imprisonment in the range of 3-5 years in 20% of cases, and imprisonment over 5 years in 7% of cases. Analysis of the length of punishment for the criminal offense of mediation in prostitution (established prison sentences, regardless of whether it is a suspended sentence) indicates that the highest prison sentence was determined and imposed in the length of 1 year and 6 months. In the proceedings before the Basic Court for 6 out of 7 perpetrators of this criminal offense, the court imposed suspended sentences. For the criminal offense of trafficking in minors for adoption, the sentence of 1 year of imprisonment suspended for 3 years was imposed.

Regarding the number of sentences imposed for the crime of human trafficking, the analysis of the first instance judgements indicates that the lowest sentence was 3 years, while the highest sentence was 9 years. It may be concluded that in 75% of cases, the criminal offense of trafficking in human beings was penalized by 3-5 years in prison and in 25% of cases by more than 5 years. Compared to the data from the previous analysis for 2018, it can be concluded that there was an increase in the number of imprisonment sentences of 3-5 years compared to 2018, when the share had been 50%, as well as a decrease in the share of sentences over 5 years, which had been 38% in the previous year.



Data of the decisions passed during 2019 indicate that the penal policy remains mild, and that prison sentences, in the most cases, are still imposed in the length of the legally stipulated minimum or very close to it. According to the decisions passed upon a plea agreement, in all the cases the prison sentence was set at the legal minimum or very close to the minimum, and in 7 out of 8 cases it was a suspended sentence (6 individual and 1 single sentence). As for the other decisions, for a total of 11 criminal offenses, in 1 case a sentence was imposed below the legal minimum (for the offense under

Article 184, paragraph 2 in relation to paragraph 1 of CC), in 7 cases a prison sentence in the length of the legally stipulated minimum was determined, i.e. in 2 cases very close to the minimum, and only in 1 case for the crime related to Article 388, paragraph 6, under which a prison sentence of at least 5 years is prescribed, a prison sentence of 9 years was imposed. This is a continuous problem, as it is also specified by the data from the analysis of judicial practice for previous years - in the judgments rendered during 2018, most of the sentences were imposed in the length or very close to the length of the legally stipulated minimum, while during 2017, all penalties were imposed in the length of the lowest stipulated penalty. As to properly observe the presented data on the number of imposed sentences, that is sanctions, the length of threatened penalties for certain forms of criminal offenses must be considered. Therefore, under point 3.2 in this Chapter, a tabular overview is presented related to threatened and imposed sentences.

According to the provisions of the Criminal Code, the court shall determine a penalty for a criminal offender within the limits set forth by law for such criminal offence, taking into account mitigating and aggravating circumstances, and particularly the degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behavior after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender (Article 54).

Available data in the analyzed first instance decisions passed during 2019 related to sentencing indicate that previous non-conviction is still most often taken into account as a mitigating circumstance (in all the cases where that circumstance existed), as well as the personal and family circumstances of the defendants (the fact that the defendant is a "family man" or has minor children was taken into account for 5 defendants, only in 1 case the age of the defendant and in 1 case the health condition). The confession of the commission of crime was taken into account in 2 cases, the lapse of time in 1 case, and also in 1 case the fact that the minor injured person did not join the criminal prosecution was assessed as a mitigating circumstance. In case of 1 defendant, both family and personal circumstances, as well as the lapse of time, were assessed as particularly mitigating circumstances for the continued criminal offense of mediation in prostitution, even though he was a multiple recidivist.

The trend that the defendant's family circumstances are used as a mitigating circumstance almost automatically when determining the punishment is continuous, so this type of mitigating circumstance is also used in cases when the injured persons are minors. Thus, in the case of a defendant who took advantage of immaturity of 4 minor victims and their difficult material, social and family circumstances for the purpose of sexual exploitation, the court assessed as a mitigating circumstance the fact that the defendant was a "married family man". In another case of a defendant who used threats, coercion and force to hold a minor victim (in addition to 6 other adult victims) for the purpose of sexual exploitation, the court also assessed as a mitigating circumstance the fact that the defendant was the father of a minor child. In case of a defendant who forced his minor son and minor stepdaughter to beg, the court assessed as a mitigating circumstance the fact that the defendant was "a family man, a father of four children". Lastly, in another case of sexual exploitation of 2 minor injured persons, the fact that the defendant was the father of three minor children was assessed as a mitigating circumstance.

In the most cases, the court considered previous convictions as an aggravating circumstance. Circumstances stipulated by law, such as the motives for the crime, the severity of the threat or violation of the protected good, the circumstances, the attitude after the crime and especially the attitude towards the victim, were still rarely assessed when measuring the sentence in the analyzed decisions. Thus, the circumstances such as the large number of victims and persistence and ruthlessness in undertaking the crime were assessed as aggravating circumstances only in 1 case.

3.3.2. Tabular overview of sanctions

Table 1: Judgments rendered upon a plea agreement

Def.	Criminal offence	Threatened sentence	Determined sentence/sanction	Single sentence
1.	Art.251 Para. 2 re. para. 1 BCC[110]	1y-10y	10 months	1y and 6m to 3y[111]
2.	Art.184 para.1 CC	6m–5yrs and fine	1y and 300.000 RSD	
3.	Art.184 para.1 CC	6m–5yrs and fine	8m to 3yrs and 50.000 RSD	
4.	Art.184 para.1 CC	6m–5yrs and fine	8m to 2yrs and 30.000 RSD	
5.	Art.184 para.1 CC	6m–5yrs and fine	8 m to 2yrs and 50 000 RSD	
6.	Art.184 para.1 CC	6m–5yrs and fine	10m to 3yrs and 120.000 RSD	
7.	Art.184 para.1 CC (re. Art.61 CC)	6m–5yrs and fine	6 m to 3yrs and 20 000 RSD	
8.	Art.389 para.1 CC	1y–5yrs	1y to 3yrs	

Table 2: Other judgements

Def.	Criminal offence	Threatened sentence	Determined sentence/sanction	Single sentence
1.	Art.184 para.2 re. para.1 CC (re. Art.61 CC)	1y-10yrs	6 m	
2.	Art.184 para.2 CC	1y–10yrs	1y and 60.000 RSD	
3.	Art.388 para.1 CC	3y– 12yrs	3yrs	
4.	Art.388 para.6 re. paras. 3 and 1 CC Art. 184 para. 1 CC	min.5yrs 6m–5yrs and fine	5yrs 1y and 6m and 100.000 RSD	5yrs and 6m and 100.000 RSD
5.	Art.184 para.1 CC	6m–5yrs and fine	1y and 50.000 RSD	
6.	Art.388 para.6 re. paras. 3 and 1 CC (re. Art.61 CC)	min.5yrs	9yrs	
7.	Art.388 para.2 re. para. 1 CC Art.388 para.2 re. para. 1 CC (both re. Art. 61 CC)	3y-12yrs	3yrs 3yrs	4yrs and 6m
8.	Art.388 para.3 re. para. 1 CC	min.5yrs	5yrs	

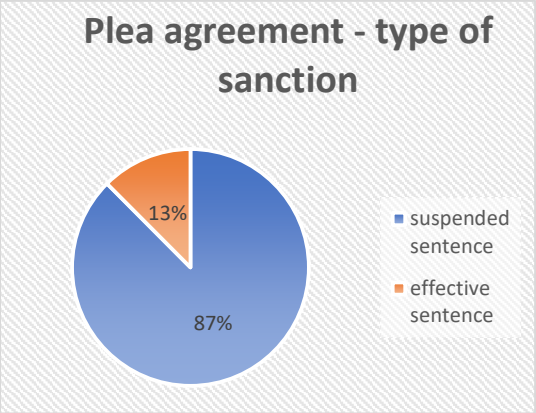
[110] Basic Criminal Code, "Official Gazette of SFRY", no. 44/76, 36/77 – corr. 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 - corr. And 54/90 and "Official Gazette of SRY", no. 35/92, 16/93, 31/93, 37/93, 41/93, 50/93, 24/94, 61/2001 and "Official Gazette of RS", no. 39/2003 (Art.251 Mediation in prostitution)

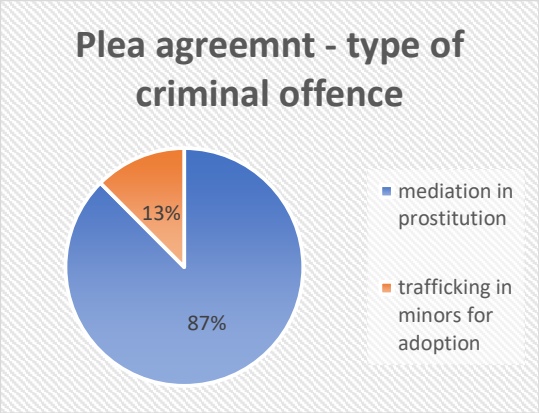
[111] The single sentence was determined in relation to the second decisiont by which the defendant received a suspended sentence

9.	Art.388 para. 3 re. para. 1 CC	min.5y	5y	

3.4. Plea agreement – the position and rights of victims

Out of the total number of 16 first instance decisions that have been analyzed for 2019, 8 judgements (50%) were passed upon a plea agreement in terms of provisions of Articles 313-319 of the Criminal Procedure Code. Out of that number, 7 judgements were passed before the Basic Courts (all judgements refer to the crime of mediation in prostitution, of which in 1 case the victim was a minor) and 1 before the Higher Court (for the crime of trafficking in minors for adoption - 1 minor victim). According to the decisions passed upon a plea agreement, in all cases the prison sentence was set at the legal minimum or very close to the minimum, and in 7 out of 8 cases it was a suspended sentence (6 individual and 1 single sentence). Out of 7 proceedings before the Basic Court which ended by a plea agreement, only in 4 cases the injured parties were referred to litigation in order to realize a compensation claim (a total of 7 victims), while in other cases there were no relevant information.





In accordance to provisions of the Criminal Procedure Code, the public prosecutor and the defendant from the moment of initiation of the investigation may conclude the plea agreement until the closure of the trial, and at the moment of the plea agreement the defendant must have an attorney. If the victim has not requested a damage claim, the public prosecutor shall invite him/her to request it before the plea agreement is concluded (Article 313 of CPC). The plea agreement comprises description of the crime; confession of the defendant; agreement on the type, degree and length of the sentence or other criminal sanction; agreement on costs of the procedure, indemnification claim and damage claim if submitted; waiver by the parties and defense counsels of the right to appeal to the court ruling and signatures of the parties (Article 314 of CPC). The court decides on a plea agreement, and if the plea agreement has been submitted after the indictment has been raised – the President of the Court, while the decision of the plea agreement is made at the trial attended by the Public Prosecutor, the defendant and his/her attorney, and which is held without the presence of public (Article 315 of CC). The court will accept a plea agreement by a decision and declare the defendant guilty if it determines that the defendant has knowingly and voluntarily confessed to the criminal offence, that the defendant is aware of all the consequences, that the other existing evidence do not run contrary to the defendant's confession, as well as that the penalty in respect of which the public prosecutor and the defendant had reached an agreement was proposed in line with the criminal and other law (Article 317). The court's decision on the plea agreement is delivered to the public prosecutor, the defendant, and his defense counsel, and they have the right to appeal according to conditions stipulated by law (Article 319 of CPC).

The more frequent implementation of the plea agreement in practice requires a special attention and assessment of implications of this institute to the position and the rights of injured persons,

particularly if they are an especially vulnerable category, such as the victims of human trafficking and related crimes, which are the subject of the analysis. Although it is undisputable that the interest of economy, efficiency, and faster conclusion of the criminal proceedings with less costs, have its justification, they must not be prevalent in relation to the rights of the injured persons. Hence, it is necessary to question the feasibility of the amendments of the Criminal Procedure Code, having in mind that, after the original introduction of the institute of plea bargain in the CPC, the position and rights of the victims were additionally limited by the amendments which followed. Those additional amendments in particular have significantly limited the rights of the injured in the proceedings related to the participation, influence to conclusion of the agreement, its contents and the possibility of an appeal – conditions related to the degree of punishment were revoked for the crimes, for which there is a possibility of a plea agreement, the condition that the plea agreement should acknowledge the rights of the injured and that it is not contrary to the principles of justice, that the injured and his/her attorney are informed about the trial and that the trial is public, and further, the right of the injured to personally, or through an attorney appeal to the decision on the plea agreement[112].

Thus, the fundamental rights of the trafficking victims, which were established by the ratified international documents, such as the right to information, protection, and participation in the proceeding, are at risk. The decisions following the plea agreements, not only limit the fundamental rights of the victims, but also make them "invisible participants" in the proceedings, since the reasoning of the judgements do not offer any information on realized rights of the victims , except on a potential compensation claim. The injured persons are, herewith, deprived of the right to participate in the proceedings, as they are not able to influence the content of the agreement in any way, which may jeopardize the rights of the victim, such as the right to information, to receive adequate protection and, especially, the right to compensation. Depending on the moment when the agreement is closed and accepted, text of the decisions does not provide any data on the position of the victim, information provided to him/her, if he/she had an attorney or not, how many times the victim was examined, what his/her statement was, and if he/she exercised the right to claim damage. Thus, the rights of the victim are at risk, especially the right to information on relevant court proceedings and the right to assistance, which would allow that the standing and the interest of a victim are presented and discussed in relevant phases of the criminal proceedings, as well as the right to claim compensation. In cases of the decisions reached following a plea agreement, it is also difficult to verify validity of qualification of a crime and adequacy of the criminal sanction, which is the subject of the agreement, in view of the role of the court, so the court decision itself does not contain any reasoning or assessment of the circumstances pertaining to the criminal sanction.

[112] These solutions were stipulated by the Criminal Procedure Code ("Official Gazette of FRY", No.70/2001 and 68/2002 and "Official Gazette of RS", No.58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law and 72/2009)

4. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

Bearing in mind that the conclusions of the annual analyses conducted in the period 2011-2018 indicated significant and continuous deficiencies in the implementation of existing legal norms relevant to the position and rights of victims, the analysis of judicial practice for 2019 was conducted with the aim of objectively reviewing the position of victims in criminal proceedings and improving their protection and rights. Following the objectives and methodology of previous analyses, the analysis presents data and conclusions based on quantitative (statistical) and qualitative analysis of the court judgments rendered during 2019 for the criminal offenses of mediation in prostitution under Article 184 CC, human trafficking under Article 388 CC and trafficking in minors for adoption under Article 389 CC. The analysis includes a significant number of court decisions (29 in total) reached in criminal proceedings during 2019 by the competent first and second instance courts. During the analysis of the court decisions rendered in criminal proceedings, in addition to general data, the data available in the decisions were analyzed from the aspects important to the position of the rights of victims, i.e. injured parties in criminal proceedings.

Results of the analysis of the judicial practice for 2019 indicate that the position of trafficking victims has not significantly changed related to the situation as per the judicial practice analyses of the previous years. Despite significant improvement of the legal, strategic and institutional framework in this area, serious obstacles still exist in realization of the protection and respect of the rights of the victims at court in accordance to the most important international documents in this area, which Serbia has ratified. Therefore, it is necessary to improve the protection and realization of the rights of victims in the field of protection of privacy, counselling and information and the manner of hearing, especially when it comes to minor injured persons, and the major obstacles still exist in the area of exercising the right to compensation, in which respect there was no progress during 2019 either. The trend of mild penal policy for the crimes under the analysis, as well as the large number of plea agreements, also affect the position of injured parties in criminal proceedings. The observed shortcomings in practice indicate that, in addition to consistent and uniform implementation of legal norms in practice, in order to improve the position of victims in court proceedings, it is necessary to improve some legal solutions as to enable victims to effectively exercise guaranteed rights and protection in court proceedings.

Regarding the **length** of the first instance proceedings, the data for 2019 compared to the results of the analyses for the previous years, show that the percentage of the proceedings up to one year long increased compared to the previous year and amounts 56% (for 2018 it was 22%), while the number of proceedings that lasted 1-3 years was reduced to 19% (in 2018 it was 45%). The percentage of proceedings lasting more than 3 years is approximately the same as in the previous year and amounts to 25% (in 2018 it was 33%). The longest decision-making period in the second-instance proceedings, measured from the day of the first instance decision to the day of the second-instance decision, was around 7 months, while the shortest decision-making period was 1 month, so the duration of the second instance proceedings was approximately the same as in 2018.

The protection of the victims' privacy, the right to assistance or counselling and information and the safety of the victim remain far from being priorities in court proceedings. In the analyzed decisions for 2019, a significant number of injured parties at the time of the commission of the crime were minors - out of 37 injured parties for all criminal offenses that were the subject of the analysis, 14 persons were minors. The percentage of minor victims in relation to victims of all criminal offenses was 38%, and in relation to all victims of the criminal offense of trafficking in human beings, it was 59%. According to available data, the public was excluded in 62% of cases, and such higher percentage was due to a large number of decisions passed upon plea agreements, in which cases the public was excluded by law.

According to the data, which could be obtained from the first instance decisions, 32% of the injured parties had an **attorney** in the procedure, and in cases of 15 injured persons, the judgements show participation of the Centre for Human Trafficking Victims Protection through reports obtained and used in the procedure. Only 6 victims had **the status of an especially vulnerable witness,** of which 2 were minors. It can be concluded that such treatment is still a consequence of the lack of understanding of the vulnerable position of victims and the neglect of the rights and interests of victims by the authorities of the procedure. The fact that in the most cases in the reasoning of the decisions, the court focuses on the content of the testimony of the injured parties, without providing information on the act of hearing (number of hearings, possible reading of previous statements, manner of hearing, presence of attorney, etc.) shows that injured parties continue to be treated primarily as a source of information on criminal offenses, while all aspects of protection with regard to the position and rights of victims are being neglected.

The current legal provisions which allow for the **hearing** of the trafficking victim without the presence of the defendants, and under special conditions, are not adequately implemented in practice to an appropriate extent, considering the specific position of the trafficked persons, and especially minors, as well as the fact that the trafficked persons are mostly exposed to sexual and, then, to labor exploitation, which amount to 82% of human trafficking cases. According to the data from the first instance decisions for the crime of trafficking in human beings, only in 50% of cases there are data indicating that there were special measures used during the hearing of minor injured persons (hearing in the presence of a representative of the Centre for Social Work or in the premises of the Centre for Social Work or by a video recording of the testimony of the injured party), while in the remaining 50% of cases there is no data on whether any special measures were applied (except for 1 minor injured person who exercised the right not to testify against his parents). It is important to point out that monitoring the implementation of standards for the protection of victims' rights in this aspect is significantly hampered by the fact that in the reasoning of court judgments, in a large number of cases, key information on the manner of hearing is missing , which makes it difficult to consider consistent application of the existing legal solutions, especially those, the implementation of which is not prescribed by law as mandatory, but depends on the assessment of various circumstances by the authorities of the procedure.

Inability of victims to exercise the **right to compensation** in criminal proceedings, even by a partial decision of the courts on the property claim, still remains a chronic problem, so in this area no progress can be seen in the judicial practice for 2019 either. It is necessary to change the practice so as to resolve compensation claims in criminal proceedings, in order to avoid long and expensive procedures in civil proceedings and to spare the victim the re-trails, repeated testimonies and forensic medical expertise. Out of the total number of 16 analyzed first instance decisions for all criminal offenses, only in 7 (46%) there is a decision on compensation claims, which in all the cases refers the injured parties to civil proceedings. The lack of an efficient system for compensation of victims is also illustrated by the fact that in the previously conducted analyses of judicial practice for the period 2011-2019, and still, there are only 2 recorded cases of compensation for victims of trafficking in civil proceedings.

Minor injured persons in court proceedings do not attain the necessary degree of protection and exercise of rights, despite a significant share in the total number of injured persons for all criminal offenses that were subject of the analysis, including the crime of human trafficking. The data presented in the analysis indicate that 59% of all victims of the crime of trafficking in human beings are minors, who in 70% of cases were exposed to sexual exploitation. In all the analyzed judgments, only 2 out of the total of 14 juvenile victims had the status of especially vulnerable witnesses, and special measures were applied at the hearing of the minor victims (such as hearing in the presence of a professional of the Centre for Social Work or in the premises of the Centre for Social Work, using video recordings) in less than a half of the cases (43% of cases). The existence of difficult family and social circumstances of minor injured persons, which the defendants used in the case of human trafficking, was ascertained for all minor victims. Therefore, the conclusion is that not only the

protection and full exercise of the rights of minor victims of trafficking in court proceedings is needed, but also an increased obligation of preventive action, especially when it comes to vulnerable groups of minors.

Regarding the **length of imprisonment** for all criminal offenses that are the subject of the analysis, and which the court determined for the defendants (regardless of whether the defendants were sentenced to "effective" prison sentences or the institute of security measures was applied - suspended sentences), imprisonment under 3 years was determined in 73% of cases, imprisonment in the range of 3-5 years in 20% of cases, and imprisonment over 5 years in 7% of cases. For mediation in prostitution (regardless if it was a suspended sentence) the highest prison sentence was determined and imposed in the length of 1 year and 6 months, and in the proceedings before the first instance court, 6 out of 7 defendants received suspended sentences. In 75% of cases, the criminal offense of trafficking in human beings was sentenced to 3-5 years in prison, and in 25% of cases to more than 5 years. In relation to the data from the analysis for the previous year, an increase can be noted in the number of prison sentences imposed in the range of 3-5 years (for 2018, 50%), as well as a decrease in the share of sentences over 5 years (for 2018, 38%). Data for 2019 indicate that the penal policy is still mild, bearing in mind that penalties are still imposed in the most cases in the length of the legally stipulated minimum or close to it. That this is a continuous problem is also indicated by the data from the analysis of judicial practice for previous years - in the judgments rendered during 2018, most of the sentences were imposed in the length, or very close to the length of the legally stipulated minimum, while during 2017, all penalties were imposed in the length of the lowest stipulated penalty.

When **sentencing**, previous non-conviction is most often considered as a mitigating circumstance. In the assessment of mitigating circumstances, there are still cases where the court assesses certain personal and family circumstances of the perpetrator ("family man", "father of minor children") as mitigating even when minor victims were objects of sexual exploitation, and even when a perpetrator forced his minor son and stepdaughter to beg.

In practice, there is an increased implementation of the institute of **plea agreement**, which needs to be monitored from the perspective of the position and rights of the injured parties. This issue requires special attention, bearing in mind that 50% of the analyzed first instance decisions were passed upon a plea agreement, which in 87% of cases referred to the criminal offense of mediation in prostitution. In order that the interests of economy and more efficient and faster resolution of criminal proceedings at lower costs, would not prevail over the rights of injured parties, it is necessary to review the compliance of existing legal provisions with international standards for the protection of victims' rights in this area. This applies to the significant restriction of the rights of the injured parties in the proceedings in terms of participation, the impact of the agreement, its content, and the possibility to challenge it by appeal.

The key problems indicated by the results of the analysis of judicial practice for 2019 and the presented concluding considerations indicate that in practice there are still obstacles in exercising the rights of victims in court proceedings, which were pointed out in previous years. In order to achieve significant changes in this area, the overall position and role of the injured parties in criminal proceedings need to be viewed not only from the perspective of the victim as a "source of information" in order to prove the crime, but also through the obligation to provide protection and guaranteed rights to the victims and prevent their re-traumatization. Improving the position of victims in the field of protection of privacy, counselling and information and the manner of hearing, is especially important given the sensitive position of the victims of trafficking and all minor victims in criminal proceedings, whereas a mild penal policy and impossibility of compensation in criminal proceedings further reinforce victims' distrust in institutional protection.

Achieving a higher level of protection and rights of injured parties in criminal proceedings in some areas (such as protection of privacy, security and information, hearing, and the issue of penal policy) is conditioned by a degree of application of the existing legal solutions, so a consistent implementation of the existing legal provisions and a changed attitude to the position of the victim by the authorities in the proceedings would bring about a significant change. Thus, a balance of the key interests in the court proceedings would be established – the reliable determination of facts, the rights of the defendants and the rights of the injured parties. Regarding other key segments, such as the right to compensation, effective realization of the compensation for victims also requires improvement of the existing legal and institutional framework in this area.

In agreement with the presented data and observations, it can be concluded that continued activities are necessary in order to improve the legal, strategic and institutional framework with the aim of improving the position of trafficked victims, through amendments of certain legal provisions and through a consistent implementation of the current legal solutions, and by a continuous education of the staff in judiciary and monitoring the case law related to trafficking in human beings. Considering the noted issues in practice, as well as the significance of the consequences suffered by trafficking victims, and a significant share of minor victims in all crimes that were the subject of analysis, development of an efficient and a comprehensive system of protection with a coordinated cooperation of all relevant actors in combat against trafficking in human beings, represents an imperative for improvement of the victims' position in court proceedings, hence implementation of the particular measures and activities is being proposed.

Recommendations – victims' rights

- Improvement of the support and assistance to trafficking victims by providing specialized support and assistance through cooperation of the government authorities and specialized associations for protection of the trafficking victims;
- Consistent implementation of the current regulations with the aim of protecting the right of victims to privacy, safety, assistance and information in criminal proceedings, especially of the provision on especially vulnerable witnesses under the Criminal Procedure Code and the relevant provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles;
- Improvement and harmonization of the current legislative framework with the ratified international documents in the area of trafficking victims' protection and child rights, and recommendations of the bodies in charge of their monitoring and implementation, by amending provisions of the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and Criminal protection of Juveniles, with the aim of preventing secondary victimization of the victims by stipulating an absolute prohibition of confrontation of especially vulnerable victims and juvenile victims with the defendant and prohibition of hearing of the especially vulnerable victims and the juvenile victims in the presence of the defendant;
- Improvement of the current legislative framework by amending provisions of the Criminal Procedure Code, which regulate the institute of plea agreement, in order to allow for participation and realization of the rights of victims of the crime of human trafficking and related crimes;
- Providing technical equipment for video and audio transmission to all authorized courts, for hearing of especially vulnerable witnesses and juvenile injured persons (separate rooms for the hearing by video link and similar, and a special waiting room for these persons);

Recommendations - prevention and protection of minor victims

- Consistent implementation of the current regulations with the aim of protecting the right of the minor victims to privacy, safety, assistance and information in criminal proceedings, especially of the provision on especially vulnerable witnesses under the Criminal Procedure Code and the relevant provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles;
- Improvement of the current legislative framework by amending provisions of the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and Criminal protection of Juveniles in order to prevent secondary victimization of victims by prescribing an absolute ban on confrontation of an especially vulnerable witnesses and minor victims with the defendant and a ban on hearing an especially vulnerable witnesses and minor victims in the presence of the defendant;
- Engaging organizations, independent bodies and competent institutions, especially social welfare institutions, in the prevention of sexual and labor exploitation of minors in order to reduce risk factors and vulnerability of minors, especially risk groups such as members of ethnic minority groups, residents of social welfare institutions and families in the records of the social protection system.

Recommendations – victims' right to compensation

- Consistent implementation of the current legal provisions with the aim of protecting trafficking victims' rights to compensation, and which refer to compensation claims in criminal proceedings;
- Improvement and harmonization of the current legislative framework with the ratified international documents in the area of trafficking victims' protection and recommendations of the bodies in charge of monitoring their implementation, especially in accessing the right to compensation, that is, damage claim by adopting a law on the compensation of victims;
- Improvement and harmonization of the current legislative and institutional framework with the ratified international documents around trafficking victims' protection and recommendations of the bodies for monitoring their implementation by establishing a state's fund for the compensation of victims.

Recommendations – penal policy

- Stricter penal policy for the crime of trafficking in human beings and related crimes with the aim of imposing commensurate sanctions, which deter from the crime;

Recommendations – training of judiciary employees

- Continuous education with the aim of consistent implementation of the current legal solutions and standardization of activities of the professional government authorities, especially judiciary, in order to adopt a victim-centered approach for better understanding of the position of the victims of trafficking and related crimes, and especially the minor victims.

Recommendations – monitoring of judicial practice, collecting data

- Continuous monitoring of the judicial practice related to the position, protection, and access to rights of the victims of trafficking and other crimes through monitoring and analysis of judicial practice;
- Improvement of statistical monitoring and collecting data on victims, procedures, and punishment of perpetrators in trafficking in human beings.

PART 3: THE POSITION AND RIGHTS OF PARTICULARLY VULNERABLE CHILDREN IN CRIMINAL PROCEEDINGS

- Analysis of court rulings in selected criminal proceedings for 2019 in the field of abuse and exploitation in human trafficking, prostitution and pornography, sexual violence, abuse, and related criminal offences -

Tanja Drobnjak

1. INTRODUCTION

The Association ASTRA – Anti-Trafficking Action continues to perform the activities aimed to review, analyze and improve the position of victims before the court, particularly focusing this time on the position and rights of child victims, given that numerous reports and analyses of international and domestic authorities, agencies and associations in the field of children's rights indicate the need to improve the legal and strategic framework and practice in order to advance the position and rights of the child. In addition to the regular annual analysis of judicial practice in relation to the situation of victims of trafficking in human beings and related criminal offences[113] performed by ASTRA since 2011, which specifically explored the position of juvenile victims of trafficking, within the analysis of judicial practice for 2019, this time the activities were extended to the analysis of the position and rights of child victims in a special situation of vulnerability. As the findings of the analysis of judicial practice on the position of victims of trafficking in human beings and related criminal offences for 2019, in the part on the position of children or juveniles as victims, indicated the need to expand the focus on the position of child victims in vulnerable situations, extension of the scope of analysis to other selected criminal offences proved to be justified.

As in the previous period, the analysis of judicial practice focuses on the position of child victims in criminal proceedings, in order to objectively review the current situation, identify obstacles in practice and indicate areas in which a need for improvement remains, either through changes to existing legal solutions or more consistent application of existing regulations in practice.

Given that the analysis of judicial practice in the area of human trafficking and related criminal offences signposted a significant number of juvenile victims, whereby in almost all cases the existence of difficult family and social circumstances was recorded, the present analysis focuses on the position of child victims in criminal proceedings which, due to their family, social, financial and other life circumstances, experience a particularly vulnerable position, i.e. situation. The analysis is aimed at monitoring and analyzing the judicial practice for 2019 regarding the position of children victims of selected criminal offences - crimes related to abuse and exploitation in human trafficking, prostitution or pornography, sexual violence, abuse and related offences. The analysis refers to criminal proceedings in which minors are harmed by the commission of criminal offenses: Rape in Article 178, Sexual Intercourse with a Child in Article 180, Sexual Intercourse through Abuse of Position in Article 181, Pimping and Procuring in Article 183, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3, Coercion into Marriage in Article 187a, Cohabiting with a Minor in Article 190 and Neglecting and Abusing a Minor in Article 193 Para 2 of the Criminal Code of the Republic of Serbia. In terms of the situation of vulnerability that can be identified in minors as injured parties, the focus is on children with difficult family, social or financial circumstances, children with inadequate parental care, children under guardianship or in the social protection system, children without care, including unaccompanied children in migration situations, as well as children in situations of trafficking and sexual or other exploitation.

International standards and the domestic legal framework stipulate that the best interest of the child must be a primary consideration in all activities concerning children, including the conduct of courts. Having in mind the special protection of children guaranteed by the Constitution in accordance with the law, there is an indisputable need to examine the extent of exercise of the rights of the child in practice, more precisely whether there is a need for improvement in the legal and strategic framework and court practice. The fact that in the domestic legal framework there is no single definition of a child, nor a single Law on Children that would comprehensively enable and guarantee the effective implementation of children's rights based on international documents relevant to this area, and particularly considering that the provisions of existing laws in civil, criminal and administrative matters

[113] Annual analysis *Position of victims of human trafficking in court proceedings*, ASTRA - Anti-Trafficking Action, available at: https://www.astra.rs/en/manuals-reports-studies/

are often inconsistent to the detriment of the exercise of children's rights in court proceedings, conducting this type of analysis proves necessary and justified.

The analysis aims to review the current position and extent of the exercise of the rights of the child victims in criminal proceedings before the court, in order to explore and identify shortcomings in the existing legal framework or deficiencies in the implementation of existing legal solutions in practice, directed towards improvement of the position of particularly vulnerable children and development of recommendations to advance the existing situation. In general, the analysis seeks to contribute to the systematic and consistent implementation of international standards in this area, either by improving the legal and strategic framework or through activities aimed at consistent implementation of existing normative framework, by strengthening cross-sectoral cooperation and further education of all relevant actors to better understand the position of child victims before the court. Ultimately, efforts are aimed at recognizing the special needs of child victims in criminal proceedings and the vital respect of the best interests of the child, as well as the adoption of a victim-oriented approach by the authority conducting the proceedings, i.e. individual approach to child victims that would take into account different types and the degree of vulnerability of each child in a particular situation.

Further in the analysis, the aims and methodology of monitoring and analyzing court decisions are presented (Chapter II: Aims and methodology of the analysis), followed by the broader context of importance for children in vulnerable situations based on available documents, data and reports of relevant international and domestic authorities, agencies and organizations, as a result of *desk research* analysis (Chapter III: Children in Situation of Vulnerability: Context, Data and Reports). Data on the number of initiated and conducted proceedings for selected criminal offenses obtained from the competent public prosecutor's offices and courts are presented separately (Chapter IV: Data received from public prosecutor's offices and courts). General statistical data obtained from court decisions are presented in relation to types of criminal offenses, types of decisions and sentences imposed, duration of the proceedings, with a special review of available data on defendants and victims (Chapter V: Statistical data from analyzed court decisions). The position of child victims in court proceedings was analyzed in relation to the most important aspects of the position and rights of victims in accordance with international standards, namely: 1) privacy, 2) information, support and representation, 3) security and protection, 4) hearing, 5) best interests of the child and 6) sanctions; international standards and relevant legal provisions are presented within each aspect, followed by data from the analyzed decisions and recommendations for the given area (Chapter VI: The position of child victims in criminal proceedings). The results and conclusions of the analysis of judicial practice with recommendations are summarized in the concluding remarks (Chapter VII: Concluding remarks and recommendations).

2. AIMS AND METHODOLOGY OF THE ANALYSIS

The analysis of judicial practice for 2019 regarding the position and rights of child victims before the court was directed towards a comprehensive review of the position and rights of child victims in criminal proceedings. As the previously conducted annual analysis of judicial practice in the area of trafficking in human beings and related criminal offences signposted a significant number of juvenile victims, whereby in almost all cases the existence of difficult family and social circumstances was recorded, the present analysis focuses on the position of child victims in criminal proceedings which, due to their family, social, financial and other life circumstances, experience a particularly vulnerable position, i.e. situation. The situation of vulnerability especially refers to child victims who are in a situation of human trafficking, prostitution, other sexual exploitation or abuse, with special attention to children with difficult family, social or financial circumstances, children with inadequate parental care, children under guardianship or in the system social protection, children without care, including unaccompanied children in a migration situation, as well as children in a situation of trafficking.

Starting from the need to examine the position of children in court proceedings who are victims of somewhat related criminal offences, i.e. related to the exploitation of children in prostitution and human trafficking, as well as the efforts to make both analyses of judicial practice as a whole, the selection of criminal offences was based on elements related to exploitation in situations of trafficking, prostitution or pornography, sexual violence and child abuse or exploitation. The subject of the analysis is therefore focused on the selected criminal offences namely: Rape in Article 178, Sexual Intercourse with a Child in Article 180, Sexual Intercourse through Abuse of Position in Article 181, Pimping and Procuring in Article 183, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3, Coercion into Marriage in Article 187a, Cohabiting with a Minor in Article 190 and Neglecting and Abusing a Minor in Article 193 Para 2 of the Criminal Code of the Republic of Serbia.

The position of child victims, i.e. juvenile victims in criminal proceedings, was analyzed in relation to the basic aspects of importance for the position and rights of child victims set by relevant international standards in this area, such as the *UN Convention on the Rights of the Child*[114], *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*[115], *the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*[116], the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000*[117] *(Palermo Protocol)* and the *2005 Council of Europe Convention on Action against Trafficking in Human Beings*[118]. Thus, the position of child victims in criminal proceedings for selected criminal offences is considered and analyzed on the basis of the following aspects: 1) privacy, 2) information, support and representation, 3) security and protection, 4) hearing, 5) best interests of the child and 6) sanctions.

The task of monitoring and analyzing annual judicial practice in this area is to objectively review the position of child victims in criminal proceedings, in order to identify possible obstacles and problems in practice - either due to shortcomings in domestic legislation or inconsistent implementation of existing legal solutions. On this basis, the data and conclusions presented in the analysis may entail a relevant foundation for recommendations and further improvement of the position and rights of child victims, to further advance their position before the court. The main aim of the analysis is to objectively consider the position of child victims in particularly vulnerable situations, in criminal proceedings for selected criminal offences. Moreover, monitoring and assessing the effective

[114] "Off. gazette of SFRY - International Treaties", No.15 / 90 and "Official gazette SRY - International Treaties", no.4/96 and 2/97
[115] "Official gazette SRY - International Treaties", no.7/2002
[116] "Official gazette RS - International Treaties", no.1/2010
[117] "Official gazette SRY - International Treaties", no.6/2001
[118] "Official gazette RS - International Treaties", no.19/2009

implementation of existing legal norms in practice is important from the aspect of uniformity of court practice in terms of exercising the rights of victims and assessing the need for continuous education of judicial staff, with the ultimate goal of improving the position of child victims in criminal proceedings.

The analysis of judicial practice in this area is based on quantitative (statistical) and qualitative analysis of court decisions rendered during 2019 in criminal proceedings in the first instance trial or in appeal proceedings. Information on the number of proceedings conducted or resolved before the competent public prosecutor's offices and courts, as well as court decisions that were the subject of analysis, were obtained from these bodies in accordance with the Law on Access to Information of Public Importance. Information was requested from the relevant public prosecutor's offices (on the number of filed criminal charges, indictments and concluded plea agreements), first instance courts (on the number of proceedings, the number of final and non-final decisions and the number of accepted plea agreements) and second instance courts (on the number of conducted second instance proceedings) in 2019 for criminal offenses Rape in Article 178, Sexual Intercourse with a Child in Article 180, Sexual Intercourse through Abuse of Position in Article 181, Pimping and Procuring in Article 183, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3, Coercion into Marriage in Article 187a, Cohabiting with a Minor in Article 190 and Neglecting and Abusing a Minor in Article 193 Para 2 of the Criminal Code of the Republic of Serbia. To conduct the analysis, a total of 103 court decisions were initially collected for the selected criminal offenses, of which 78 decisions rendered by first instance courts and 25 decisions rendered by second instance courts.

From this number, the decisions that meet the two following criteria were selected for the analysis, which were determined to specify the area that the analysis will address:

- Criteria relating to victims: child victims in a situation of vulnerability (children with difficult family, social and financial circumstances, children with inadequate parental care, children in the social protection system or children without care, including unaccompanied migrant children, children in trafficking situation);
- Criteria relating to criminal offenses: criminal offenses relating to abuse and exploitation in trafficking in human beings, prostitution or pornography, sexual violence, neglect and abuse and related criminal offenses (criminal offenses Rape in Article 178, Sexual Intercourse with a Child in Article 180, Sexual Intercourse through Abuse of Position in Article 181, Pimping and Procuring in Article 183, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3, Coercion into Marriage in Article 187a, Cohabiting with a Minor in Article 190 and Neglecting and Abusing a Minor in Article 193 Para 2 of the Criminal Code of the Republic of Serbia.).

Based on the above criteria, the subject of the analysis involves a total of 39 court decisions that were selected for analysis, which were rendered in criminal proceedings during 2019, of which 33 are first instance decisions rendered by relevant courts (Basic and Higher Courts in the Republic of Serbia) and 6 second instance decisions passed in the appeal proceedings by the relevant courts (Appellate and Higher Courts in the Republic of Serbia). In the selected decisions that are the subject of the analysis, the position and rights of child victims in a situation of vulnerability are examined, which means that all data on victims in the analysis refer to juvenile victims - persons who are in the position of injured party in criminal proceedings and are under 18 years old.

The data obtained from the collected decisions were the subject of quantitative (statistical) and qualitative analysis, which focused on data or indicators relevant to assessing the position of the victim in terms of protection and exercise of fundamental rights in court proceedings. Quantitative (statistical) analysis of data from the decisions is provided in Chapter V: Statistical data in the analyzed court decisions, whereby the data refer to the type of criminal offenses, type of decisions and the

length of sentences imposed, length of the proceedings, as well as available data on defendants and injured parties obtained from first instance decisions, while second instance decisions were the basis for determining the type of decisions (confirmation, revocation and modification of first instance decisions) and the length of proceedings.

Based on available statistical data, as well as a detailed analysis of available data from first instance decisions, qualitative analysis addressed the position and rights of child victims through the most important aspects set by relevant international standards and is provided in Chapter VI: Position of child victims in criminal proceedings. Within each aspect relevant to the position and rights of victims, the following is listed: relevant international standards; legal solutions provided by the Criminal Code (CC)[119], the Law on Juvenile Offenders and Criminal Protection of Juveniles[120] and the Criminal Procedure Code (CPC)[121]; whereas the data from the analyzed decisions are presented independently, along with individual recommendations as a part of the concluding remarks in the summary recommendations of the analysis.

All injured persons for selected criminal offenses that are the subject of analysis, in accordance with the meaning of the term referred to in Article 112 of the Criminal Code, are minors - persons who have not reached 18 years of age. The terms "victim", "child victims", "injured party" or "minor/juvenile injured person" are utilized in the text interchangeably and all involve persons who have the status of injured party in criminal proceedings and who are under 18 years of age. In cases where the term “child” or “child victim” is used in the text, it is always used in the sense of the provisions of the Convention on the Rights of the Child (a person under 18 years of age) and not in the narrower sense given by the Criminal Code (a person under 14 years). The term "defendant" was used as a general name for a suspect, accused, indicted, and convicted person, in the sense of the term referred to in Article 2 of the Criminal Procedure Code. Bearing in mind that the reasoning of court decisions in some cases does not contain data on elements of importance for analysis or such data are unavailable due to anonymization of submitted decisions, the text of the analysis uses the term "available data" which indicates that statistical data processing is based on available data, while the number of cases in which the elements in question could not be determined is also given.

[119] “Official gazette RS - International Treaties”, no.85/2005, 88/2005-corr., 107/2005-corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019

[120] “Official gazette RS - International Treaties”, no.85/2005

[121] “Official gazette RS - International Treaties”, no.72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019

3. CHILDREN IN SITUATION OF VULNERABILITY: CONTEXT, DATA AND REPORTS (DESK RESEARCH ANALYSIS)

Pursuant to the *UN Convention on the Rights of the Child*[122], the best interests of the child must be a primary consideration in all activities concerning children, whether undertaken by public or private social welfare institutions, courts, administrative or legislative authorities. Even though, in accordance with constitutional guarantees, children enjoy special protection in line with the law and must be protected from psychological, physical, economic and any other exploitation or abuse, there remains a need for improvement in the field of the rights and position of child victims in court proceedings in the legal and strategic framework and judicial practice in the Republic of Serbia. There is no single definition of a child in the domestic legal framework, nor a particular Law on Children that would comprehensively implement and guarantee the effective implementation of children's rights stipulated in international documents relevant to this area, while the provisions of existing laws in civil, criminal and administrative areas are often inconsistent to the detriment of the exercise of children's rights in court proceedings.

Regarding the extent of the exercise of the rights of the child, in the *Concluding Observations on the combined second and third periodic report of the Republic of Serbia of the UN Committee on the Rights of the Child*[123], it is recommended to strengthen the state efforts to ensure that the right of the child that his or her best interest is of primary importance is properly integrated and consistently interpreted and applied in all legal, administrative and judicial proceedings and decisions. In addition to the recommendation for the adoption of a comprehensive Law on Children and the Law on the Ombudsman for the Rights of the Child, the need to improve the data collection system is emphasized, in order to facilitate the analysis of the situation of all children, especially those in vulnerable situation, given the lack of systematic data collection on children. Particular concern was expressed regarding the rights and position of child victims and witnesses of criminal offences - there is a discrepancy between the Criminal Procedure Code and the Law on Juvenile Offenders and Criminal Protection of Juveniles regarding the criteria for examining particularly vulnerable witnesses, the excessive duration of court proceedings and the lack of child support services, all of which are necessary to avoid re-victimization of child victims and witnesses during court proceedings. In this regard, the Committee also recommended that measures be taken to protect child victims in criminal proceedings, in order to exclude the possibility of examining particularly vulnerable witnesses and speed up the establishment of child-friendly procedures, as well as necessary measures to address child trafficking, child prostitution and transferring and particularly strengthening the social protection system in order to include Roma children (particularly girls as victims of child marriages), refugee children and asylum seekers, and internally displaced children in the protection system. The Committee also specifically recommended the establishment of fair and efficient asylum procedures tailored to the best interests of the child.

The *EC Progress Report on Serbia for 2019*[124] also indicates that an integrated legal framework that would enable the appropriate implementation of children's rights has not yet been established. The report points out that there is a lack of adoption of an action plan for children, that violence against children remains a matter of concern, that a draft strategy for the protection of children and prevention of violence against children has not been adopted, including changes to relevant laws in this area. It is also necessary to provide better protection for child victims who testify in criminal proceedings, protection of children's rights in state institutions for children, with the conclusion that there is no systematic support for victims and witnesses of criminal offences.

[122] "Off. gazette SFRY - International Treaties", No. 15/90 and "Off. gazette SRY - International Treaties", no. 4/96 and 2/97
[123] CRC/C/SRB/CO/2-3, adopted by the Committee at its 74th session (16 January-3 February 2017), available at: https://ljudskaprava.gov.rs/sh/node/19966
[124] *EC Progress Report on Serbia for 2019, available at:* https://www.stat.gov.rs/media/4783/serbia-report-2019.pdf

In May 2020, the Strategy for Prevention and Protection of Children from Violence for the period 2020 to 2023[125] was adopted, which emphasizes that the best interest of the child should be of paramount importance in all activities concerning children. In the Draft National Strategy for the Exercise of the Rights of Victims and Witnesses of Criminal Offenses for the period 2019-2025 (the Draft of the Ministry of Justice of the Republic of Serbia from February 2019),[126] whose adoption is still expected, it is pointed out that providing assistance and support to victims and witnesses in criminal proceedings is mainly based on *ad hoc* activities of a few services established in all higher courts and Prosecutor's Offices, the War Crimes Prosecutor's Office, the Organized Crime Prosecutor's Office and the First Basic Public Prosecutor's Office in Belgrade, as well as certain civil society organizations, legal clinics and centers for social work. It is also stated that there are no precise data on the number and structure of the providers, as well as the programs they offer, while their geographical distribution and the variety of services they offer are extremely uneven. Problems include the lack of clearly defined criteria for the professional qualifications of providers and the quality of services they provide, whereas the procedures for assessing needs, referrals to services, as well as the provision of support itself have not been standardized. Training programs on victims' rights are not standardized or established as a segment of initial and continuous training for judicial office holders, and information on available forms of support is not systematized or available within a single database.

According to the data from the Regular Annual Report of the Ombudsman for 2018 (published in March 2019)[127] cases in the field of children's rights make up 7.61% of the total number of cases considered. Almost a quarter of the total number of complaints received in the area of children's rights relate to violence against children, the existence of child and early marriages and sexual abuse of children, which are not accompanied by adequate normative and practical measures aimed at suppression and prevention.

According to the Situation Analysis of Children and Adolescents in Serbia conducted by UNICEF in Serbia in 2019,[128] one of the priorities must be to adequately address the most complex cases of violence that occur due to multiple vulnerabilities of children and their families, which includes cases of sexual violence, violence against child victims and witnesses of crimes, children living on the streets, children living in accommodation institutions and children victims of trafficking. It is also stated that the average annual share of criminal offenses (according to the Ministry of Interior RS) committed to the detriment of minors comprises 5-6% of the total number of criminal offenses in which injured parties are individuals, and at the level of one year on average about 3,170 criminal offenses are recorded in which about 3,300 minors were victims. It is also pointed out that the data indicate that cross-sectoral cooperation at the local level in cases of violence against children is inadequate and cannot respond to the needs of all child victims, especially in complicated cases with multiple vulnerabilities (e.g. sexual violence, child marriage, violence against children in movement). Children from families facing complex and multiple problems and deprivation, including poverty, were also highlighted as children at risk of neglect, abuse, separation from family and community, and social exclusion. Child victims and witnesses of crime do not have adequate support during criminal proceedings and are often exposed to secondary victimization, and measures to protect victims from secondary victimization are not implemented regularly.

In the case of child victims of trafficking, the analysis of ASTRA the *Position of victims in criminal proceedings - Analysis of judicial practice for 2019 for the criminal offenses of mediation in*

[125] *Strategy for Prevention and Protection of Children from Violence 2020 – 2023, available at:* https://www.srbija.gov.rs/dokument/45678/strategije-programi-planovi-.php

[126] Draft National Strategy for the Exercise of the Rights of Victims and Witnesses of Criminal Offenses for the period 2019-2025, Draft of the Ministry of Justice of the Republic of Serbia from February 2019, available in Serbian at: https://www.podrskazrtvama.rs/media/domaci/strategija-V1.pdf

[127] Regular Annual Report of the Ombudsman for 2018, available in Serbian at: https://www.pravadeteta.com/index.php?option=com_content&view=category&layout=blog&id=43&Itemid=88

[128] *The Situation Analysis of Children and Adolescents in Serbia, UNICEF in Serbia in 2019*, available in Serbian at: https://www.unicef.org/serbia/sites/unicef.org.serbia/files/2020-01/situaciona_analiza_2019.pdf

prostitution, trafficking in human beings and trafficking in minors for adoption[129] indicates that juvenile victims in court proceedings do not receive the necessary degree of protection and exercise of rights, despite a significant share in the total number of victims for all criminal offences that were the subject of analysis, including the criminal offence of trafficking in human beings. The data presented in the mentioned analysis indicate that 59% of all victims of trafficking are minors, who were exposed to sexual exploitation in 70% of cases, and only 2 out of 14 juvenile victims had the status of a particularly vulnerable witness.

The findings of the *Second GRETA Report for Serbia*[130] are also important for victims of trafficking, indicating the need to make full use of available measures to protect victims in order to prevent re-traumatization during court proceedings, including the use of videoconferencing and other appropriate means to avoid "direct confrontation" of victims and traffickers and in accordance with the status of "particularly vulnerable witness" of victims of trafficking.

The U.S. State Department's 2019 Trafficking in Persons Report of June 20, 2019[131] identifies shortcomings in the area of victim protection, despite intensified state efforts in this area, noting that judges did not always grant particularly vulnerable witness status to trafficking victims, nor have adequately protected the rights of victims during lengthy court proceedings - given the vulnerability of victims and especially children, to whom this specific procedural treatment of particularly vulnerable witnesses would ensure that they testify without the presence of the defendant and allow video-link testimony. *The U.S. State Department's 2020 Trafficking in Persons Report of June 25,* 2020[132] states that child victims of trafficking in Serbia are exposed to sexual exploitation, forced labor, forced begging, and petty crime. There is no consistent practice of granting the status of a particularly vulnerable witness to victims of trafficking, including children. The Centre for the Protection of Victims of Trafficking does not have special procedures for children victims of trafficking. There is a practice that cases of human trafficking qualify as mediation in prostitution, even when the victims were children. Therefore, efforts need to be stepped up to proactively identify victims, including migrants, "commercial sex" workers, refugees and asylum seekers, and unaccompanied children begging on the streets.

The Basic Statistical Report on the Identification of Victims of Trafficking in Human Beings for 2019 of the Centre for the Protection of Victims of Trafficking in Human Beings[133] states that statistics related to formally identified victims of trafficking indicate that in 2019, 39 victims of trafficking were formally identified; 64% of victims of trafficking are minors, and 82% are women, according to gender 59% are female, the largest number of victims are victims of sexual exploitation - 59%, followed by multiple exploitation and forced marriage. Out of a total of 39 victims, 35 are citizens of Serbia, while 4 victims are citizens of the Republic of Croatia, Pakistan, Mali, and Afghanistan. The report *Migration Profile of the Republic of Serbia for 2018 o*f the Government of the RS[134] provides data obtained from the Ministry of Interior for 2018, according to which, based on the number of criminal charges filed against perpetrators of human trafficking in 2018, there were 32 victims, whereby it is observed that younger females prevail, primarily minors up to 14 years of age (a total of 13 victims, while a total of 22 minors are females; 2 minors are males). The most common is sexual exploitation, to which only women are exposed, with an almost triple increase compared to the previous year.

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[129] Available at: https://www.astra.rs/en/manuals-reports-studies/

[130] Report of the Expert Group on Combating Trafficking in Human Beings, which monitors the implementation and fulfilment of the obligations undertaken by the signatory states by signing the 2005 CoE Convention on Action against Trafficking in Human Beings, GRETA (2017) 33, available at: https://rm.coe.int/greta-2017-37-frg-srb-en/16807809fd

[131] Translation of the Report into Serbian is available at: https://www.astra.rs/izvestaji-i-studije/ and full report available at: https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf

[132] Available at: https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf

133 *Basic statistical report on the identification of victims of trafficking in human beings for 2019, Centre for the Protection of Victims of Trafficking in Human Beings*, available in Serbian at: http://www.centarzztlj.rs/images/statistika/19/2019_Statisticki_izvestaj.pdf

[134] *Migration Profile of the Republic of Serbia for 2018 of the Government of the RS, available in Serbian at:* http://www.kirs.gov.rs/media/uploads/Migracije/Publikacije/Migracioni_profil_2018.pdf

When considering the family and social context of child victims, important data on the beneficiaries of centers for social work with regard to their age structure, are available in the *Report on the work of the Centers for Social Work for 2018* of the Republic Institute for Social Protection.[135] These data show that children make up 27% of the total number of beneficiaries, while 56.65% of the total number of minor beneficiaries experience financial problems. Children under guardianship (in the family and in accommodation) make up 6.12%, children victims of violence and neglect 5.68%, children with inadequate parental care 3.08%, children victims of trafficking 0.03%, unaccompanied children foreign citizens 0.86%, children living and working on the streets ("street children") 0.05% and children returnees/from readmission 0.17%.

In the report *Children in the social protection system* of the Republic Institute for Social Protection in 2018[136], it is pointed out that the number of children in the social protection system in the period 2014-2018 continuously increases - in this period, the number of children in the general population of children in Serbia decreased by 2.8%, while in the same period the number of children in the social protection system increased by 5.8%. It is concluded that children are the most vulnerable category of the population, bearing in mind that in 2018 there were a total of 205, 129 children on the records of the Centers for Social Work, and the share of children beneficiaries of the social protection system in the general population is 16.4%, i.e. every sixth child is on the records of the Centre for Social Work. This report states that from among the children on the records of the Centre for Social Work, children victims of violence and neglect comprise 5.19%, children with inadequate parental care 2.82%, unaccompanied foreign children 0.79%, and children victims of human trafficking 0. 08%. Constantly largest share of children registered as socio-economically endangered children (51.8%). In 2018, there were 4,672 children under guardianship in the records. Data for child victims of domestic violence show that there were 7,741 reports, of which 30% related to physical violence, 2% sexual, 31% neglect or ill-treatment and 1% to child exploitation, while in terms of sexual violence girls accounted for 72.8% of victims.

Numerous problems in exercising the rights of the child in Serbia were also perceived in the report *State of play of the Rights of the Child in the Republic of Serbia in 2019 of the Centre for the Rights of the Child,*[137] whereby the existence of child marriages stands out as a problem, with the estimate that in Roma settlements every sixth girl marries before the age of 15 and more than half get married before adulthood, as well as the problematic situation in institutions for children and youth without parental care. It is also stated that in 2018, 26 children and one young person were registered as victims, and other beneficiaries were registered as perpetrators in all cases, while 8 reported cases of violence were recorded in institutions for education of children and youth, and another beneficiary was registered as a perpetrator, while there is no data available on the number of cases in which it has been established that there is responsibility for the abuse or neglect of children in accommodation. Children in the street situation, i.e. children living and working on the street, are in a particularly difficult situation, whereby even a harmonized definition of this term accepted in all relevant institutions is lacking – despite a perceptible decrease of the number of children in the street situation recorded in the centers of social work with a decrease in the number of children in this category by more than two thirds in 2018, unofficial estimates indicate that there are about 2,000 children living and working on the streets in Serbia, mostly in large cities. It is also pointed out that there is no systematic collection of data on children, but data from different sources are used to monitor the exercise of children's rights, which are often not comparable because they are collected

[135] *Report on the work of the Centres for Social Work for 2018 of the Republic Institute for Social Protection*, available in Serbian at: http://www.zavodsz.gov.rs/sr/biblioteka/izve%C5%A1taji-iz-sistema/izve%C5%A1taji-iz-sistema-2018/

[136] *Children in the social protection system of the Republic Institute for Social Protection in 2018*, available in Serbian at: http://www.zavodsz.gov.rs/media/1874/deca-u-sistemu-socijalne-zastite-2018.pdf

[137] *State of play of the Rights of the Child in the Republic of Serbia in 2019 of the Centre for the Rights of the Child*, available in Serbian at: http://cpd.org.rs/wp-content/uploads/2019/11/Stanje-prava-deteta-u-Republici-Srbiji-2019.-godine_web_final-1.pdf

according to different methodologies. The lack of reliable and comparable data and records makes it difficult to create effective policies for children, as well as effective cross-sectoral cooperation.

The position of migrant children, i.e. asylum seekers, is additionally complex, whereby unaccompanied children stand out as the most sensitive category. *Statistics from the Asylum Office presented by the UNHCR for Serbia,*[138] indicate that in the period from January to the end of September 2019, 9,054 persons were registered, of which 2,019 were minors, or 570 unaccompanied children, and 134 asylum applications were submitted, of which 35 cases (50 persons) were rejected, 10 cases (11 persons) were rejected, subsidiary protection was provided for 17 persons and asylum was granted for 15 persons. *Survey of Unaccompanied Migrant and Refugee Children in Serbia: Standards of Treatment and Respect for Their Rights of the* Institute for Criminological and Sociological Research[139] shows that unaccompanied migrant children and asylum seekers are potential victims of various crimes, with numerous problems in practice such as non-existence of special units in the social protection system that would address unaccompanied migrant children, the appointment of a temporary guardian for an unaccompanied child, which is under the jurisdiction of the Centre for Social Work, which results in practice in several temporary guardians in one case due to the mobility of children in such situations.

The analysis the *Right to Asylum in the Republic of Serbia 2019* of the Belgrade Centre for Human Rights[140] specifies that there are no specialized panels in the Administrative Court to decide on claims against final decisions of the Asylum Commission, and that the Administrative Court has never adopted a request for asylum in its decision, but in all proceedings in which the claim was upheld, the case was returned to the Asylum Commission for reconsideration. Moreover, the Administrative Court has never held an oral hearing in these proceedings, while asylum seekers have been waiting for decisions for a year and a half, and according to the above data, in the period from January 1 to September 30, 2019, the Administrative Court received 17 claims, most of which were rejected. With regard to unaccompanied minors, the key problems refer to the lack of an efficient system of identification and registration of children, insufficient capacity of centers for social work in terms of human resources, as well as excessively long duration of asylum procedures for children, without consistent respect for basic principles of child protection arising from international obligations and domestic regulations.

Official data for selected criminal offenses covered by this analysis, which are presented according to the age of the injured parties, are available on the official website of the Republic Statistical Office. According to the available data of the Republic Bureau of Statistics for 2018[141], for convicted adults according to the criminal offense and injured parties (victims), in the group of criminal offenses against sexual freedom, out of 178 injured persons 78 are minors (persons under 18 years of age) for the criminal offense Rape out of 25 injured parties 6 are minors, for the criminal offense Sexual Intercourse with a Child 12 minors are victims, for the criminal offense Sexual Intercourse through Abuse of Position, out of 5 injured 2 are minors, for the criminal offense Pimping and Procuring 2 victims are minors, for the criminal offense Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography 1 minor was victim; in the group of criminal offenses against marriage and family, out of 5028 victims, minors comprise 1762, of which for the criminal offense Cohabiting with a Minor there were 49 juvenile victims and for the criminal offense Neglecting and Abusing a Minor 70; for the criminal offense of trafficking in human beings, out of 17 injured, 4 are minors.

[138] Available at: http://www.unhcr.rs/en/dokumenti/statisktike/azil.html
[139] *Survey of Unaccompanied Migrant and Refugee Children in Serbia: Standards of Treatment and Respect for Their Rights*, Institute for Criminological and Sociological Research 2019/Vol. XXXVIII/2/49-71 – S. Ćopić, , available in Serbian at: https://www.iksi.ac.rs/zbornik_arhiva/zbornik_iksi_2_2019/zbornik_iksi_2_2019_sanja_copic_slobodan_copic.pdf
[140] *Right to Asylum in the Republic of Serbia 2019, Belgrade Centre for Human Rights*, available at: http://azil.rs/en/wp-content/uploads/2020/03/Right-to-Asylum-in-Serbia-2019.pdf
[141] *Adult perpetrators of criminal offences in RS, 2018*, Republic Bureau of Statistics, available in Serbian at: https://publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf

According to the available data of the Republic Bureau of Statistics for 2018[142] for juvenile perpetrators of criminal offenses, per criminal offense and the injured party (victim), in the group of criminal offenses against sexual freedom, of 18 injured parties 16 are minors (persons under 18), for the criminal offense Rape of 3 injured parties all 3 are minors, for Sexual Intercourse with a Child, 3 minors were victims, for Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography 2 minors were victims.

[142] *Minor perpetrators of criminal offences in RS, 2018*, Republic Bureau of Statistics, available in Serbian at: https://publikacije.stat.gov.rs/G2019/Pdf/G20195654.pdf

4. DATA RECEIVED FROM THE PUBLIC PROSECUTORS' OFFICES AND COURTS

In order to collect reliable and relevant data and as many court decisions as possible that would be the subject of analysis, the public prosecutor's offices and courts were sent a request for data for 2019 in accordance with the Law on Free Access to Information of Public Importance. Information was requested for 2019 from the relevant public prosecutor's offices (on the number of filed criminal charges, indictments and concluded plea agreements), first instance courts (on the number of proceedings, the number of final and non-final decisions and the number of accepted plea agreements) and second instance courts (on the number of conducted second instance proceedings) for selected criminal offenses – Rape in Article 178, Sexual Intercourse with a Child in Article 180, Sexual Intercourse through Abuse of Position in Article 181, Pimping and Procuring in Article 183, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3, Coercion into Marriage in Article 187a, Cohabiting with a Minor in Article 190 and Neglecting and Abusing a Minor in Article 193 Para 2 of the Criminal Code of the Republic of Serbia.

It may be concluded, on the basis of the official letters received from the **Basic Public Prosecutor's Offices** (BPPO), that during 2019, a total of 158 criminal charges were filed for criminal offenses under the jurisdiction of the Basic Public Prosecutor's Office, of which 86 criminal charges for the offense under Article 190 CC RS, for Article 193 CC 33 criminal charges, for Article 185 5 criminal charges were filed, for Article 183 3 criminal charges were filed, while for 31 criminal charges there is no data related to the criminal offence in question. Out of 158 criminal charges, 30 criminal charges were rejected, and a total of 58 indictments were filed. The total of 3 plea agreements have been concluded.

The following data can be determined based on the official letters received from the Basic Public Prosecutor's Office before which the proceedings took place:

BPPO Niš	3 criminal charges were filed for Article 190, of which 2 proceedings ended with the rejection of the criminal charges, while in the remaining case evidentiary actions are in progress
BPPO Aleksinac	For Article 190, 3 criminal charges were filed against 3 persons and in all cases, indictments were filed
III BPPO Belgrade	1 criminal charge was filed for Article 190 and the procedure is in the phase of taking evidentiary actions
BPPO Kikinda	Received 8 criminal charges under Article 190 and 5 indictments were filed
BPPO Valjevo	1 proceeding conducted for Article 190 and criminal charges were rejected
BPPO Sremska Mitrovica	1 criminal charge for Article 193 para. 2 of the CC which was rejected
BPPO Prokuplje	9 criminal charges were received, 1 was rejected, 6 indictments were filed, 2 cases are in the phase of taking evidentiary actions
BPPO Novi Sad	For Article 190, 9 criminal charges were received, 1 was rejected, 1 indictment was filed, 6 cases are in the phase of conducting evidentiary actions, 1 case has been transferred to the jurisdiction of another prosecutor's office
BPPO Požarevac	1 criminal charge was filed for Article 185, 6 criminal charges were filed for Article 190, of which 1 indictment was filed in 1 case, 3 criminal charges were filed for Article 193, of which 1 indictment was filed in 1 case
BPPO Bačka Palanka	For Article 190, para 1, 2 criminal charges were filed, 1 of which was transferred to the jurisdiction of another prosecutor's office, in another case conducting the evidentiary actions is in progress
BPPO Petrovac na Mlavi	For Article 190, 2 criminal charges were received, and in both cases rejected

BPPO Vrbas	For Article 190, 2 criminal charges and 2 indictments were filed
BPPO Požega	3 criminal charges were filed for Article 190 and 3 indictments were filed
BPPO Loznica	1 criminal charge and 1 indictment were filed for Article 190
BPPO Mionica	For Article 185 para 3, criminal charges were filed against 1 person, for Article 193 para 2 pre-investigation proceedings against 2 persons are in progress
BPPO Pančevo	For Article 193 para 2, 1 criminal charge was filed, 4 criminal charges were filed for Article 190 and then 2 indictments, while 1 criminal charge was rejected
BPPO Ub	For art.190 a procedure is conducted against 4 persons, for art.193 against 1 person, police investigation is in progress against 2 persons, investigative actions are scheduled against 2 persons
BPPO Leskovac	For Article 183, 1 criminal charge was filed against 1 person, for Article 190, 5 criminal charges were filed against 5 persons, of which 1 indictment was filed against 1 person, for Article 193 para 2 4 criminal charges were filed against 9 persons
BPPO Zrenjanin	8 criminal charges were received, 6 indictments
BPPO Arandjelovac	1 criminal charge was acted upon and 1 indictment was filed
BPPO Bečej	For Article 190, 1 criminal charge was filed against 1 person and the procedure is in the phase of taking evidentiary actions
BPPO Vršac	1 criminal charge and 1 indictment were filed for Article 190, 3 criminal charges were filed for Article 190, para 3, of which an indictment was filed for 2 persons
BPPO Bor	for Article 190, 3 criminal charges and 3 indictments were filed
BPPO Vranje	2 criminal charges were received for Article 190, of which 1 was rejected and 1 is in the evidentiary phase, for Article 193 1 criminal charge was received and rejected
BPPO Zaječar	1 criminal charge was filed for Article 190, for Article 193 para 2 1 criminal charge was filed, both charges dismissed
BPPO Vladičin Han	2 criminal charges were filed for Article 190, 1 criminal charge was filed for Article 183, para 1
BPPO Ruma	1 criminal charge was received for Article 190 and 1 indictment was filed, 1 criminal charge was filed for Article 193, para 2 and the procedure ended with a plea agreement
BPPO Subotica	1 criminal charge was received for Article 190, which was rejected, 7 criminal charges were received for Article 193, para 1, of which 1 case is in the evidentiary phase, in 1 case indictment was filed, in the remaining 5 a decision on dismissal was passed; BPPO Pirot - 3 criminal charges were filed for Article 190, of which 1 indictment was filed and in 2 cases evidentiary action is in progress
BPPO Pirot	3 criminal charges were filed for Article 190, of which 1 indictment was filed and in 2 cases evidentiary action is in progress
BPPO Obrenovac	For Article 190 in 1 case plea agreement was concluded, 1 is in the phase of undertaking evidentiary actions
BPPO Šabac	4 criminal charges were filed for Article 190, of which 1 was rejected, for 1 procedure is in progress, in 1 case was submitted to the jurisdiction of another prosecutor's office, 1 suspect was accused
BPPO Mladenovac	For Article 185 1 criminal charge was received and the case is in the indictment phase, for Article 190 1 criminal charge was filed and rejected

BPPO Lebane	7 criminal charges were filed for Article 190, of which 1 is unresolved, 2 were rejected, and 4 indictments were filed
I BPPO Belgrade	For Article 193 para 2 10 criminal charges were filed, for art.190 2 criminal charges were filed, for art.183 1 criminal charge was filed
BPPO Kruševac	4 criminal charges were received, an indictment was filed in 1 case, and decisions rejecting criminal charges were issued in 3 cases
BPPO Čačak	4 criminal charges and 1 indictment were filed for Article 190
BPPO Senta	An indictment was filed for Article 190 against 1 person, and for Article 193, para 1, criminal charges were rejected against 1 person
BPPO Brus	for Article 190, 2 criminal charges were filed against 2 persons, of which in 1 case an indictment was filed, and 1 case was transferred to the jurisdiction of another prosecutor's office
BPPO Novi Pazar	For Article 190 6 criminal charges were filed, of which 1 indictment was filed, 2 charges were rejected, and in 3 cases criminal prosecution was postponed
BPPO Priboj	1 criminal charge was filed for Article 190, which was rejected
II BPPO Belgrade	For Article 190, 3 criminal charges were filed, of which 1 was rejected and for the other 2 evidentiary actions are in progress, for Article 193 2 criminal charges were filed, of which 1 in is in the course of taking evidentiary actions and 1 was transferred to the jurisdiction of another prosecutor's office
BPPO Lazarevac	For Article 193, para 2, 1 criminal charge was filed, which was rejected
BPPO Kragujevac	For Article 185 para 2, 1 criminal charge was filed, an indictment was filed, and the procedure is ongoing
BPPO Sombor	For Article 185 para 3 1 criminal charge was filed, 1 indictment, and 1 plea agreement was concluded, for Article 1902 criminal charges and 2 indictments were filed
BPPO Vrbas	2 indictments were filed for Article 190

On the basis of the official letters received from the **Higher Public Prosecutor's Offices** (HPPO), it can be concluded that during 2019, a total of 41 criminal charges were filed for criminal offenses within the jurisdiction of the Higher Public Prosecutor's Office, of which 22 criminal charges were filed under Article 178, 16 criminal charges. In relation to Art. 180, no criminal charges were filed for Article 181, while for 3 criminal charges there is no data to which criminal offenses they refer. Out of 41 criminal charges, according to available data, 7 criminal charges were rejected, a total of 21 motions to indict were filed, of which, according to available data, 16 indictments. Two plea agreements were concluded.

Based on the official letters received from the HPPO before which the proceedings took place, the following data can be determined:

HPPO Jagodina	For Article 178 para 3, 3 criminal charges were filed and rejected, for Article 180 1 criminal charge was filed and 1 indictment was filed
HPPO Belgrade	Preparatory procedures based on 2 requests for initiating a preparatory procedure, of which 1 for Article 180 from 2018 and 1 for Article 182 para 2 from 2019
HPPO Prokuplje	1 criminal charge was filed for Article 180 and the procedure is in progress
HPPO Požarevac	For Article 178 para 3, 1 criminal charge was received, investigation was conducted and the procedure was suspended, for Article 180 para 1, 3 criminal charges were filed against 3 persons, of which 2 investigations were

	terminated with the suspension of proceedings and in 1 case an indictment was filed
HPPO Subotica	For Article 178 para 3,1 criminal charge was received against 2 persons, of which 1 indictment was filed and 1 procedure before the panel for juveniles took place
HPPO Vranje	For Article 178 para 3, 1 criminal charge was filed against 2 persons and an indictment was filed
HPPO Smederevo	For Article 178 para 3, 4 indictments were filed, and 1 investigation is in progress
HPPO Kragujevac	For Article 178 para 3, 1 criminal charge was filed, which was rejected, for Article 180 para 1 criminal charge and indictment were filed
HPPO Novi Pazar	For Article 178 para 3, 1 criminal charge was received against 1 person with whom a plea agreement was concluded
HPPO Novi Sad	2 criminal charges were filed for Article 178, para 3, of which 1 was rejected and 1 indictment was filed
HPPO Zaječar	For Article 178, para 3, an investigation was conducted against 1 person, which was suspended
HPPO Kraljevo	For Article 180, para 1, 1 criminal charge was filed against 1 person and an indictment was filed
HPPO Čačak	For Article 180, para 1, 1 criminal charge was filed against 1 person, a procedure was conducted against 1 person and a case was transferred to the jurisdiction of another prosecutor's office
HPPO Pančevo	3 criminal charges were received in relation to 4 persons and a case was transferred to the jurisdiction of another prosecutor's office
HPPO Zrenjanin	For Article 178, para 3, 3 criminal charges were received, of which 1 case in the indictment phase, for Article 178, para 4, 5 criminal charges were received, of which 3 cases are in the indictment phase
HPPO Smederevo	For Article 178 para 3, 4 indictments were filed, and 1 investigation is in progress
HPPO Sombor	7 criminal charges were filed for Article 180, an investigation is being conducted in relation to 1 person
HPPO Niš	For Article 180, 1 criminal charge and 1 indictment were filed, and 1 plea agreement was concluded
HPPO Valjevo	For Article 178, para 3, 2 criminal charges were filed, and both were rejected
HPPO Kruševac	For Article 178, para 3, charges were filed against 2 persons, for 1-person indictment was filed

Based on the official letters received from the **Basic courts** (BC) before which the proceedings in their jurisdiction took place in 2019 and which are the subject of this analysis, the following data can be determined:

BC in Velika Plana	3 criminal proceedings were conducted, a final decision was passed for Article 185, para 3, in 2 proceedings for Articles 190 and 193 para 2, proceedings are in progress
BC in Bečej	2 proceedings for Article 190 have been finalized
BC in Subotica	3 decisions were passed, of which 1 plea agreement was concluded for Article 193, para 3 and 2 decisions for Article 193

BC in Pančevo	3 proceedings for Article 190, of which 2 were final, and 1 is in progress, 2 proceedings for Article 193, para 2 were conducted and decisions are final
BC in Jagodina	1 final decision for Article 190, para 1
BC in Požega	2 proceedings for Article 190 and 1 decision rendered
BC in Novi Pazar	4 proceedings for Article 190, 3 in progress, 1 finalized
BC in Senta	2 proceedings for Article 190, para 1, 1 finalized
BC in Prokuplje	4 proceedings for Article 190, in 1 final decision passed, in 1 decision not final, 2 in progress
BC in Zaječar	1 proceeding for Article 190, paras 1 and 2 and a final decision was rendered
BC in Užice	1 proceeding for Article 190, para 1, in which a final decision was rendered
BC in Stara Pazova	1 proceeding for Article 193, para 2 ended with a final decision, 1 proceeding for Article 190, para 1 ended with an acquittal (non-final)
BC in Bačka Palanka	1 decision for Article 190
BC in Smederevo	2 proceedings for Articles 183 and 190
BC in Trstenik	1 proceeding for Article 190, final decision rendered
BC in Ub	1 decision for Article 185, para 2
BC in Šabac	1 proceeding for Article 183 has not been completed, 4 proceedings for Article 190, of which 3 have been finalized
BC in Arandjelovac	3 proceedings for Article 190, para 3, 1 final decision rendered
BC in Kikinda	3 proceedings for Article 190, para 1 and 1 for Article 193, para 2, all 4 terminated by decisions
BC in Despotovac	1 proceeding for Article 183, not completed
BC in Lebane	For Article 183, 185 para 2 and para 3, 187, 190 and 193 para2, 3 proceedings were conducted, 1 final decision was passed for Article 190, para 1
BC in Gornji Milanovac	1 proceeding for Article 190, final decision passed
BC in Vršac	3 proceedings, 1 for Article 190 and 2 for Article 193, para 2, 3 final decisions rendered
BC in Mionica	2 criminal proceedings for Article 190, 2 final decisions rendered
BC in Bor	For Article 185, para 2, 1 proceeding was conducted, a final decision was rendered, for Article 190, 2 proceedings were conducted, of which 1 ended with a final decision; for Article 193, para 2, 2 proceedings were conducted and completed
BC in Vrbas	2 proceedings for Article 190, para 2, ended with the passing of decisions
BC in Kruševac	1 proceeding for Article 190
BC in Sombor	2 proceedings were conducted for Article 190, para 1, of which 1 was finalized, 1 proceeding for Article 193, para 1 was finalized
BC in Negotin (Kladovo court unit)	1 proceeding for Article 190, para 1 completed

BC in Knjaževac	For Article 190, 1 proceeding legally terminated
BC in Loznica	4 proceedings for Article 190, of which 1 was terminated by final decision

Based on the official letters received from the **Higher courts** (HC) before which the proceedings in their jurisdiction took place in 2019 and which are the subject of this analysis, the following data can be determined:

HC in Belgrade	6 proceedings for Art. 178 para 3 with 2 decisions of which 1 is final, 11 proceedings for Art. 180 with 2 final decisions, 2 proceedings for Art. 181 with 1 final decision, in the second instance 1 proceeding for Art. 193 in which the decision was rendered
HC in Valjevo	3 proceedings for Article 180 in which decisions were rendered, of which 1 was final; in the second instance 2 proceedings for Article 185, para 2 and 2 decisions passed, confirming, and revoking
HC in Vranje	1 proceeding for Art. 178 para 3
HC in Jagodina	1 proceeding for Article 180
HC in Kragujevac	1 proceeding for Article 178, para 3 and 1 for Article 180, para 1
HC in Kraljevo	1 proceeding for Article 180, para 1
HC in Kruševac	2 proceedings for Art. 180 and 1 final decision, of which 1 is acceptance of a plea agreement, in second instance 1 proceeding for Art. 190 para 1 in which the decision was confirmed
HC in Niš	2 decisions, 1 acquittal for Article 178, para 3 and 1 for Article 180, para 2
HC in Negotin	1 proceeding for Article 178, para 3 and Article 180, para 1, legally terminated
HC in Leskovac	1 proceeding for Article 190
HC in Novi Pazar	1 decision for Art. 178 para 3 and 1 plea agreement accepted, for Art. 180 2 proceedings and decisions rendered
HC in Pančevo	1 proceeding for Article 178, para 3 and 3 proceedings for Article 180
HC in Požarevac	1 proceeding for Article 178, para 3, decision rendered
HC in Smederevo	2 decisions for Article 178 para 3 and para 4 and 1 for Article 180 para 1
HC in Sremska Mitrovica	2 proceedings for Art178 para 3, of which in 1 the decision is final and 1 is in progress, for Art. 180 2 proceedings of which in 1 final decision is passed and in second instance 1 proceeding
HC in Subotica	1 proceeding for art. 178 para 3 terminated with final decision, 2 proceedings for art. 181 (1 for art.181 para 4 final decision passed and 1 for art.181 paras 2 and 3), in second instance 1 proceeding for Article 185, para 3, the decision was revoked and 1 proceeding for Article 193, para 2, the decision was upheld
HC in Novi Sad	For Article 178 6 proceedings, 6 decisions were passed (5 final and 1 non-final), of which 1 acceptance of plea agreement, for Article 180 1 proceeding and 1 non-final decision was passed, for Article 181 1 court proceeding was conducted and 1 final decision was rendered

Based on the official letters received from the **Appellate Courts** before which there were proceedings for criminal offenses that are the subject of analysis, the following data can be determined:

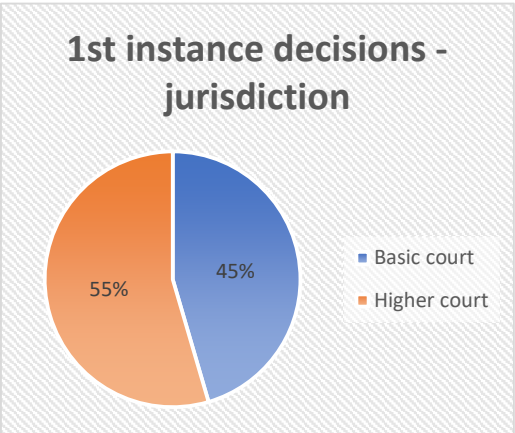
Appellate Court Belgrade	12 proceedings were conducted
Appellate Court of Novi Sad	Conducted proceedings for criminal offenses under Articles 178, 180, 181 and 185
Niš Appellate Court	Conducted a total of 8 proceedings for the criminal offense under Article 180 (7 decisions confirmed, 1 modified) and 2 proceedings for the criminal offense under Article 181 (1 decision confirmed, 1 revoked)
Appellate Court Kragujevac	1 procedure for Article 183, para 1

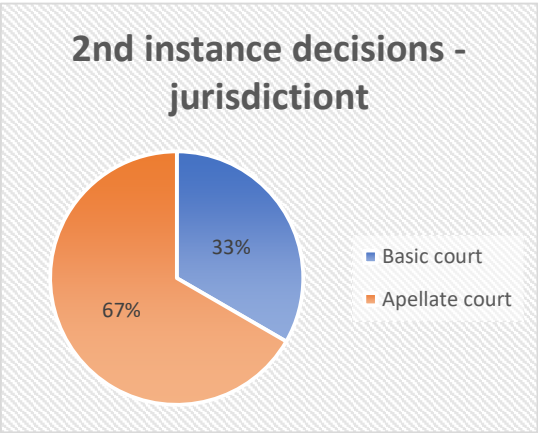
5. STATISTICAL DATA IN ANALYSED COURT DECISIONS

The collection and analysis of court decisions rendered during 2019 was conducted in order to monitor and assess the position and rights of child victims in a situation of vulnerability, who have the status of a minor victim in criminal proceedings. In accordance with the objectives and methodology of the analysis, the planned focus of the analysis were the decisions related to the selected criminal offences, namely Rape in Article 178, Sexual Intercourse with a Child in Article 180, Sexual Intercourse through Abuse of Position in Article 181, Pimping and Procuring in Article 183, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3, Coercion into Marriage in Article 187a, Cohabiting with a Minor in Article 190 and Neglecting and Abusing a Minor in Article 193 Para 2 CC RS.

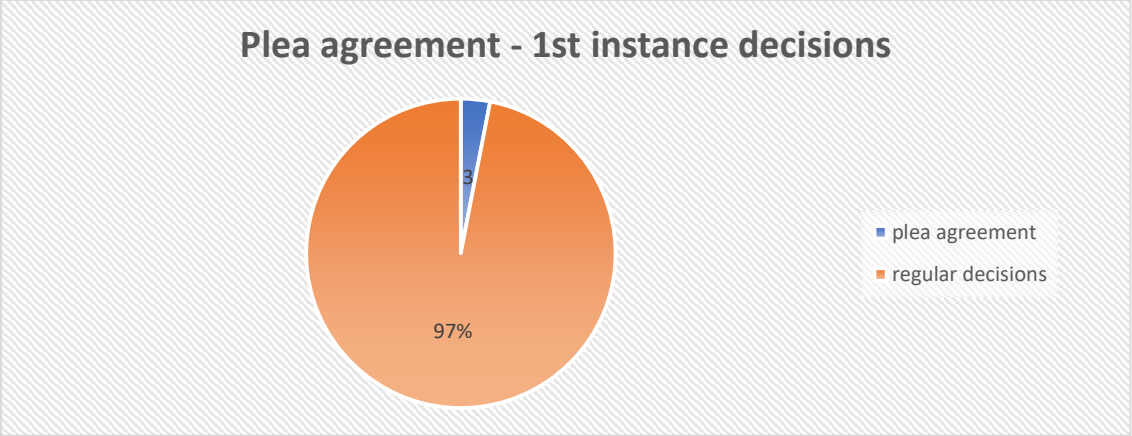
In accordance with the stated criteria, the subject of quantitative (statistical) and qualitative analysis were the collected court decisions that were passed in 2019 in the first or second instance criminal proceedings. The presented quantitative (statistical) analysis is based on available data that could be obtained from first instance court decisions regarding the type of criminal offenses, the type of decisions and the length of sentences imposed, the length of proceedings, as well as relevant data on defendants and injured parties. In addition, second-instance decisions were the basis for determining data on the type of criminal offenses, the type of decision (confirmation, revocation, or modification of first-instance decisions), as well as the length of proceedings. Qualitative analysis, along with the use of statistical data, addresses the position and rights of child victims in criminal proceedings through aspects relevant to their position and rights, namely: 1) privacy, 2) information, support and representation, 3) security and protection 4) hearing, 5) the best interests of the child and 6) sanctions.

The analysis includes a total of **39 court decisions** rendered in criminal proceedings during 2019, which were obtained from the competent Basic, Higher and Appellate Courts in the Republic of Serbia. Out of the total number of the decisions included in the analysis, 33 decisions were passed in the first instance procedure, namely 15 decisions by the competent Basic Courts (Basic Court in Novi Sad, Stara Pazova, Velika Plana, Subotica, Šabac, Bačka Palanka, Zaječar, Leskovac, Loznica, Sombor, Vršac, Bor, Pančevo) and 18 decisions by the competent Higher Courts (Higher Court in Belgrade, Novi Sad, Subotica, Nis, Kragujevac, Jagodina, Novi Pazar, Požarevac, Smederevo, Negotin). The subject of the analysis are also 6 decisions rendered in the second instance or appeal proceedings, 4 rendered by the competent Appellate Courts (Appellate Courts in Belgrade and Novi Sad) and 2 rendered by the competent Higher Courts (Higher Court in Subotica and Leskovac).



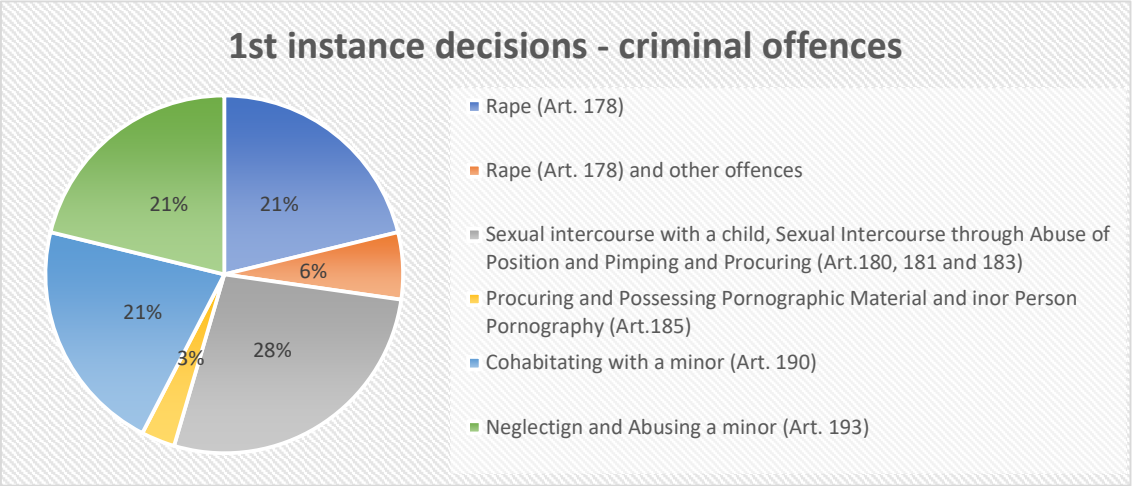


Out of the total number of 33 first instance decisions, only 1 decision was passed by accepting the plea agreement in terms of the provisions of Articles 313-319 of the CPC in the proceedings before the Higher Court, which makes 3% of the total number of first instance decisions.



The analyzed first instance decisions in which injured parties were minors refer to the following **criminal offenses:** criminal offence Rape in Article 178 CC, Sexual Intercourse with a Child in Article 180 CC, Sexual Intercourse through Abuse of Position in Article 181 CC, Pimping and Procuring in Article 183 CC, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3 CC, Cohabiting with a Minor in Article 190 CC and Neglecting and Abusing a Minor in Article 193 CC. Even though it was selected as one of the criminal offences covered by the analysis, there were no first instance decisions for the criminal offence Coercion into Marriage in Article 187a, Para 2 CC.

Out of the total number of analyzed first instance decisions: 7 decisions refer to Rape according to Art. 178 paras 3 and 4 (21% out of the total number of first instance decisions); 1 decision refers to rape according to Art. 178 para 4 and Sexual Intercourse with a Child in Article as per Art. 180 (3%); 1 decision on Rape as per Art. 178 para 4 and Sexual Intercourse through Abuse of Position as per Art. 181 (3%); 6 decisions refer to Sexual Intercourse with a Child as per Art. 180 (18.5%); 2 decisions for Sexual Intercourse through Abuse of Position as per Art. 181 (6.5%); 1 decision refers to Pimping and Procuring and Sexual Intercourse with a Child as per Art. 183 and Art. 180 (3%); 1 decision to Procuring and Possessing Pornographic Material and Minor Person Pornography as per Article 185, paras 2 and 3 (3%); 7 decisions refer to Cohabiting with a Minor as per Article 190 (21%); and 7 decisions to Neglecting and Abusing a Minor of Article 193, paras 1 and 2 (21%).

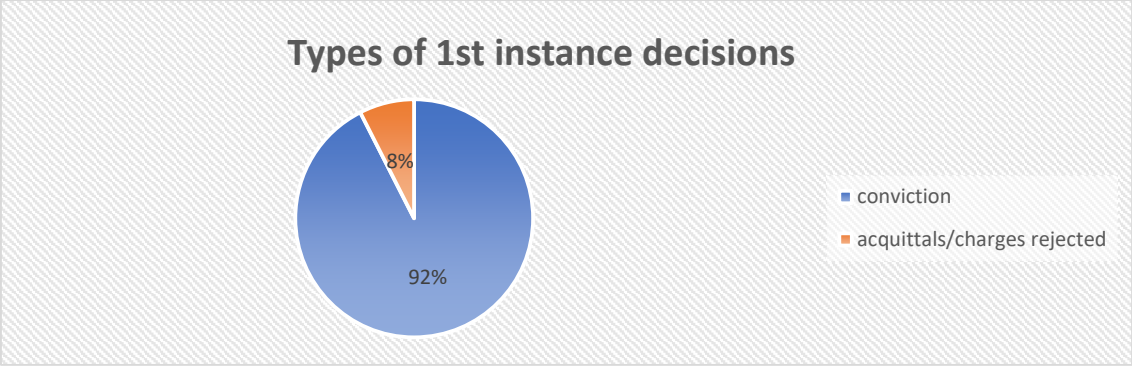


5.1. Data in first instance decisions

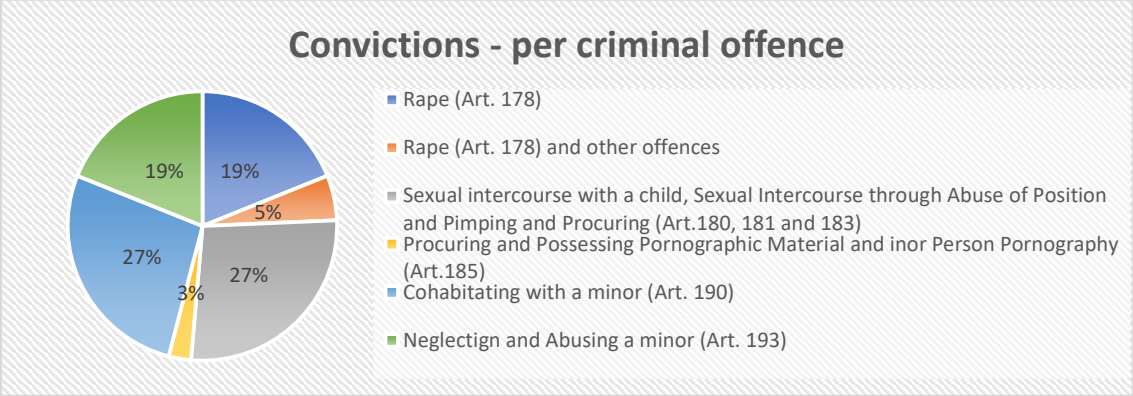
The analysis of first instance decisions includes 33 first instance decisions, of which 15 are decisions of Basic and 18 decisions of Higher Courts, which involve a total of 40 defendants and 38 victims (all victims are minors).

With regard to the **indictments**: 7 persons were charged with the criminal offense of Rape under Article 178, paras 3 and 4 (17.5%); 1 person for Rape and Sexual Intercourse through Abuse of Position as per Article 178, para 4 and Article 180 (2.5%); 1 person for Rape and Sexual Intercourse through Abuse of Position as per Article 178 para 4 and Article 181 (2.5%); 8 persons for Sexual Intercourse with a Child as per Article 180 (20%); 2 persons for Sexual Intercourse through Abuse of Position as per Article 181 (5%); 1 person for Pimping and Procuring and Sexual Intercourse with a Child as per Article 183 and 180 (2.5%); 1 person for Showing, procuring and possession of Pornographic Material and Juvenile Pornography as per Article 185, paras 2 and 3 (2.5%); 12 persons for Cohabiting with a Minor as per Article 190 (30%); 7 persons for Neglecting and Abusing a Minor as per Article 193 paras 1 and 2 (17.5%).

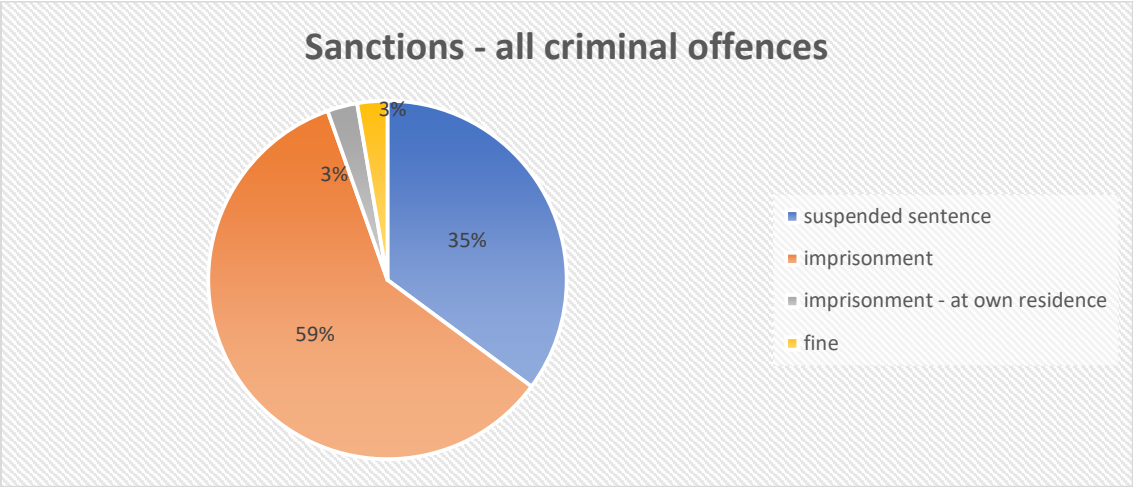
Regarding the **type of decision**, the first instance court passed convictions in most cases, so out of the total number of 40 defendants, 37 persons were convicted, while for the remaining 3 persons in 1 case an acquittal was passed and in 2 cases the charge was rejected.



When **convictions** are analyzed in relation to the criminal offences that are the subject of the analysis, the data indicate that out of 37 defendants 7 persons were convicted for criminal offence Rape in Article 178 paras 3 and 4 (19% of total number of defendants), 1 person for Rape in Article 178 para 4 and criminal offence Sexual Intercourse with a Child in Article 180 (2,5%), 1 person for Rape in Article 178 para 4 and criminal offence Sexual Intercourse through Abuse of Position in Article 181 (2,5%), 7 persons for criminal offence Sexual Intercourse with a Child in Article 180 (19%), 2 persons for criminal offence Sexual Intercourse through Abuse of Position in Article 181 (6%), 1 person for criminal offence Pimping and Procuring in Article 183 and criminal offence Sexual Intercourse with a Child in Article 180 (2,5%), 1 persons for criminal offence Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3 (2,5%), 10 persons for criminal offence Cohabiting with a Minor in Article 190 (27%), and 7 persons for criminal offence Neglecting and Abusing a Minor in Article 193 paras 1 and 2 (19%).



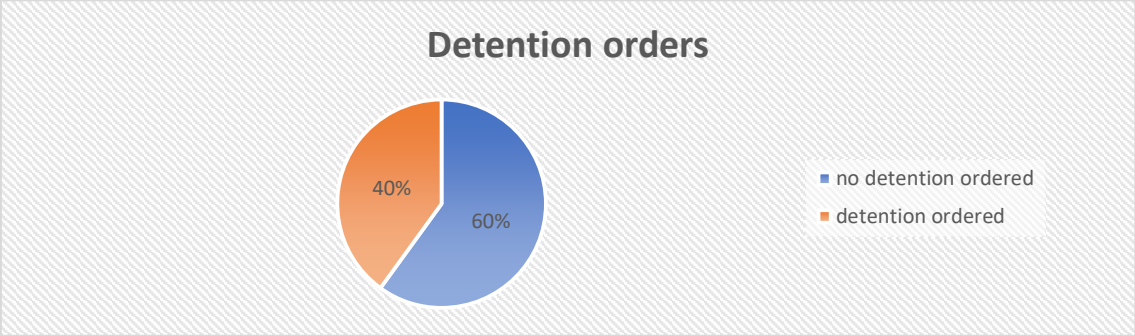
Data on the **types of sanctions** indicate that convicted persons were sentenced to imprisonment in almost all cases; they were either imposed an "effective" prison sentence (in the case of 22 defendants) or a suspended sentence - a warning measure pursuant to Article 65 of the CC (in 13 cases), while only in 1 case it was determined that the defendant will serve the prison sentence in the premises where he lives (in accordance with Article 45, para 3 of the CC). In the case of 1 defendant, a fine was imposed. In addition, security measures were imposed on 3 defendants, namely prohibition of convergence and communication with the victim (Article 89a of the CC) together with a security measure seizure of objects (Article 87 of the CC), measure seizure of objects and measure compulsory alcohol addiction treatment (Article 84 of the CC), while in case of 1 defendant measures were imposed in accordance with the Law on Special Measures to Prevent Crimes against Sexual Freedom against Minors, namely mandatory reporting to the competent police authority, prohibition of visits to places where minors gather, mandatory visit to professional counselling centers and institutions, mandatory notification about the change of place of residence, stay or work place and mandatory notification about travel abroad.



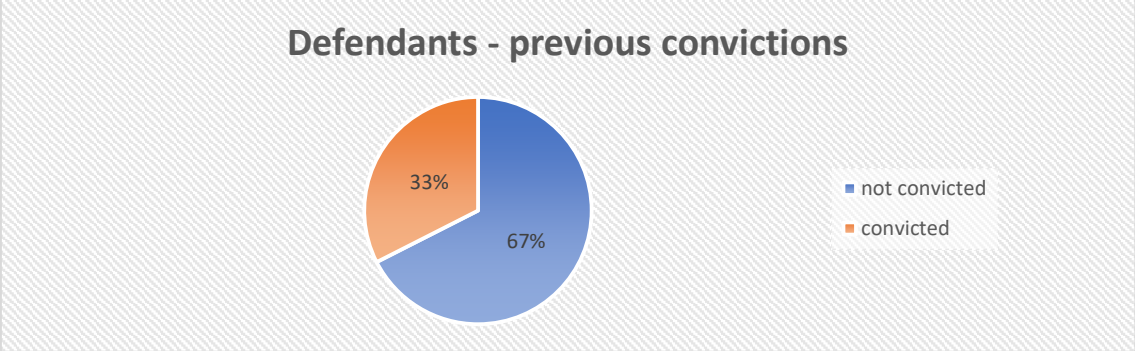
Regarding the amount of imprisonment for all criminal offenses that are the subject of the analysis, determined by the court for the defendants (regardless whether the defendants were sentenced to "effective" prison sentences or the institution of security measures - suspended sentences), the data indicate that the highest single sentence of imprisonment is 15 years, the shortest 3 months, while the average length of an individual sentence is 3 years and 10 months A total of 50% of prison sentences are under 3 years, 14% between 3-5 years and 36% over 5 years. Given that the analysis addresses a large number of criminal offenses for which prescribed and imposed sentences differ significantly, a detailed overview and analysis of sanctions for criminal offenses that are the subject of analysis is given in Chapter VI: Position of child victims in criminal proceedings (item 6. Sanctions).

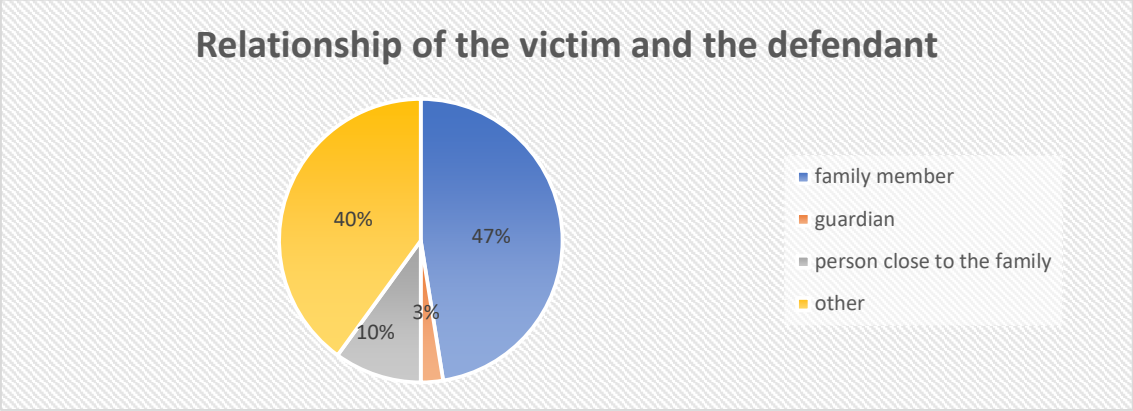
Duration of the proceedings in the first instance was analyzed in relation to the period from the indictment until the day of the first-instance decision. According to the stated criteria and the available data, the maximum duration of the court proceedings is 6 years and 10 months, while the shortest proceedings lasted 13 days. The average duration of the proceedings is 11 months.

Based on the available data in the first instance decisions, it can be determined that **detention** was ordered for 16 defendants out of a total of 40 defendants, with the longest duration of detention being 2 years and 1 month, and the shortest 47 days.

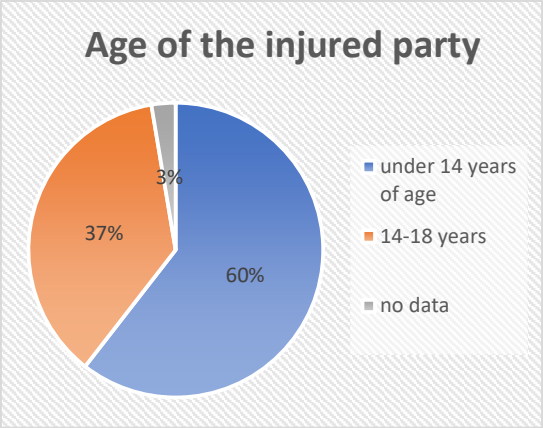


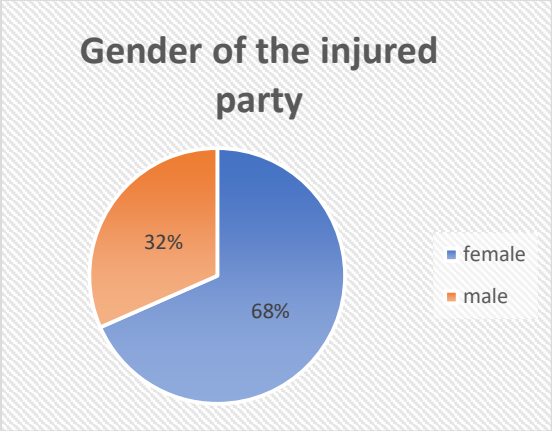
By analyzing data on **defendants** (a total of 40 people) that were available in the first instance decisions, it can be determined that out of the total number of defendants, 13 people were previously convicted, and only 1 defendant was a minor at the time of the crime. Defendants in 19 cases are family members of the injured party (parent, brother, relative), in 1 case the defendant is the guardian of the minor victim, and in 4 cases the defendant is a person close to the victim's family (mother's extramarital partner, family friend).



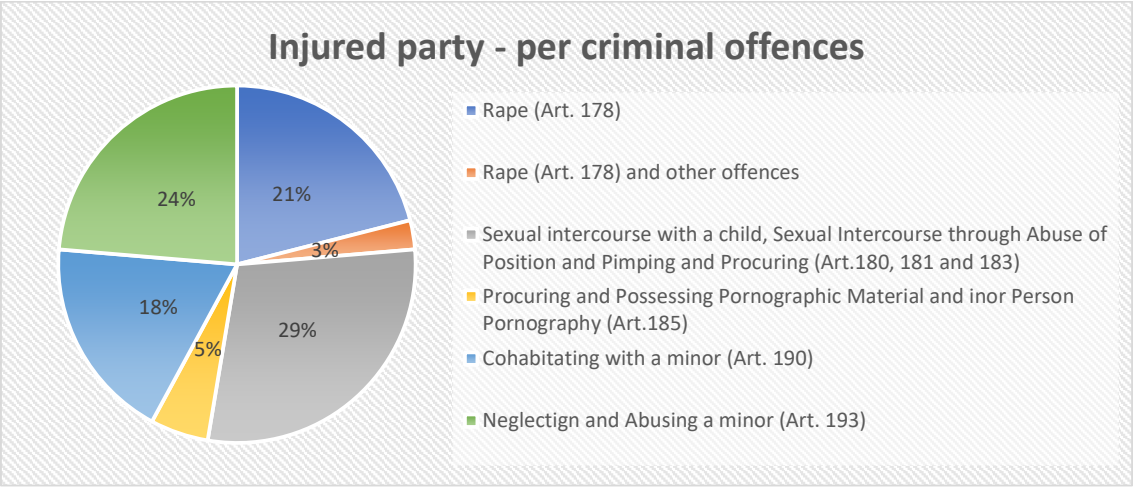


In the first instance decisions, there are a total of **38 victims (all minors).** According to the available data in the analyzed first instance decisions for injured parties, 26 injured parties (68%) are female, while 12 injured parties (32%) are male. According to age, 23 minor injured persons are under 14 years of age (61%), 14 are 14 years of age and older (36%), while for 1 injured party it is not possible to determine this information data from the decision.

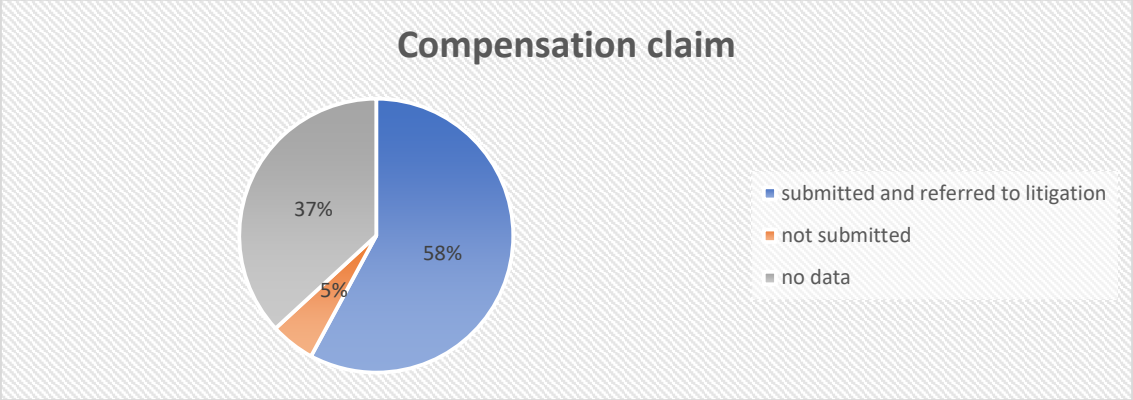




Out of the total of 38 minor victims in first instance decisions in relation to the **criminal offences committed against them**, data from court decisions indicate the following: 8 persons were injured by criminal offence Rape in Article 178 paras 3 and 4 (21%), 1 person was injured by criminal offence Rape in Article 178 para 4 and Sexual Intercourse with a Child in Article 180 (3%), 7 persons were injured by criminal offence Sexual Intercourse with a Child in Article 180 (18,5%), 2 persons by criminal offence Sexual Intercourse through Abuse of Position in Article 181 (5%), 2 persons by criminal offence Pimping and Procuring in Article 183 and Sexual Intercourse with a Child in Article 180 (5%), 2 persons by criminal offence Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 paras 2 and 3 (5%), 7 persons by criminal offence Cohabiting with a Minor in Article 190 (18,5%), 9 persons were injured by criminal offence Neglecting and Abusing a Minor in Article 193 paras 1 and 2 (24%).

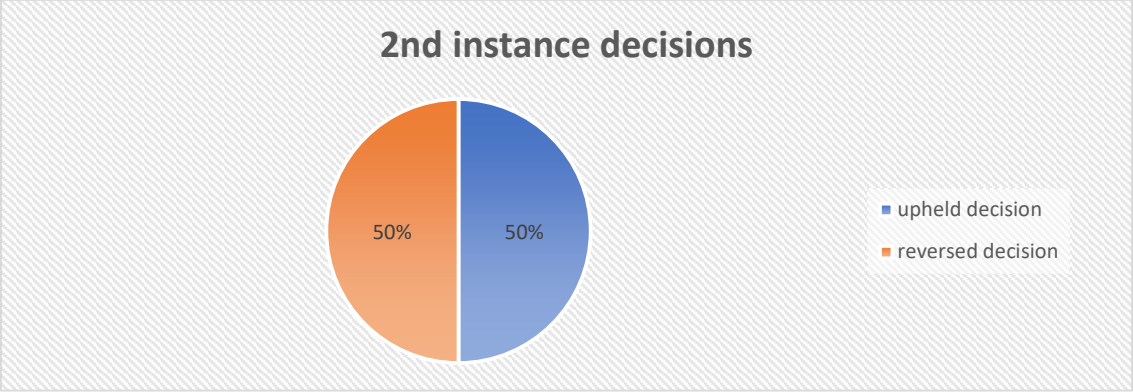


With regard to decision making on **compensation claim**, based on the data available in the analyzed first instance decisions, 22 victims were instructed to submit this request in litigation (58% of cases) by the decision of the first instance court, 2 victims did not submit compensation claim (5%), while no data was available for 14 victims (37%).



5.2. Data in second instance decisions

The analysis includes 6 court decisions rendered during 2019 in the second instance proceedings by the Appellate Courts (4 decisions) and the Higher Courts (2 decisions), which relate to criminal offenses under Article 178, para 4, Article 180, paras 1 and 2, Article 190, para 2 and Article 193, para 2. Regarding the **type of decision**, the Appellate Court upheld the first instance decision in 50% of cases (3 decisions), while in 50% of cases the first instance decision was reversed (3 decisions, of which in 1 case the decision was reversed in terms of reduced sentence and 2 cases were acquittals).



The longest **decision-making period** in the second-instance proceedings (calculated from the day of the first-instance decision until the day of the second-instance decision) is about 5 months, while the shortest decision-making period is about 3 months, so the average decision-making period is about 4 months.

6. POSITION OF CHILDREN IN CRIMINAL PROCEEDINGS

The analysis of judicial practice is focused primarily on the position and the exercise of the rights of child victims in criminal proceedings for selected criminal offences through the analysis of available data from first instance court decisions. Monitoring the position of child victims, i.e. minor injured parties in court proceedings, focuses on aspects singled out in relation to relevant international standards of protection and the exercise of rights and assistance to victims, such as the *UN Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child, Child Prostitution and Child Pornography*, the *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,* supplementing the *2000 United Nations Convention against Transnational Organized Crime (Palermo Protocol)* and the *2005 Council of Europe Convention on Action against Trafficking in Human Beings.*

The following aspects have been singled out as aspects of particular importance for considering the position and rights of victims in criminal proceedings: 1) privacy, 2) information and representation, 3) safety and protection, 4) hearing, 5) best interest and 6) sanctions.

6.1. Privacy

International standards

The *UN Convention on the Rights of the Child* (Art. 16) stipulates that no child shall be subjected to arbitrary or unlawful interference with his or her privacy. The *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (Art. 8) emphasizes the importance of protecting the privacy and identity of child victims by taking measures in accordance with national law to avoid inappropriate dissemination of information which could result in identification of children victims. The *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Art. 31, Art. 36) points to the importance of protecting the privacy of victims and taking measures in accordance with national law to prevent information leeks which could result in identification of children victims, which refers to the right of a judge to exclude the public during criminal proceedings. The *Palermo Protocol* (Art. 6) and the *Council of Europe Convention on Action against Trafficking in Human Beings* (Art. 11) also point to the importance of protecting the privacy and identity of victims as one of the basic preconditions for protecting victims in court proceedings.

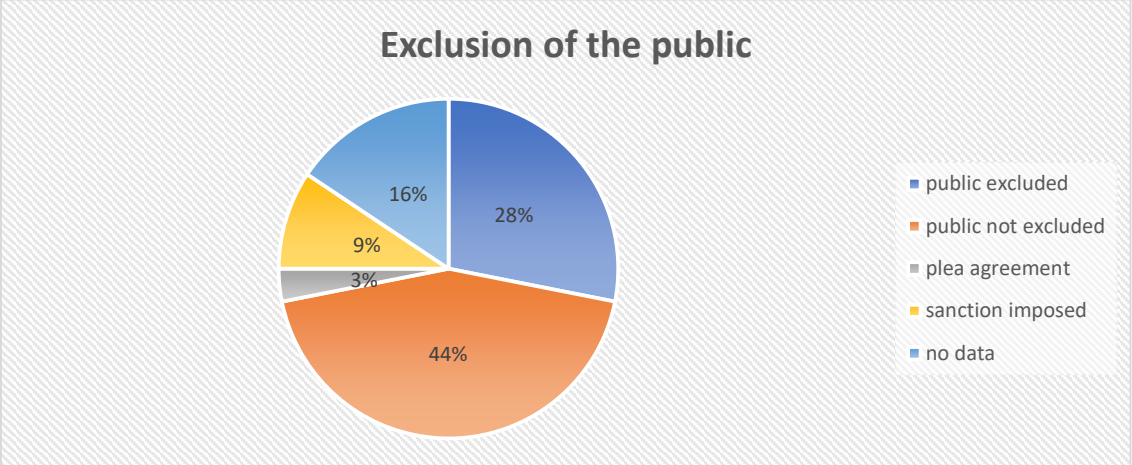
Legal provisions

The provisions of the Code of Criminal Procedure prescribe (Art. 363) that the court panel may *ex officio* or upon a motion by a party or the defense counsel, exclude the public from the entire main hearing or a part thereof, if it is necessary for the purpose of protecting public order and morality, the interests of minors or private lives of the participants in the proceedings. In this case, however, the panel may allow the presence of the professional public and, at the request of the defendant, the presence of his spouse or close relatives, who are required to maintain the confidentiality of everything they learn at the hearing (Art. 364). Also, the provisions of this law on particularly vulnerable witnesses (Art. 104) provide for the possibility of examining a witness without the presence of the parties or other participants in the proceedings in the room where the witness is examined, if examination is performed by using technical devices for image and sound transmission.

Data in court decisions

Regarding the data relevant to the aspect of privacy of victims in criminal proceedings, it is important to note that out of the total number of 33 first instance decisions, only 1 decision refers to the acceptance of a plea agreement, in which case pursuant to Art. 315 para 3 of the CPC the hearing is held without the presence of the public, whereas the public prosecutor, the defendant and his

defense counsel are summoned to the hearing. In addition to the mentioned case, 3 more first instance proceedings referred to the imposition of a sanction, and accordingly they do not provide adequate data in this aspect. Of the remaining cases, the available data in the first instance decisions indicate that the public was excluded in 9 first instance proceedings, while in 14 proceedings there was no exclusion of the public. In addition, for 6 court proceedings, in the first instance decisions it is not possible to determine with certainty whether the public was excluded.



The presented data indicate that the measures for the protection of privacy and identity of the victims are insufficiently applied in the criminal proceedings, which is particularly surprising having in mind that all victims in the analyzed decisions are minors. Inadequate application of legal provisions that would enable victims to protect their identity and privacy is largely a consequence of the lack of understanding of the vulnerable position of children victims by the authorities conducting the proceedings and the lack of individualized approach to cases of minor victims. This aspect of victim protection is particularly important when taking into account data on the age structure of victims - data in the analysis indicate that about 60% of juvenile victims are under 14 years of age.

Recommendations

- Consistent implementation of existing legislation in order to exercise the right of victims to privacy.
- Adoption of victims' rights-oriented approach by the authority conducting the proceedings, i.e. an individualized approach to child victims that would consider the different types and degree of vulnerability of each child in a particular situation.

6.2. Information, assistance and representation

International standards

The *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (Art. 8) emphasizes the importance of informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases; also providing appropriate support services to child victims at all stages of the legal process. The *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Art. 13, Art. 31) points to the importance of assisting victims in order to inform them of their rights and position in the proceedings, as well as the services available to them; providing victims with appropriate support services so that their rights and interests are properly represented and taken into account; providing access to free legal aid, i.e. appointment, by the authority conducting the proceedings, of a special representative of the victim who has the status of a party in criminal proceedings or when holders of parental responsibility are prohibited from representing a child in

such proceedings due to conflict of interest between them and the victim; with the possibility for associations or governmental or non-governmental organizations to provide assistance and/or support to victims with the consent of victims during criminal proceedings. The *Palermo Protocol* (Art. 6) and the *Council of Europe Convention on Action against Trafficking in Human Beings* (Art. 12 and 15) emphasize assistance to victims, i.e. the provision of information and assistance in exercising the rights and interests of victims in court proceedings as rights of great importance for victims.

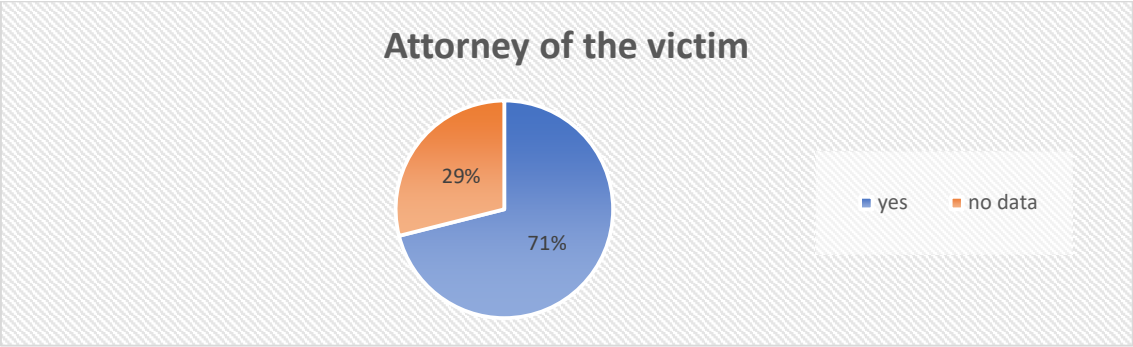
Legal provisions

The Criminal Procedure Code stipulates the obligation of the authority conducting the proceedings to advise the participants in the proceedings about the rights they are entitled to, as well as to caution the participants in the proceedings who might omit to perform an action or fail to exercise a right due to ignorance about the consequences of the omission (Article 8). In addition, the public prosecutor and the court have an obligation to inform the injured party of his rights in the proceedings (Art. 50). If it deems necessary to protect the interests of a particularly vulnerable witness, the authority conducting proceedings may issue a ruling on the appointment of a proxy for the witness (Art. 103 para 3 CPC). The provisions of the Law on Juvenile Offenders and Criminal Protection of Juveniles stipulate that a juvenile who is a victim shall have a legal representative from the first questioning of the defendant and in case the juvenile does not have a legal representative, he shall be appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles, whereby the costs of representation shall be borne by the Court budget (Art. 154).

Data in court decisions

Available data in the analyzed first instance decisions indicate that 27 victims had an attorney in the proceedings (71%), while there is no data for 11 victims in the decisions (29%). Bearing in mind that in the first-instance decisions which are the subject of the analysis all victims are minors, for 26 minors the participation of the Centre for Social Work is stated in the decision, either through reports on the victim obtained and used in the proceedings or through the presence of the Centre for Social Work during hearings; in 1 case there was the participation of the Commissariat for Refugees and Migration, while for 12 victims there is no data in this regard in the decisions.

The existence or participation of representatives or guardians of minor victims is perceived in 31 cases (81%), 1 victim is an unaccompanied minor - migrant (3%), while for 6 victims no data are available in this regard in the decisions (16% of cases).



The analysis of court decisions in most cases does not provide detailed data on the aspect of informing victims and the support that may be provided to them, bearing in mind that court decisions by their nature do not contain data that would be relevant to this area of exercising victims' rights in criminal proceedings.

Recommendations

- Consistent implementation of existing legislation in order to exercise the right of victims to information and representation;
- Improving the system of information and support services for victims and witnesses at the competent courts and prosecutor's offices through the establishment of support services for child victims and witnesses in all competent courts and prosecutor's offices;
- Strengthening the social protection system by improving the work of CSW to provide comprehensive support to children in situations of vulnerability (children without adequate parental care, Roma children, refugees and migrant children and asylum seekers).

6.3. Safety and protection

International standards

The *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (Art. 8) emphasizes the importance of ensuring, in appropriate cases, the safety of child victims, as well as the safety of their families from intimidation and retaliation. The *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Art. 31) states the obligation to take measures to ensure the safety of victims, as well as the safety of their families and witnesses who testify in their favor, to protect them from intimidation, retaliation and re-victimization; the need to avoid contact between victims and defendants in court or police premises, unless the competent authorities determine that it is in the best interests of the child or when such contact is necessary for investigation or criminal proceeding; as well as ensuring, at least in cases where victims and their families may be in danger, that they are informed, if necessary, when a person who has been prosecuted or convicted is temporarily or permanently released. The *Palermo Protocol* (Art. 6) and the *Council of Europe Convention on Action against Trafficking in Human Beings* (Art. 12) emphasize the obligation to provide victims with a system of measures for their safety, security, and protection in court proceedings.

Legal provisions

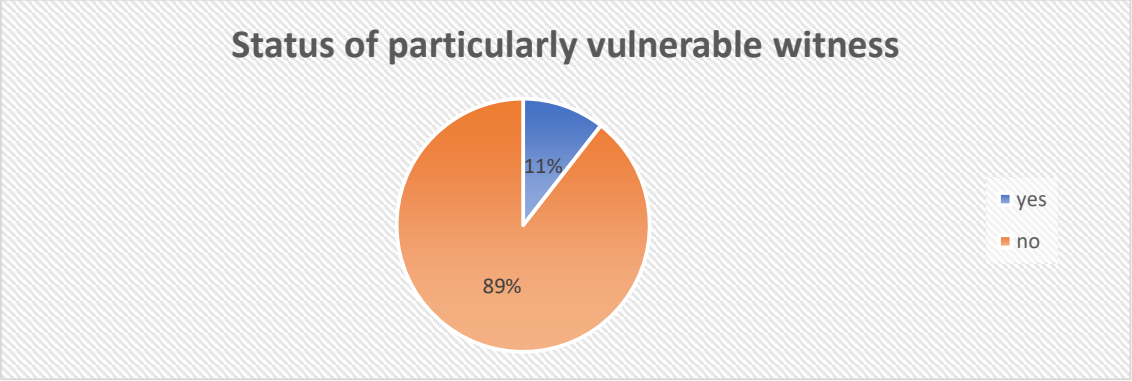
The provisions of the Criminal Procedure Code prescribe the obligation of the court to protect an injured party from an insult, threat and any other attack (Art. 102), which, along with the provisions on particularly vulnerable witness (Art. 103 and 104) can provide a greater degree of security and protection for victims in criminal proceedings. In addition, the adequate application of the provisions on measures to ensure the presence of the defendant and the unobstructed conduct of criminal proceedings under Article 188 of the CPC, which, in addition to detention, provides the possibility of ordering other measures such as a measure prohibition of approaching, meeting or communicating with a certain person and visiting certain locations. The Law on Juvenile Offenders and Criminal Protection of Juveniles stipulates that if, due to the nature of the criminal offence and the juvenile's character the judge considers it necessary, he shall order questioning of the juvenile with the aid of technical devices for image and sound transmission, and the questioning shall be conducted without presence of the parties and other participants in the proceeding (Art. 152).

Data in court decisions

The safety and protection of the victim at the trial, as well as outside the trial, is best ensured when the defendant is in detention, if the legal conditions are met. Available data in the first instance decisions demonstrate that during the first instance proceedings, detention of the defendants was ordered in 40% of cases. Moreover, security measures were imposed to 3 defendants, namely prohibiting convergence and communication with the victim (Article 89a CC), while in the case of 1 defendant, measures were imposed in accordance with the Law on Special Measures to Prevent

Crimes against Sexual Freedom Against Minors, such as mandatory reporting to the competent police authority, prohibition of visiting places where minors gather, mandatory visits to professional counselling centers and institutions, mandatory notification of change of place of residence, stay or workplace and mandatory notification of travel abroad.

With regard to the status of particularly vulnerable witness, data in the analyzed court decisions indicate that out of the total number of 38 juvenile victims, the status of a particularly vulnerable witness was granted only in the case of 4 victims, which makes only 11% of the total number of victims. Out of the 4 victims who were granted the status of particularly vulnerable witness, in 2 cases the minor injured parties were heard at the main trial (in 1 case in the presence of the defendant and in 1 case with the defendant's previous removal from the courtroom), while in the remaining 2 cases, in 1 case the transcript of the testimony of the injured party previously given in the screening room was read at the hearing, and in 1 case the interrogation was performed using devices for image and sound transmission in the presence of expert witnesses. In the analyzed first instance decisions, there are no other recorded cases of taking measures provided by law to ensure the safety and protection of the victim.



It is difficult to explain the lack of the status of particularly vulnerable witness in a large number of cases, given that these are victims who are not only juvenile victims, but also victims in a particularly vulnerable position, due to their personal circumstances and type of criminal offence. Therefore, the victims in almost all cases meet the conditions provided by law to be granted this status in the proceedings (age, life experience, lifestyle, gender, health condition, nature, manner or consequences of committing the criminal offence). It should be particularly noted that data analysis shows that 60% of victims are under 14 years of age and that all victims have life circumstances that make them a particularly vulnerable group (difficult family, social or financial circumstances, inadequate parental care, domestic violence, trafficking situation or minors without care or escort). The fact that the defendants in 50% of cases are family members or guardians of minor victims is also pointed out as particularly important.

The analysis of court decisions indicates that this aspect is not sufficiently addressed, despite the existing legal solutions that could contribute to the improvement of the rights of victims. Having in mind the specific position of the victims and the type of criminal offenses, it can be concluded that there is a need to direct the actions of the relevant prosecutors' offices and courts towards ensuring the safety and security of the victim, especially during the hearing, in order to protect the victim's rights and concurrently provide a meaningful and substantially high-quality statement in the interest of proper conduct of the procedure and determination of criminal responsibility.

Recommendations

- Consistent implementation of existing legislation in order to exercise the right of victims to safety and protection;

- Improving the existing solutions from the Criminal Procedure Code and the Law on Juvenile Offenders and Criminal Protection of Juveniles, by excluding the possibility for child victims to be heard at the main trial in the courtroom and in the presence of the defendant;
- Equipping all competent courts and prosecutor's offices, as well as CSW, with special rooms for interrogation of child victims and devices for image and sound transmission;
- Adoption of victims' rights-oriented approach by the authority conducting the proceedings, i.e. an individualized approach to child victims that would take into account the different types and degree of vulnerability of each child in a particular situation.

6.4. Hearing

International standards

The *UN Convention on the Rights of the Child* (Art. 12) stipulates that the child shall be given the opportunity to be heard in all judicial and administrative proceedings concerning the child, in accordance with the procedural rules of national law. The *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (Art. 8) emphasizes the importance of allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law. The *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Art. 31, Art. 32, Art. 35, Art. 36) indicates the need to avoid contact between victims and perpetrators in court or in police premises, unless the competent authorities determine that it is in the best interests of the child or when such contact is necessary for an investigation or criminal proceeding; the need to ensure that victims give their testimony and choose the way in which their views, needs and concerns will be presented, directly or through an intermediary, and considered; providing the necessary measures to ensure that interviews with the child can take place without undue delay and in the presence of legal counsel, in premises adapted for that purpose and where necessary with the use of video recording i.e. without the presence of the victim in court, whereby the interview with a child is performed by trained professionals; ensuring that investigations or prosecutions do not depend on the victim's charges or accusation, and that proceedings can continue even if the victim has withdrawn his or her statements. The provisions of the *Palermo Protocol* and the *CoE Convention on Action against Trafficking in Human Beings*, which relate to the protection of victims' rights in the proceedings, must be especially emphasized during the victim's hearing, and the actions of the procedural body must be aimed at ensuring the safety and security of victims.

Legal provisions

In accordance with the provision of Article 103 of the CPC, the court may designate the status of particularly vulnerable witness to the injured party. The provisions of the CPC concerning the rules for the examination of persons with the status of particularly vulnerable witness require particular attention, and the examination may be conducted with the assistance of a psychologist or social worker or other professional, with the possibility of examination by technical devices without the presence of other participants, his/her dwelling or other premises or in an authorized institution professionally qualified for examining particularly vulnerable persons, but none of these provisions is binding (Article 104). Even the prohibition of confrontation of particularly vulnerable witness with the defendant is conditioned by the request of confrontation by the defendant himself/herself, and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defense (Art. 104).

The provisions of the Law on Juvenile Offenders and Criminal Protection of Juveniles also envisage only the possibility, and not the obligation to interrogate juvenile victims using technical devices for transmitting images and sound, i.e. examination without the presence of the parties and other

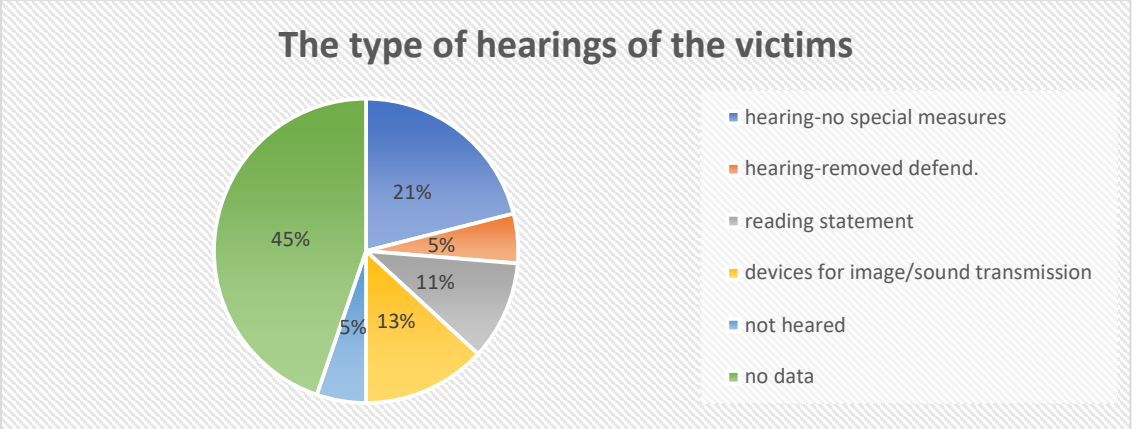
participants in the proceedings. When conducting proceeding for criminal offences committed against juveniles, it is the obligation of the authority conducting the proceedings to treat the victim with care, having regard to his age, character, education and living circumstances, particularly endeavoring to avoid all possible prejudicial consequences of the proceeding on his character and development, and questioning of a child or juvenile shall be conducted with the assistance of psychologist, pedagogue or other qualified person (Article 152). If a juvenile against whom a criminal offense referred to in Article 150 of this Law is committed is examined as a witness, the hearing may be conducted no more than twice, and exceptionally more than once if it is necessary for the purpose of criminal proceedings. If, considering the peculiarities of the criminal offense and the personality traits of the juvenile, the judge deems it necessary, he/she shall order that the juvenile be heard using technical means for transmitting images and sound, and the hearing be conducted without the presence of the parties and other participants in the room in which the witness is located, so that the parties and persons entitled to it, ask questions through a judge, psychologist, pedagogue, social worker or other professional. If a juvenile is examined as a particularly vulnerable witness i.e. who is in a particularly difficult mental state due to the nature of the criminal offence, consequences or other circumstances, confrontation with the defendant is prohibited (Article 153), contrasting the solution provided by the CPC.

In the field of assessment of injured parties, the CPC prescribes (Article 131) that the authority conducting the proceedings shall order a psychiatric expert assessment of the witness if suspicion arises about the capacity of a witness to convey his/her knowledge or observations in connection with the subject matter of the testimony. If expert assessment was ordered for the purpose of evaluating the capacity of a witness to convey his/her knowledge or observations in connection with the subject matter of the testimony, the expert witness shall establish whether the witness is mentally disturbed and issue an opinion whether the witness if capable of testifying (Article 132).

Data from court decisions

Available data on the manner of hearing of injured parties in first instance decisions indicate that, despite the fact that injured parties are minors, in a significant number of cases the hearings take place at the main trial in the presence of defendants and without exclusion of the public.

Based on the first-instance decisions that are the subject of the analysis, in the case of 17 victims it is not possible to precisely determine the manner in which they were heard before the court and how they testified in the proceedings. Of the other cases, in 2 cases the minor victims were not questioned (1 unaccompanied minor was unavailable to the court, while in 1 case it was a decision accepting the plea agreement). The largest number of victims, a total of 10 persons, were heard in court at the main trial, out of which 8 victims were heard without the use of any measures to protect the interests of minor victims, while 2 victims were heard at the main trial, whereby the defendant was previously removed from the courtroom (Article 390 of the CPC). Using the devices for the transmission of images and sound, in the presence of an expert and a representative of the CSW, 5 injured parties were heard, out of which in 3 cases the transcripts of these statements were subsequently read at the main trial. Of the remaining number, in 4 cases the previously given statements of the victims were read.



Only 4 victims (which makes 11% of the total number of victims) received the status of particularly vulnerable witness, although about 60% of the victims were under 14 years of age. Regarding the manner of examination of particularly vulnerable witness, the data indicate that out of 4 cases of especially vulnerable witnesses, in 2 cases the hearing was conducted at the main trial (1 victim without any additional protection measures, 1 victim with prior removal of the defendant from the courtroom). Of the remaining 2 cases, in 1 case a transcript of his statement previously given in the "screening room" was read at the hearing, and in 1 case the hearing was conducted using devices of image and sound transmission in the presence of experts. These data indicate that even when the status of particularly vulnerable witness is granted, it does not provide an additional degree of protection to victims, given that some of them are still being heard in the courtroom at the main trial, even in the presence of defendants.

Similar to some other aspects relevant to the position of victims in court proceedings, it may be perceived that in certain number of cases the data from first instance decisions do not provide sufficient information regarding the manner or number of hearings of victims at various stages of the proceedings, presence of an attorney or implementation of measures to protect the position of the victim in court proceedings and to avoid further traumatization of the children victims. Thus, in almost half of the cases, it is not possible to determine the manner of hearing of the injured parties from the text of the first instance decision, which particularly stands for criminal offenses within the jurisdiction of the Basic Courts, either due to a brief reasoning (only on the content of the statement) or in cases referred to in Article 429 (when the law provides for the possibility of no reasoning or partial reasoning of the decision) or Article 517 CPC (imposition of a criminal sanction).

The fact that in most cases the court focuses on the content of the testimony of the injured parties in the reasoning of the decision, without providing information on the act of hearing (number of hearings, possible reading of previous statements, manner of hearing, presence of attorneys, etc.) signposts a persistent trend in court practice that victims, including minors as victims, are treated primarily as a source of information on criminal offenses, while neglecting all significant aspects of the position and rights of victims.

The manner of hearing of minor victims, in addition to the court decision, is largely conditioned by the findings and opinion of experts – expert witnesses who perform psychiatric assessment of the injured party and ultimately, in addition to opinions on the mental state of the injured party and the ability to faithfully reproduce events, provide opinion whether they can be heard in court. Given that the position and the exercise of the rights of child victims in criminal proceedings largely depends on the outcome of assessment in this aspect, the need for special training of expert witnesses who act in these cases would significantly improve the position of minor victims.

Thus, in the case of one injured party (victim of the criminal offence Rape, perpetrator father), the expert witness established that “she was capable of testifying in court in the courtroom in the

presence of the accused, which could not have consequences for her physical health, anxiety or fear". The victim was heard at the court and provided a long and exhaustive statement about previous events, and her mental condition was assessed only for the purpose of assessing the reliability of the statement. The victim had been previously assessed and re-assessed several times, with psychiatric assessment indicating the existence of post-traumatic stress disorder (PTSD).

In another case, the assessment of the injured party (victim of the criminal offence Sexual Intercourse through Abuse of Position, perpetrator father) was reduced to "determining the state of mind and possible tendency to confabulation", i.e. whether she has "preserved memory and is capable of reproducing past events" without any findings regarding the consequences of testifying in court, despite the fact that the expert witness had previously indicated the existence of PTSD symptoms. The court used that finding only to draw a conclusion regarding the truthfulness of the victim's testimony, so it was concluded that the court "has no reason to doubt her testimony".

In contrast to this case, a positive example is the case of one injured party (victim of the criminal offence Rape, perpetrator father), in which the expert witnesses' commission concluded that "the victim could be secondarily victimized if she testified in court in the presence of the accused". The victim was interrogated using technical devices for the transmission of images and sound in a special room of the court without the presence of other participants, except the psychologist and CSW staff.

The fact that granting the status of particularly vulnerable witness is not a guarantee that the victim will enjoy the protection provided by law in order to avoid secondary victimization of minor victims is confirmed by the case of two victims with the status of particularly vulnerable witness. One victim was heard at the main trial in the presence of the defendant. The second victim was previously heard with the use of devices of image and sound transmission, but subsequently in accordance with the expert witness's opinion that "there would be no harm if the injured party would be examined at the trial in the absence of the defendant", the court used as an exceptional opportunity to examine the minor victim more than twice. Thus, the victim was also questioned at the main trial, as it is stated, "in order to achieve the purpose of the proceedings - to establish the truth."

Data in the analyzed decisions related to the hearing of victims in the proceedings point to a lack of understanding of the specific and vulnerable position of child victims and neglect of their rights and interests in criminal proceedings. Injured parties are treated by the authority conducting the proceedings mainly as a source of information or knowledge about the criminal offence, which deprives the victims of guaranteed rights and protection in the proceedings and hinders the protection of minor victims despite the existing legal possibilities.

Recommendations

- Consistent implementation of existing legislation in order to achieve the safety and rights of victims during the hearing;
- Improving the existing solutions from the Criminal Procedure Code and the Law on Juvenile Offenders and Criminal Protection of Juveniles, by excluding the possibility for child victims to be heard at the main trial in the courtroom and in the presence of the defendant, and by introducing an absolute ban on confrontation of children victims with the defendant and other witnesses;
- Equipping all competent courts and prosecutor's offices, as well as CSW, with special rooms for interrogation of children victims and devices for image and sound transmission;
- Improving the existing solutions in the Law on Juvenile Offenders and Criminal Protection of Juveniles, by introducing the obligation that expert witnesses who perform assessment of juvenile victims in criminal proceedings have acquired special knowledge in the field of

children's rights, by analogy with the obligation prescribed for procedural bodies and attorneys;

– Adoption of victim's rights-oriented approach by the authority conducting the proceedings, i.e. an individualized approach to children victims that would consider the different types and degree of vulnerability of each child in a particular situation.

6.5. Best interest of a child

International standards

The *UN Convention on the Rights of the Child* (Art. 3) stipulates that in all activities concerning children, including those undertaken by the courts, the best interests of the child must be a primary consideration. *General Comment of the UN Committee on the Rights of the Child No. 14* (2013)[143] *on the right of the child to have his or her best interests taken as a primary consideration* the refers to the following elements to be taken into account when assessing the best interests of the child particularly emphasizing elements of care, protection and safety of the child (Item 71) which also includes care for the safety of the child and protection from all forms of physical or mental violence and abuse, as well as sexual, economic and other exploitation; in addition, an element related to the situation of vulnerability, which includes belonging to a minority group, being a refugee and asylum seeker, victim of abuse or harassment and child in the street situation; whereby the authorities are obliged to take into account the different types and degree of vulnerability of each child in a particular situation, emphasizing the importance of child's uniqueness. The *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (Art. 8) emphasizes the importance of recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses; as well as avoiding unnecessary delays in considering cases, while ensuring that their best interests are a priority in the criminal justice process. The *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Art.30) states the obligation to take all necessary legislative or other measures to ensure that investigations and criminal proceedings are conducted in the best interests of the child and with respect for his or her rights, with a protective approach to victims, ensuring that investigations and criminal proceedings do not aggravate the trauma already suffered by the child; including the need to ensure that investigations and criminal proceedings are treated as a matter of priority and carried out without any undue delay. The provisions of the *Palermo Protocol* (Art. 6) indicate the need to take into account the special needs of victims, and in particular the special needs of children, as well as the provisions of the *CoE Convention on Action against Trafficking in Human Beings* (Art. 28) which indicate the need to ensure that children victims receive special protection measures that will take into account their best interests, paying special attention to the needs of children victims in court proceedings.

Legal provisions

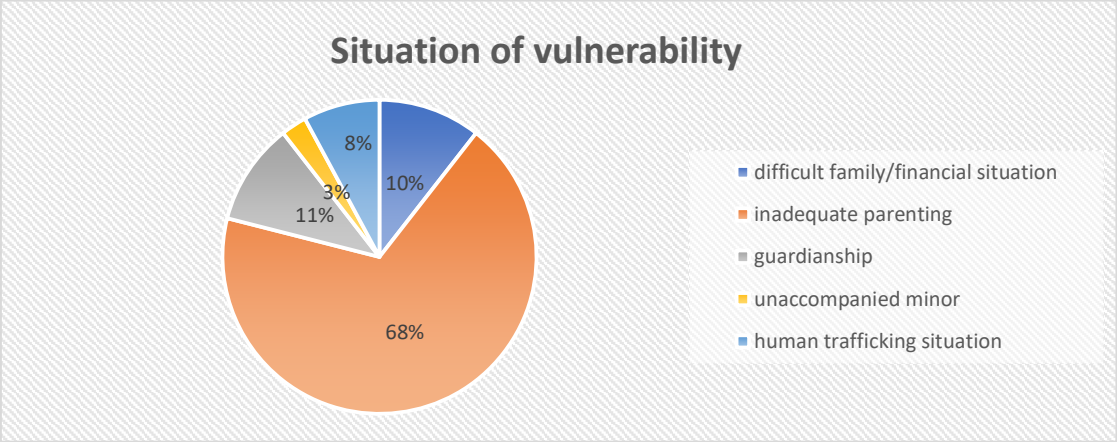
The provisions of the Criminal Procedure Code (Art. 103) stipulate that a witness who is particularly vulnerable in view of his age, life experience, lifestyle, gender, state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances, the authority conducting proceedings may, *ex officio*, at the request of parties or the witness himself/herself, designate as a particularly vulnerable witness. The Law on Juvenile Offenders and Criminal Protection of Juveniles (Art. 152) stipulates that, when conducting proceedings for criminal offenses committed to the detriment of minors, the public prosecutor, investigative judge and judges of the bench shall treat the victim with care, having regard to his age, character, education and living circumstances,

[143] CRC/C/GC/14, adopted at the 62nd session of the UN Committee on the Rights of the Child (January 14 - February 1, 2013)

particularly endeavoring to avoid all possible prejudicial consequences of the proceeding on his character and development.

Data from court decisions

As the assessment of the best interests of the child requires special attention to be paid to the element related to the situation of vulnerability (belonging to a minority group, refugees and asylum seekers, victims of abuse or harassment, human trafficking, children in the street situation), the analysis also addressed family, social and financial circumstances of minor victims. Data in the analyzed decisions indicate that out of the total number of 38 victims, 4 minor victims have difficult family, social or socio-economic circumstances (10.5%), for 21 minor victims inadequate parental care or dysfunctional family without CSW supervision can be perceived (55, 5%), 4 minor victims had inadequate parental care in the sense that their parents enabled or did not prevent the commission of the criminal offence (10.5%), in the case of 1 minor victim the family was under the supervision of CSW due to inadequate parental care (2.5 %), 4 minor victims are under the guardianship of another person or CSW (10.5%), 1 minor victim is an unaccompanied migrant (2.5%), while 3 minor victims are in a situation of human trafficking (8%).



In relation to the total number of cases, in 8 cases domestic violence may be perceived, either against the victim or another family member, most often the mother of the victim. Regarding the criminal offense Neglecting and Abusing a Minor under Article 193 CC, 2 cases refer to parents forcing a minor to mendacity, and in 1 case the child was denied health care and the right to education. Regarding the criminal offense under Article 190 CC, the parents enabled cohabiting with a minor in 3 cases, while in 3 cases the victims did not have adequate care (1 person escaped from a foster family, 1 was without a guardian - guardian grandmother passed away, 1 person was institutionalized). In relation to all criminal offenses, in 50% of cases the criminal offense against the victim was committed by a family member or guardian.

In relation to the presented data, the data from the analyzed first instance decisions regarding various aspects of importance for the position and rights of children victims point out that the situation of vulnerability of the victim was not adequately recognized by the authorities conducting the proceedings. The presented data in the first instance decisions indicated that the public was not excluded from the hearing in 44% of cases, and that in only 11% of cases minor victims were granted the status of particularly vulnerable witness, even though about 60% of victims were under 14 years old. In many cases, victims are still heard at the main trial in the presence of the defendants, and even 1 victim who was granted the status of particularly vulnerable witness was heard in that way. The psychiatric assessment of the victims is mainly used by the court to determine the credibility of their testimony, i.e. the ability to be heard in court and to faithfully reproduce the events. In practice, this leads to situations in which minor victims remain deprived of individual access and necessary safety,

thus protection from secondary victimization is often neglected by the court, even in cases that indicate the existence of serious consequences such as PTSD.

Having in mind the results of the analysis in terms of protection of privacy, information and support, safety and especially avoidance of re-traumatization of victims during hearings and participation in criminal proceedings, it can be concluded that the authorities conducting the proceedings in most cases did not take into account different forms and the degree of vulnerability of each child in the specific situation, leading in practice to the absence of an individualized approach.

Moreover, it is perceived that the authorities conducting criminal proceedings in practice do not sufficiently apply the existing legal solutions in order to protect the interests of minors, so in this way the need to recognize the vulnerability of child victims and their special needs remains unmet. Consequently, neglecting the specific position of the victims and the type of criminal offense, the treatment of victims as a source of information to prove the criminal offense prevails in practice.

Recommendations

- Consistent implementation of existing legislation in order to exercise the rights and protection of child victims in criminal proceedings;
- Adoption of a victim-oriented approach by the authorities conducting the proceedings, i.e. an individualized approach to child victims that would consider the different types and degree of vulnerability of each child in a particular situation.

6.6. Sanctions

International standards

The *CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (*Article 13) indicates that it is necessary to take all necessary legislative or other measures to ensure that offenses established in accordance with this Convention are punishable by effective, proportionate sanctions which entail preventive function, taking into account the severity of these acts. The *CoE Convention on Action against Trafficking in Human Beings* (Article 23) also points to the need to impose effective and proportionate sanctions and measures to deter the commission of a criminal offense.

Legal provisions

According to the provisions of the Criminal Code (Article 54), the court shall determine a punishment for a criminal offender within the limits set forth by law for such criminal offence, with regard to the purpose of punishment and taking into account all circumstance that could have bearing on severity of the punishment (mitigating and aggravating circumstances), and particularly the following: degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behavior after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender. In determining the fine amount (Article 50), the court shall afford consideration to financial status of the offender. The circumstance which is an element of a criminal offence may not be taken into consideration either as aggravating or extenuating, unless it exceeds the degree required for establishing the existence of the criminal offence or particular form of the criminal offence or if there are two or more of such circumstances, and only one is sufficient to define the existence of a severe or less severe form of criminal offence. The court may pronounce to a perpetrator of a criminal offence a penalty which is under statutory limits or a mitigated penalty, when mitigation of penalty is provided by law; the law provides for remittance from punishment of the offender and the court decides otherwise; if the court finds that particularly mitigating

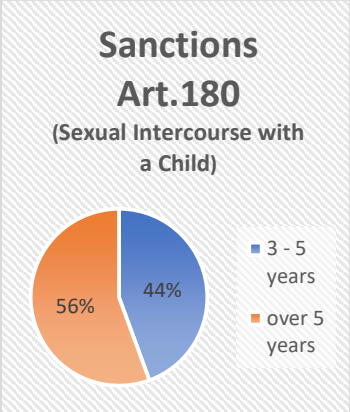
circumstances exist indicating that the purpose of punishment may be achieved by a mitigated penalty (Art.56).

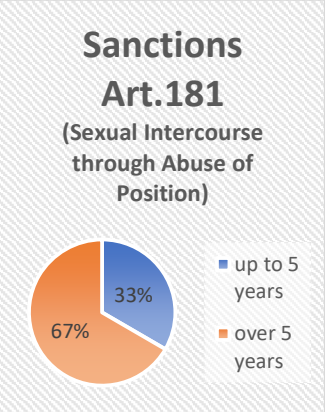
Data from the judgements

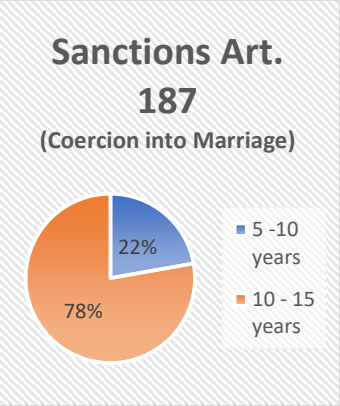
The data obtained from the first instance court decisions show that in most cases, the court passed convictions (92%) for the relevant criminal offenses covered by the analysis. Data on the types of sanctions indicate that convicted persons were sentenced to imprisonment in almost all cases, whether they were imposed as an "effective" prison sentence (in the case of 22 defendants - 59%) or a suspended sentence - a warning measure under Article 65 CC (in 13 cases - 35%), while only in 1 case (3%) it was determined that the defendant will serve the prison sentence at his own residence in accordance with Article 45, para 3 CC. In the case of 1 defendant (3% of the total number) a fine was imposed. In addition, security measures were imposed to 3 defendants, namely a prohibition of convergence and communication with the victim (Article 89a CC) together with a security measure seizure of objects (Article 87 CC), measure seizure of objects and compulsory alcohol addiction treatment (Art.84 CC), while in the case of 1 defendant, measures were imposed in accordance with the Law on Special Measures to Prevent Crimes against Sexual Freedom against Juveniles, namely mandatory reporting to the competent police authority, ban on visiting places where minors gather, mandatory visits to professional counselling centers and institutions, mandatory notification of change of place of residence, stay or workplace and mandatory notification of travel abroad.

Regarding the length of imprisonment for all criminal offenses that are the subject of analysis, determined by the court for the defendants (regardless of whether the defendants were sentenced to "effective" prison sentences or the institute of security measure - suspended sentence was applied), data indicate that the longest determined single sentence of imprisonment is 15 years, the shortest one is 3 months, while the average length of a single sentence is 3 years and 10 months. A total of 50% of prison sentences are under 3 years, 14% range 3-5 years and 36% is over 5 years. Bearing in mind that the analysis explores a large number of criminal offenses for which the prescribed and imposed sentences differ significantly, a detailed overview and analysis of sanctions is given individually for the criminal offenses that are the subject of analysis.

For the criminal offense Rape under Article 178 of the Criminal Code, the highest imposed sentence of imprisonment is 15 years, the lowest 5 years and 6 months, whereas a prison sentence of 5-10 years was imposed in 2 cases, and 10-15 years in 7 cases. For the criminal offense Sexual Intercourse with a Child in Article 180, the highest sentence of imprisonment is 7 years, the lowest 3 years, whereby a prison sentence of 3-5 years was imposed in 4 cases, and over 5 years in 5 cases. For the offence Sexual Intercourse through Abuse of Position in Article 181, the highest sentence of imprisonment is 8 years, the lowest 1 year, whereby the sentence of imprisonment of up to 5 years was imposed in 1 case, and over 5 years in 2 cases. For the offence Pimping and Procuring under Article 183, a sentence of imprisonment for a term of 1 year was imposed. The criminal offense Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography under Article 185, a sentence of imprisonment of 3 months was imposed. Effective prison sentences were imposed for all these offences, except for one case of serving a sentence at the defendant's residence. For the criminal offense Cohabiting with a Minor under Article 190, all sentences were imposed as suspended sentences with 1 case of a fine, with a maximum of 4 months in 1 year, and a minimum of 3 months in 1 year. For the offence Neglecting and Abusing a Minor under Article 193, 4 effective prison sentences and 4 suspended sentences were imposed, with the highest effective prison sentence of 8 months, the lowest 3 months, and the highest suspended sentence 10 months in 2 years and the lowest 3 months in 1 year.







The data from the judgements indicate that the penal policy is quite soft, and that prison sentences in a significant number of cases are imposed around the legally prescribed minimum, which can be specifically stated for criminal offences Sexual Intercourse with a Child in Article in 180 and Cohabiting with a Minor in Art. 190 CC.

In the analyzed first instance decisions, the available data on determining the punishment indicate that previous non-conviction (in all cases when that circumstance existed), as well as the personal and family circumstances of the defendants (age, health and family condition) are most often taken into account as mitigating circumstances, followed by confession of the criminal offence and expressed remorse. The fact that the defendant has children despite the fact that the crime was committed against a minor victim was taken into account in 2 cases (in 1 case for the defendant who committed the offence against a minor daughter, and in 1 case the father of a minor child born out of wedlock with a minor victim). In 2 cases, the court specifically pointed out that the fact that the defendant had children could not be assessed as mitigating because the crime was committed against a minor victim.

An overview of the prescribed and imposed sentences for all defendants in the first-instance proceedings before the Basic and Higher Courts is as follows:

Table 1: Higher courts

Off.	Criminal offence	Prescribed sentence	Determined sentence/sanction	Single sentence
1.	art.178 para 3 and 4 in connection to para 1	5-15yrs (para 3) / min.10yrs or life imprisonment (para 4)	10 yrs	
2.	art.178 para 3 in connection to para 1	5-15yrs	15 yrs	
3.	art.178 para 4	min.10yrs or life imprisonment	13 yrs	
4.	art.178 para 3 in connection to para 1	5-15yrs	5yrs and 6m	
5.	art.178 para 4 KZ in connection to para 1	min.10yrs or life imprisonment	10yrs	
6.	art.178 para 4 in connection to para 1	min.10yrs or life imprisonment	15yrs	
7.	art. 178 para 3 in connection to para 1	5-15yrs	7yrs	
8.	art.180 para 1	5-12yrs	7yrs	

9.	art.180 para 2 in connection to para 1	5-15yrs	5yrs	
10.	art.180 para 1	5-12yrs	6yrs and 11m	
11.	art.180 para 1	5-12yrs	5yrs	
12.	art.180 para 1	5-12yrs	4yrs	
13.	art.178 para 4 in connection to para 1 art.180 para 1	min.10yrs or life imprisonment 5-12yrs	10yrs 5 yrs	13yrs and 6m
14.	art.181 para 4 in connection to para 2	2-12yrs	1y	
15.	art.181 para 3 and para 2	5-12yrs	8yrs	
16.	art.178 para 4 in connection to para 1 art.181 para 3 in connection to para 2	min.10yrs or life imprisonment 5-12yrs	12yrs 5yrs	14yrs
17.	2 x art.183 para 2 2 x art.180 para 1	6m-5yrs and a fine 5-12yrs	2x1y and 50.000 RSD 2x3yrs	5yrs and 6m and 90.000 RSD
18.	art.180 para 1	5-12yrs	3yrs	
19.	art. 180 para 1	5-12yrs	3yrs	

Table 2: Basic courts

Off.	Criminal offence	Prescribed sentence	Determined sentence/sanction	Single sentence
1.	2 x art.185 para 3 in connection to para 1	6m-3yrs	2x3m	
2.	art.190 para 1	Up to 3yrs	3m in 1y	
3.	art.190 para 1	Up to 3yrs	4m in 1y	
4.	art.190 para 1	Up to 3yrs	3m in 1y	
5.	art.190 para 2	Up to 3yrs	3m in 1y	
6.	art.190 para 2	Up to 3yrs	3m in 1y	
7.	art.190 para 1	Up to 3yrs	4m in 1y	
8.	art.190 para 2	Up to 3yrs	4m in 1y	
9.	art.190 para 2	Up to 3yrs	3m in 1y	
10.	art.190 para 2	Up to 3yrs	3m in 1y	
11.	art.190 para 1	Up to 3yrs	100.000 RSD	
12.	art.193 para 2	3m-5yrs	3m	
13.	art.193 para 2	3m-5yrs	3m in 1y	
14.	art.193 para 2	3m-5yrs	8m in 2yrs	
15.	art.193 para 1	Up to 3yrs	5m	
16.	art.193 para 2 in connection to para 1	3m-5yrs	10m in 2yrs	
17.	2 x art.193 para 2	3m-5yrs	2x8m	
18.	art.193 para 2	3m-5yrs	6m in 2yrs	

Recommendations

– Consistent implementation of existing legislation in order to impose effective and proportionate sanctions in criminal proceedings, especially the provisions on sentencing.

7. CONCLUDING REMARKS AND RECOMMENDATIONS

The present analysis of judicial practice for 2019 was conducted with the aim to objectively review the position of child victims in situations of vulnerability, in criminal proceedings for selected criminal offences, in order to identify possible obstacles and problems in practice - either due to shortcomings in domestic legislation or inconsistent application of existing legal solutions. The goal of the analysis is to improve the position of child victims before the court in all aspects important for the full exercise of their rights as victims in court proceedings. The analysis of judicial practice in this area is based on quantitative (statistical) and qualitative analysis of court decisions rendered in 2019 in criminal proceedings, and the subject of analysis was a total of 39 court decisions, out of which 33 first instance and 6 decisions rendered in second instance. The criteria for selecting the decisions that will be the basis for the analysis were based on the specific position of minor victims - child victims in vulnerable situations (children with difficult family, social and financial circumstances, children with inadequate parental care, children in the social protection system or children without care, including unaccompanied migrant children, trafficked children), as well as the types of criminal offences that can be classified as abuse and exploitation in trafficking, prostitution or pornography, sexual violence, neglect and abuse, and related offences (Rape in Art. 178, Sexual Intercourse with a Child in Art. 180, Sexual Intercourse through Abuse of Position in Art. 181, Pimping and Procuring in Art. 183, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Para 2 and 3, Coercion into Marriage in Art. 187a, Cohabiting with a Minor in Art. 190, Neglecting and Abusing a Minor in Art. 193 Para 2 of the Criminal Code of the Republic of Serbia).

All victims in the analyzed first instance decisions are minors - a total of 38 victims, whereby females (68%) and minors under the age of 14 (61%) predominate. In 50% of cases, the criminal offense against the victim was committed by a family member or guardian (family member or parent, brother or relative in 47% of cases and guardian in 3% of cases). Data from the analyzed decisions are presented in relation to aspects of importance for the position and rights of child victims in criminal proceedings, namely: 1) privacy, 2) information, support and representation, 3) security and protection, 4) hearing, 5) best interest of the child and 6) sanctions. The presented data indicate that despite the significant improvement of the legal, strategic and institutional framework in this area, there remain serious obstacles in achieving the protection and respect of the rights of child victims before the court in accordance with the set international standards. The position and rights of juvenile victims, viewed on the basis of available data from the analyzed decisions, can obviously be significantly improved, especially in the segment of safety and protection and the manner of hearing in order to avoid re-traumatization of children in court proceedings. Likewise, it is observed that the authorities conducting the proceedings in most cases do not take into account the degree of vulnerability of each child in a particular situation, leading in practice to the lack of individualized approach and recognition of vulnerability of child victims and their special needs.

With regard to the protection of the victim's privacy, the right to information, support and representation, it is observed that there is significant room for improvement, bearing in mind that according to available data from the decisions, the public was excluded in 28% of cases, i.e. in 44% cases the proceedings were public. Available data in the analyzed first instance decisions indicate that 71% of victims had attorneys in the proceedings, while in 29% of cases there is no available data in the decisions; concurrently, in most cases the participation of the Centre for Social Work is perceived, either through reports on victims obtained and used in the proceedings or through the presence of the Centre for Social Work during the hearing. Out of a total of 38 juvenile victims in the analyzed first instance decisions, the status of a particularly vulnerable witness was granted in only 11% of cases (4 victims), which is particularly distressing given that victims in these cases are children in situations of vulnerability, and considering the nature of criminal offences against them.

The existing legal solutions that provide the possibility for the injured party, and particularly minors, to be interrogated without the presence of the defendants and under special conditions, are not

sufficiently applied in practice. In a significant number of cases, juvenile victims are questioned at the search, which, along with multiple expert witness reports, represents an additional trauma for them. The hearing was conducted during search in 26% of cases (in 21% of cases without the application of any legal solutions that would alleviate the situation of the victim, while in 5% of cases the defendant was previously removed from the courtroom, and in this way 2 injured parties with the status of a particularly vulnerable witness were heard), in 11% of cases the testimonies of victims were read, and only in 13% of cases the victims were heard using devices for image and sound transmission.. It is important to note that in almost half of the cases, it is not possible to determine the manner of hearing of the injured parties from the text of the first instance decision, which especially refers to criminal offenses within the jurisdiction of the Basic Courts, either because it solely entails a brief explanation which does not provide sufficient information on the manner of hearing of the injured parties but only on the content of the testimony, or on the cases referred to in Article 429, or Article 517 CPC. The manner of hearing juvenile victims is largely conditioned by the findings and opinion of court experts – expert witnesses who perform psychiatric assessment of victims, whereby it may be concluded that the introduction of additional education of expert witnesses regarding the rights of the child and the specific position of child victims would significantly improve the situation in this regard.

This analysis also explored the family, social and financial circumstances of the minor victims, given that the assessment of the best interest of the child should pay special attention to the element related to the situation of vulnerability. Data from the analyzed decisions indicate that all minor victims can be found to have difficult family, social or financial circumstances, inadequate parental care, CSW supervision of the family, guardianship of another person and the situation of human trafficking, while only in one case it was an unaccompanied minor migrant. In relation to the presented data, it may be observed that the authorities conducting the proceedings in most cases did not take into account the different types and degree of vulnerability of each child in a particular situation, which leads in practice to the lack of individualized approach. Also, it can be stated that the criminal procedure bodies do not sufficiently apply the existing legal solutions in practice in order to protect the interests of juvenile victims, thus the need to recognize the vulnerability of child victims and their special needs remains unmet. Consequently, the treatment of victims as a source of information to prove the criminal offense prevails in practice, neglecting the specific position of the victim and the type of criminal offense.

The courts mostly rendered convicting decisions for the criminal offences covered by the analysis (92%), determining prison sentences in almost all cases, which were imposed either as an “effective” prison sentence (in the case of 22 defendants - 59%) or a suspended sentence - warning measure in Article 65 of the CC (in 13 cases - 35%), while only in 1 case (3%) it was determined that the defendant will serve the prison sentence at his own residence in accordance with Article 45, para 3 CC. In the case of 1 defendant (3% of the total number) a fine was imposed. Data from the decisions indicate that the penal policy is quite soft, and that prison sentences in a significant number of cases are imposed around the legally prescribed minimum, which can be particularly observed for criminal offence Sexual Intercourse with a Child in Article 180 and Cohabiting with a Minor in Art. 190 CC.

Based on the key problems indicated by the results of the analysis of judicial practice in this area, it can be concluded that the position of child victims in criminal proceedings is far from the established international standards. In 44% of cases, the public was not excluded from the hearing, only in 11% of cases the minors were granted the status of a particularly vulnerable witness, whereby about 60% of the victims under the age of 14. In many cases, the injured parties are still heard at the main trial in the presence of the defendants, and even some particularly vulnerable witnesses, while the psychiatric assessment conducted in the proceedings is mostly used only to determine the credibility of their testimony. All these circumstances ultimately lead to the lack of individualized approach and treatment of injured parties only from the perspective of "sources of information" in order to prove the existence of a crime, which deprives child victims of guaranteed rights.

Based on the overall results of the analysis, it may be concluded that further improvement of the legal, strategic, and institutional framework is necessary, including consistent implementation of existing legal norms in practice. Moreover, it is of special importance that authorities conducting the proceedings recognize the vulnerability of child victims and their special needs in criminal proceedings, and consequently adopt the victim-oriented approach, i.e. individualized approach to child victims that would take into account different types and degrees of vulnerability of each child in a specific situation.

Recommendations

- Consistent implementation of existing legal provisions in order to exercise the rights of child victims in criminal proceedings in aspects related to privacy, information, support and representation, as well as safety and protection and prevention of secondary trauma of children during the hearing;
- Consistent implementation of the existing legal provisions on granting the status and examination of a particularly vulnerable witness and the provisions on examination of minor injured persons in the Criminal Procedure Code and the Law on Juvenile Offenders and Criminal Protection of Juveniles;
- Improving the system of information and support services for victims and witnesses at the competent courts and prosecutor's offices, through the establishment of support services for child victims and witnesses in all competent courts and prosecutor's offices;
- Strengthening the social protection system by improving the work of CSW to provide comprehensive support to children from particularly vulnerable groups (children without adequate parental care, children in human trafficking situation, sexual exploitation, abuse, Roma children, children in street situations, refugees and migrant children and asylum seekers);
- Improving assistance and support to victims by providing specialized support and assistance through cooperation of state bodies and specialized associations engaged in the rights of child victims;
- Improving the existing solutions in the Criminal Procedure Code and the Law on Juvenile Offenders and Criminal Protection of Juveniles, by excluding the possibility for child victims to be heard at the main trial in the courtroom and in the presence of the defendant, and by introducing an absolute prohibition of confrontation of minor victims with the defendant and other witnesses;
- Equipping all competent courts and prosecutor's offices, as well as CSW, with special rooms for interrogation of child victims and devices for image and sound transmission;
- Improving the existing solutions in the Law on Juvenile Offenders and Criminal Protection of Juveniles, by introducing the obligation that expert witnesses who perform assessment in cases involving minors as injured parties in criminal proceedings have acquired special knowledge in the field of children's rights, by analogy with the obligation prescribed for procedural bodies and attorneys;
- Adoption of a victim-oriented approach by authorities conducting the proceedings, i.e. an individualized approach to child victims that would consider the different types and degree of vulnerability of each child in a particular situation;
- Consistent implementation of existing legislation with an aim to impose effective and proportionate sanctions in criminal proceedings, in particular sentencing provisions;

- Continuous education for the purpose of consistent implementation of existing legal solutions and standardization of the actions of professionals employed in state bodies, especially in the judiciary, so they could adopt a victim-focused approach and better understand the situation of minor victims;
- Adoption of a comprehensive Law on Children in order to eliminate inconsistencies in existing regulations in various areas relevant to the rights of the child, define elements for determining the best interests of the child and recognize the special needs of children victims of crime;
- Improving the system of data collection on children, particularly on children in situations of vulnerability and children victims of crime.

PART 4: CHILD FRIENDLY JUSTICE - THE PERSPECTIVES OF CHILDREN AND YOUTH

Milena Banić, PhD

1. RESEARCH METHODOLOGY

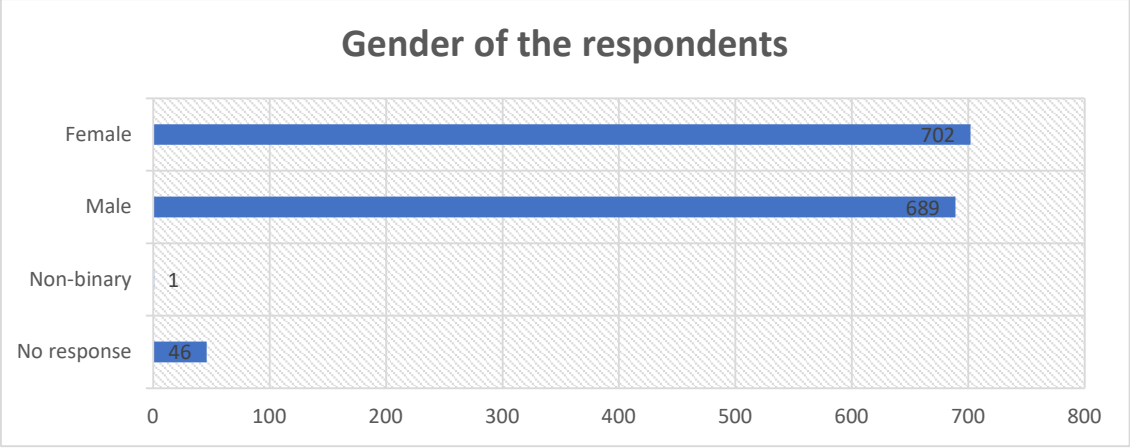
The research on Child-Friendly Justice from the Perspective of Children and Youth was conducted in the period from March to September 2020 by the Centre for the Rights of the Child within the project "Children's Rights in Serbia - Improving the Position of Children in the Judicial System of the Republic of Serbia", led by International Rescue Committee (IRC) Hellas, in partnership with Centre for the Rights of the Child and ASTRA – Anti Trafficking Action and with the support of the European Commission through the Rights, Equality and Citizenship Program (reference number: 878485 - CRIS).

The aim of the research was to determine the opinion of children and youth about the judicial system and the level of its adaptation to children and youth in accordance with the adopted standards of child-friendly justice. The achievement of standards of child-friendly justice is analysed in relation to the basic standards and rights defined by international and national documents, in particular the UN Convention on the Rights of the Child, the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and the provisions of the Law on Juvenile Offenders and Criminal Protection of Juveniles in the Republic of Serbia.

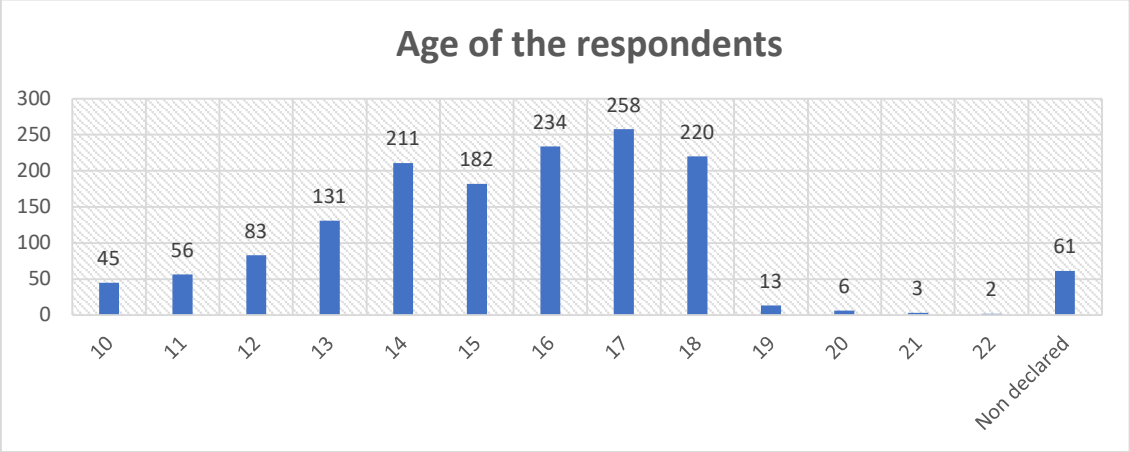
In particular, the standards of child-friendly justice which relate to informing the child about the rights and proceedings, hearing of a child, the urgency of the proceedings, safety and security, respect and dignity, the child friendly environment and the exercise of the rights of children deprived of liberty are addressed. Within the exercise of the rights of children placed in juvenile justice institutions, the exercise of the following rights was considered: informing on rights, keeping regular contact with the family, the right to education, the right to play, engage in sports and cultural activities, the right to health care, the right to protection from violence, freedom of religion and the right to a legal remedy.

The research sample consisted of 1505 children and young people, of which 67 children and young people who were in contact with the judicial system aged 10-22 years who are placed in the Correctional Institution in Kruševac, the Institute for Education of children and youth in Nis, the Institute for education of children and youth in Belgrade, the Institute for education of children and youth in Knjaževac and 1438 children and young people aged 10 to 18 from the general population. The research included 742 male and 714 female respondents, 1 respondent declared himself as a non-binary person, while 48 respondents did not declare their gender.

Within the research sample consisting of children who were in contact with the judicial system and who are placed in these institutions, out of a total of 67 children and youth, the research included 55 male and 12 female respondents, whereas the research sample of a total of 1438 children from the general population included 689 male respondents, 702 female respondents, 1 respondent who declared himself as a non-binary person, while 46 respondents did not declare their gender.



In relation to age, the research covered children and young people aged 10 to 22, namely 45 respondents aged 10, 56 respondents aged 11, 83 respondents aged 12, 131 respondents aged 13, 211 respondents aged 14, 182 respondents of 15 years, 234 respondents of 16 years, 258 respondents of 17 years, 220 respondents of 18 years, 13 respondents of 19 years, 6 respondents of 20 years, 3 respondents of 21 years and 2 respondents of 22 years, while 61 respondents did not declare their age.



The research methodology was based on examination through two questionnaires.

The first questionnaire consisted of 29 open-ended and closed questions. The aim of this questionnaire was to collect in-depth opinions of children and young people on the judicial system and the level of its adaptation to children and young people in accordance with the adopted standards of child-friendly justice. This questionnaire was intended for children and young people aged 10 to 22 who were in contact with the judicial system and who are placed in the Educational-Correctional Institute in Kruševac, the Institute for Education of Children and Youth in Nis, the Institute for Education of Children and Youth in Belgrade, the Institute for the Education of Children and Youth in Knjaževac.

The questionnaire was disseminated in a printed form, with the previously obtained permits of the Ministry of Justice and the Ministry of Labour, Employment, Veterans and Social Affairs, as well as the additional consent of the institutes in which the research was conducted. This questionnaire covers issues related to the standards of child-friendly justice, related to informing on rights and proceedings, hearing of the child, urgency of the proceedings, safety and security, respect and dignity, child-friendly environment and exercise of the rights of children deprived of liberty. Within the exercise of the rights of children in juvenile justice institutions, the exercise of the following rights was considered: informing on rights, keeping regular contact with the family, the right to education, the right to play, engage in sports and cultural activities, the right to health care, the right to protection from violence, freedom of religion and the right to a legal remedy.

The second questionnaire consisted of seven open-ended and closed questions and was intended for children and young people from the general population aged 10 to 18 years. The aim of this questionnaire was to determine the level of information provided to children and young people about their rights when in contact with the judicial system. The questionnaire was designed in a google form and disseminated via the Internet, through social networks, the influencers, as well as in cooperation with other institutions, organizations, associates and partners, particularly with teachers and professors of primary and secondary schools in many cities and rural areas.

The questionnaires were designed to entail a coherent whole that allows, following their qualitative and quantitative analysis, a comprehensive outlook and presentation of the opinion of children and

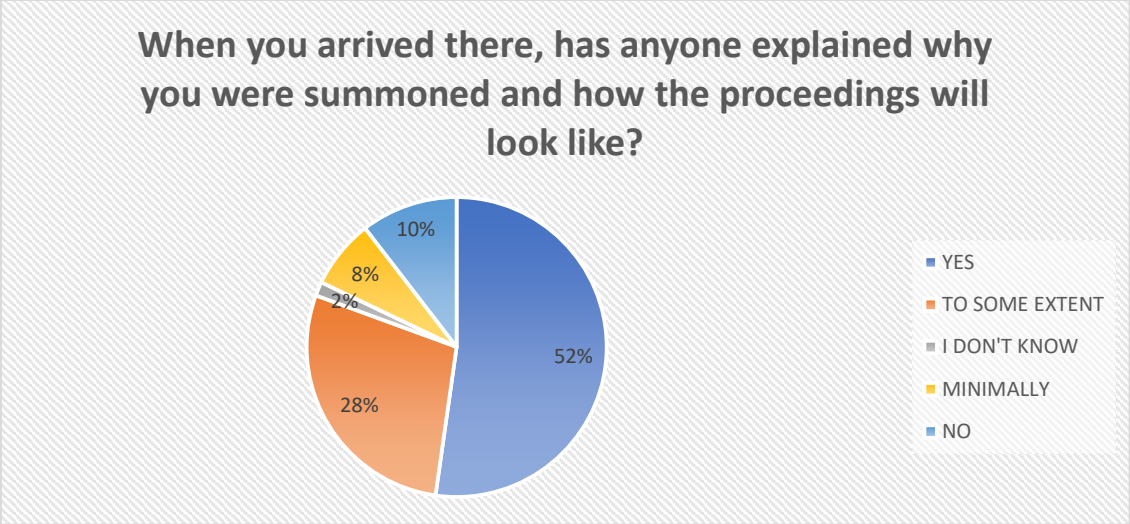
young people on the achievement of standards of child-friendly justice. All formulated questions in the questionnaires were discussed with children through focus group discussions (Club DX of the Centre for the Rights of the Child) before dissemination, in order to make the language clear and fully adapted to children and youth. During the process of developing the questionnaire, support was also provided by the Republic Institute for Social Protection.

2. RESEARCH RESULTS

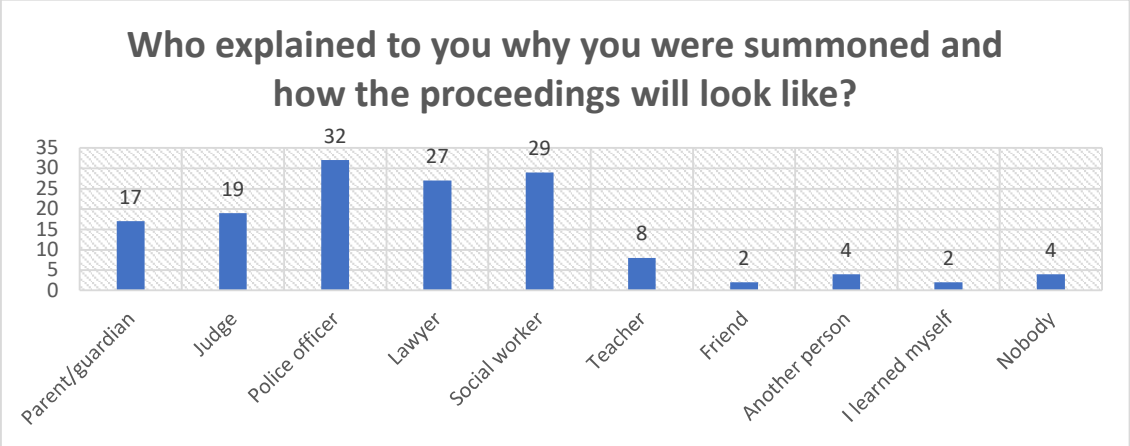
2.1. Informing on rights and proceedings

The results of the research show that this right is not exercised sufficiently and that there are a number of challenges in relation to informing the child about the rights and proceedings.

With regard to informing the child about the proceedings, the research results show that 1/5 of the respondents who were in contact with the justice system, when they came to the institutions, were not explained or were minimally explained why they were summoned and what the proceedings would look like. When asked in which institution the proceedings were not explained to them sufficiently, in most cases the respondents stated that it happened in the police (14 respondents), and very rarely that it happened in the centre for social work (one respondent).

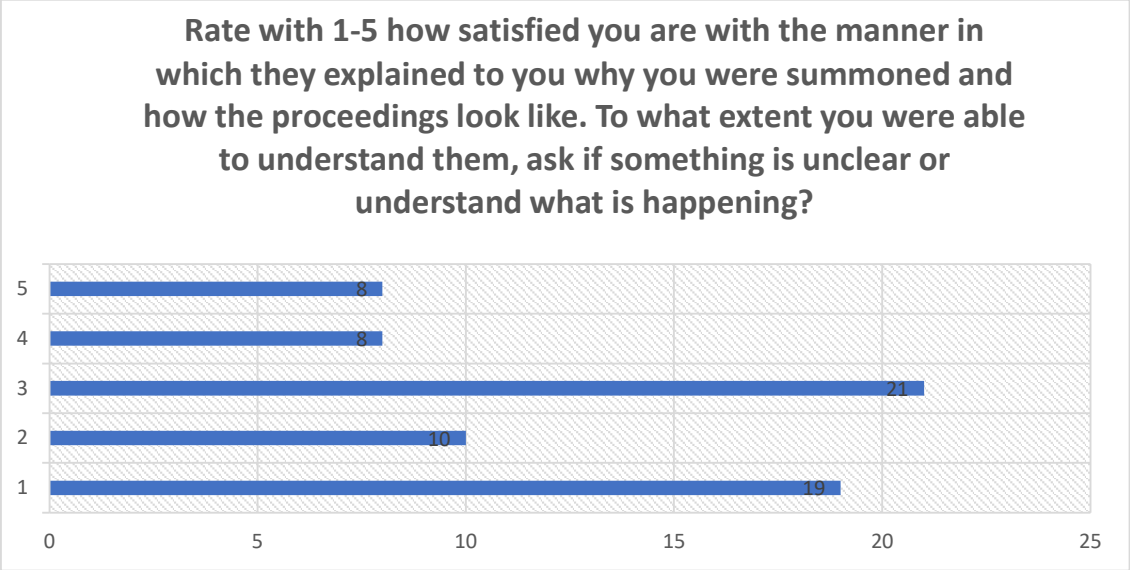


The respondents who were informed about the proceedings reported that in most cases they received information from members of the police, social workers and lawyers. 1/3 of the respondents reported that their parents and judges informed them about the proceedings, while a small number of respondents stated that they also received information from some other persons (another adult, teacher, friend) or that they informed themselves about the proceedings.



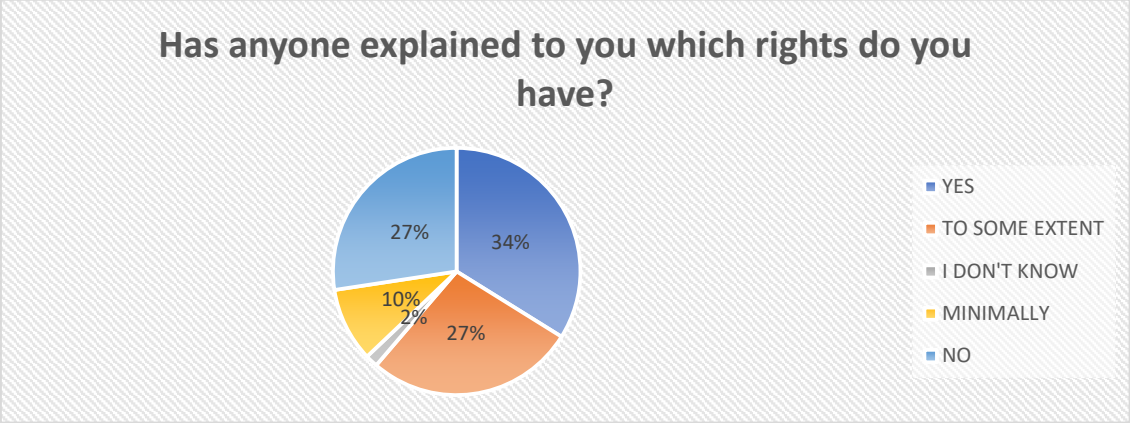
However, research indicates that even when children and young people are provided with information about the proceedings, the way professionals address them is not fully adapted to the language tailored to the child. Thus, almost half of the respondents indicated that they are not satisfied or are

minimally satisfied with the way they were given information about the proceedings and assess that they could not understand them, ask additional questions to resolve ambiguities, or fully understand what is happening.



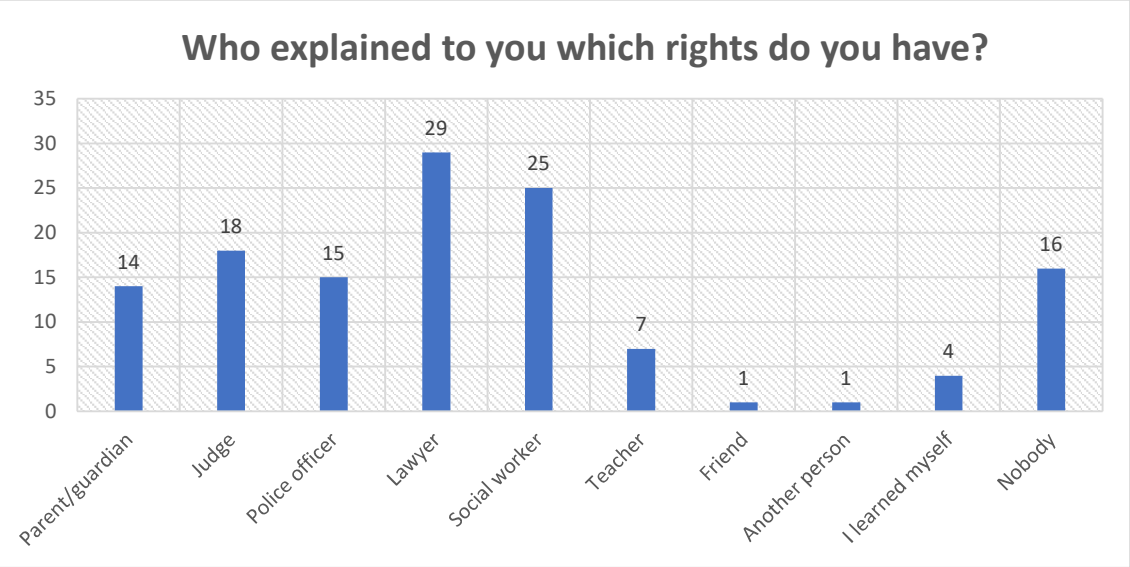
When it comes to informing children and young people about the rights they have in the proceedings, the results of the research are also concerning.

Namely, almost 1/2 of the respondents who were in contact with the justice system indicated that they were not explained or were minimally explained the rights they have in the proceedings when they came to the institutions.

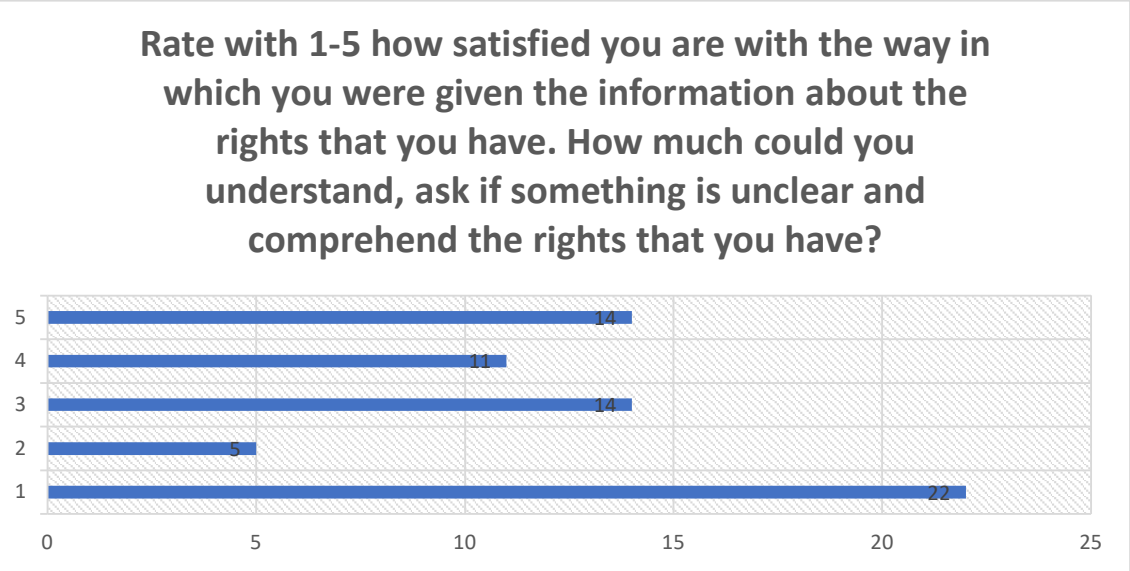


When asked in which institution they were not explained the rights they have in the proceedings, in most cases the respondents stated that it happened in the police (seven respondents), and very rarely that it happened in the centre for social work (one respondent).

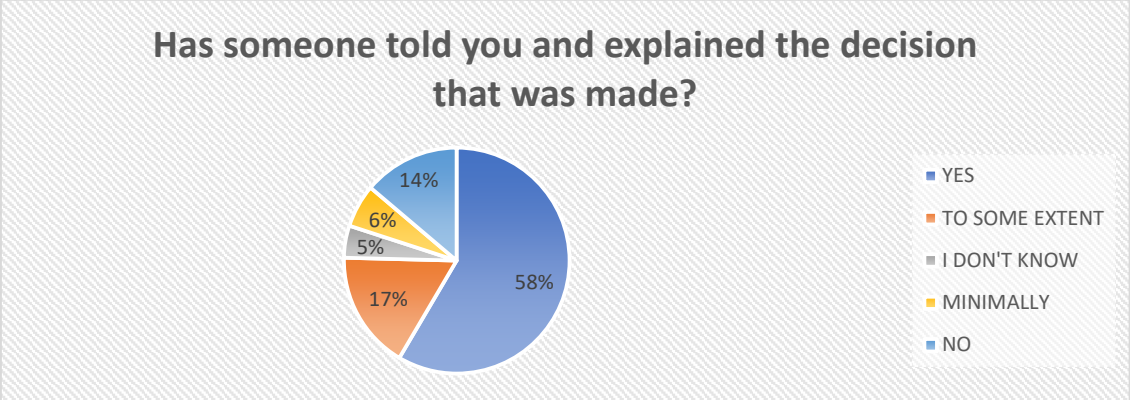
The respondents who were informed about the right they have in the proceedings reported that in most cases they received information from a lawyer and a social worker. 1/3 of the respondents reported that their parents, judges and police officers also informed them about their rights, while a small number of respondents stated that they also received information from some other persons (another adult, teacher, friend) or that they obtained information themselves.



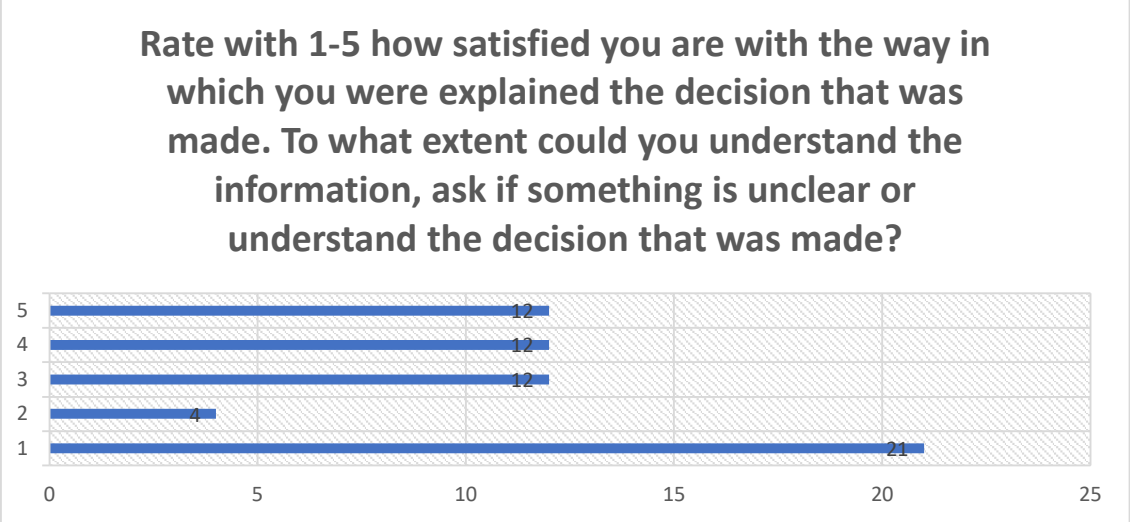
The results of the research indicate that, even when children and young people are provided with information about the rights they have in the proceedings, the way in which professionals address them is not completely adapted to the language tailored to the child. Thus, almost half of the respondents are not satisfied or are minimally satisfied with the way the information was given to them.



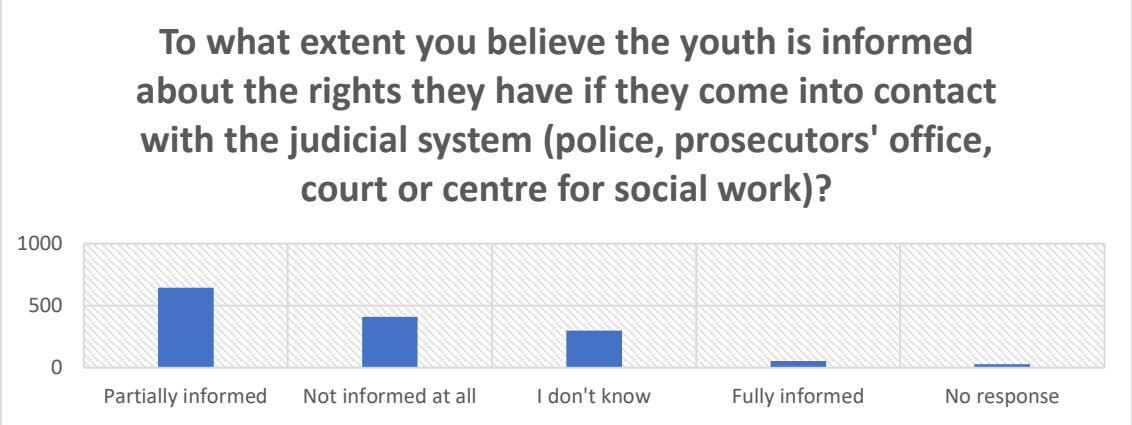
In terms of informing on the decision made in the proceedings, the results of the research show that the majority of children and young people who had contact with the judicial system were fully or to some extent explained the decisions made in the proceedings. However, it is worrying that 1/5 of the respondents indicated that the decision that was made was explained to them minimally or not at all.

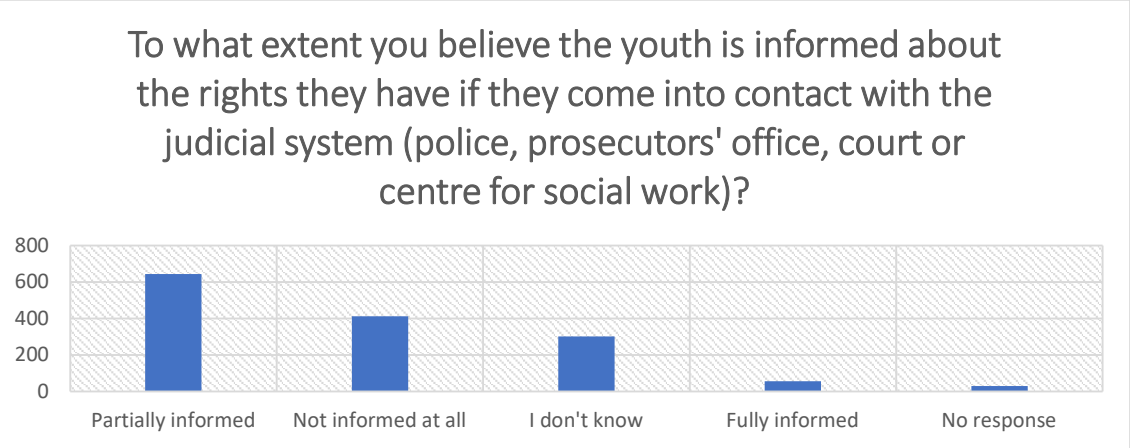


Also, the respondents indicated that the way the decisions were explained to them was not always adapted to the child's language in a way that they could fully understand them.



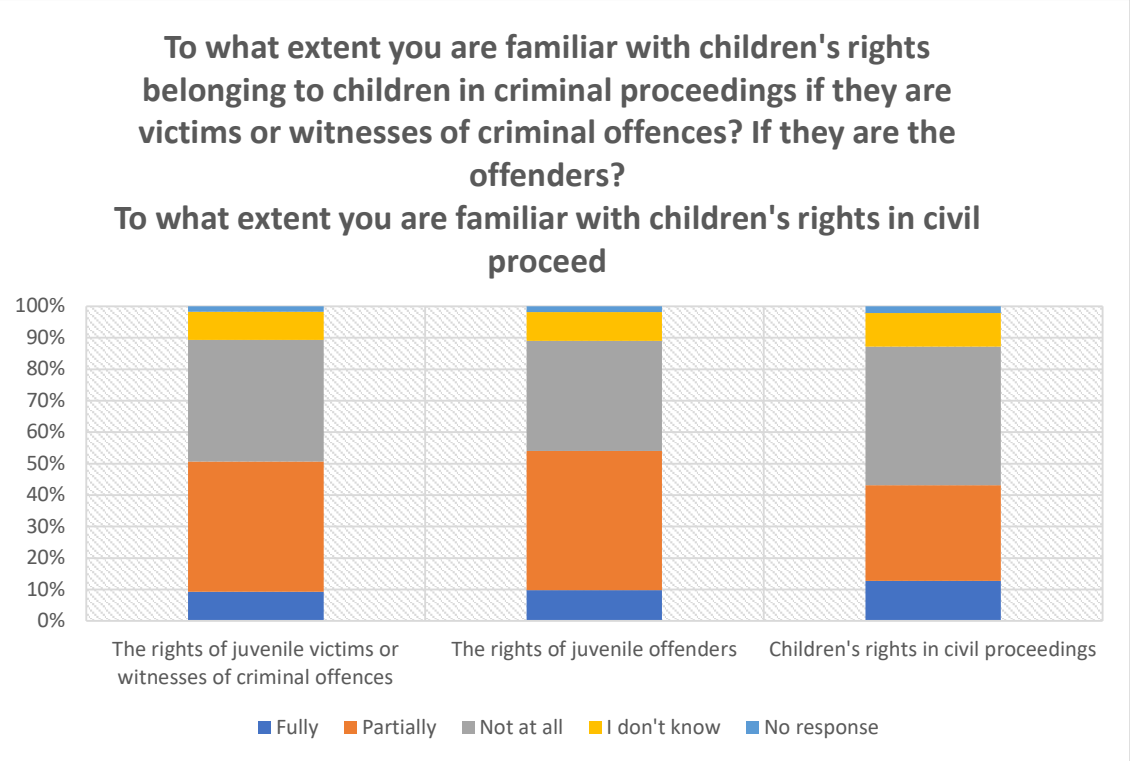
The research results also indicate that children and young people are generally not informed about their rights in case they come into contact with the judicial system, especially if they have no previous experience. Thus, the majority of respondents from the general population believe that children and young people are not informed at all about the rights they have if they come into contact with the judicial system (44%) or that they are partially informed (28%). Only 3% of respondents believe that children and young people are fully informed about their rights in case they come into contact with the judicial system.





When it comes to assessing how familiar respondents are with the rights they have in certain court proceedings, the research results also indicate that the level of knowledge of the rights is low. Thus, only about 9% of respondents from the general population are fully aware of the rights that children have in criminal proceedings if they are victims or witnesses of criminal offence or if they are offenders, while about 12% are fully aware of the rights children have in civil proceedings.

Most respondents are not at all or partially aware of their rights.



The results of the research show that children and young people most often received information about their rights in the judicial system through parents/guardians (51%), at school (38%), through the media (32%), independent research (26%), and various websites (14%). A number of young people additionally stated that they were informed through films, or at gatherings of citizens' associations.

The respondents referred to school classes (76%), media (53%), YouTube (39%), Instagram (36%), brochures (30%), posters (21%), Facebook (20%), TikTok (19%) and festivals (15%), as the best ways to increase children's and young people's awareness on the rights they have in the judicial system. The ways that respondents additionally cite include video clips, short films, mobile phone applications, games, influencers, peer education and workshops on this topic.

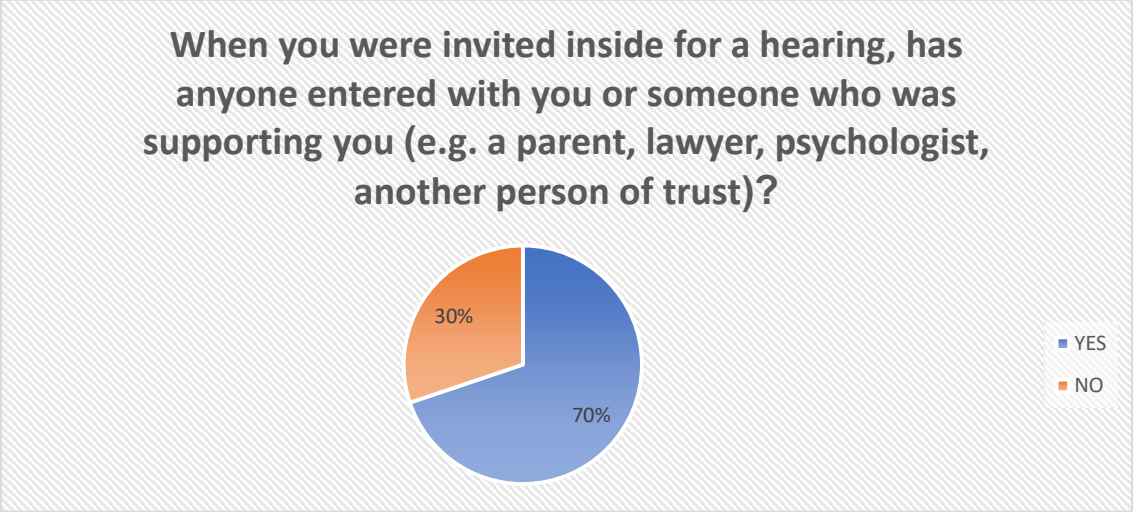
2.2. Hearing of a child

In relation to the hearing of a child in the proceedings, the research particularly aimed at determining to what extent the standards related to the manner of hearing and the number of hearings were respected. In particular, the extent to which the standards of the child-friendly environment have been met was considered.

The results of the research illustrate that in most cases, the premises where the interrogation takes place are not arranged in such a way that they are adapted to children and young people. Thus, almost 2/3 of the respondents believe that the premises in which they were interrogated were not adapted for children.

A number of respondents also estimate that a large number of people are present at the hearing. With regard to the question *"How many people were present with you in the room?"*, two respondents answered *"many",* and one respondent stated that *"nine people"* were present. Bearing in mind that the public is excluded in proceedings involving juveniles, even in the main phase of the trial in criminal proceedings against juvenile offenders, the presence of nine persons may be questionable and in particular in other phases of the proceedings. Some respondents stated that a large number of *"police officers", "inspectors" or "commanders"* were present during the police interrogation, and that they sometimes took turns in the room. The fact that two respondents state that they were alone in the room where they were interrogated, with one of them stating that a lawyer arrived later is of particular concern.

The results of the research also indicate that 1/3 of the respondents believe that a person they trusted was not present during their hearing.

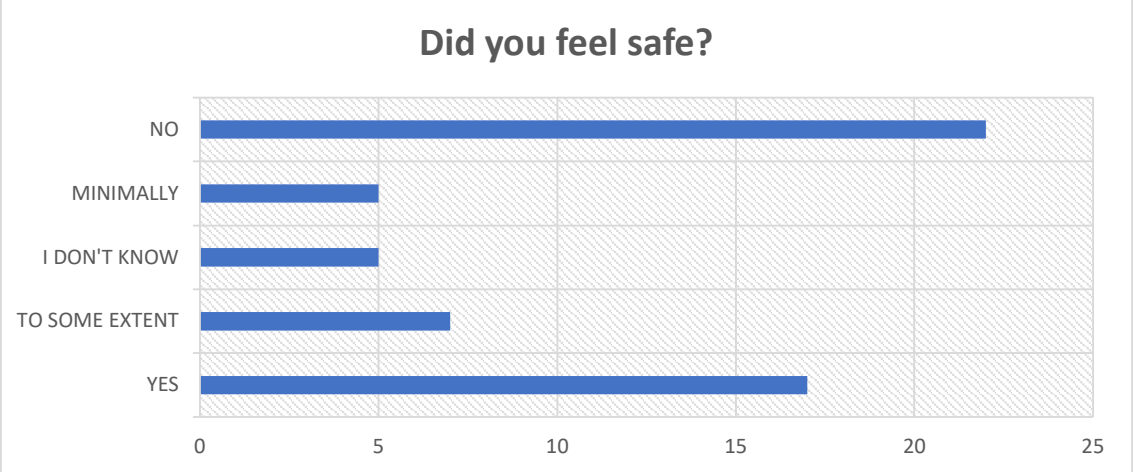


2.3. Urgency of the proceedings

The results of the research indicate that the standard of urgency of the proceedings is commonly respected to a great extent and that in most cases no more than a year passes from the first hearing to decision making. In rare cases, the responses of the respondents imply that the obligation of urgency is not respected. Namely, two respondents state that "three years" have passed from their first hearing to the decision, two respondents state that "four years" have passed, while one respondent states that "six and a half years" have passed.

2.4. Safety and security

The results of the research point out that the achievement of safety and security standards is not sufficiently respected. Only 1/2 of the respondents who were in contact with the judicial system consider that they felt safe or somewhat safe in the proceedings. Out of the 67 respondents from the population of children and young people deprived of liberty who experienced criminal proceedings and came into contact with most institutions in the judicial system, as many as 27 respondents indicated that they did not feel safe during the proceedings or that their sense of security was minimal.

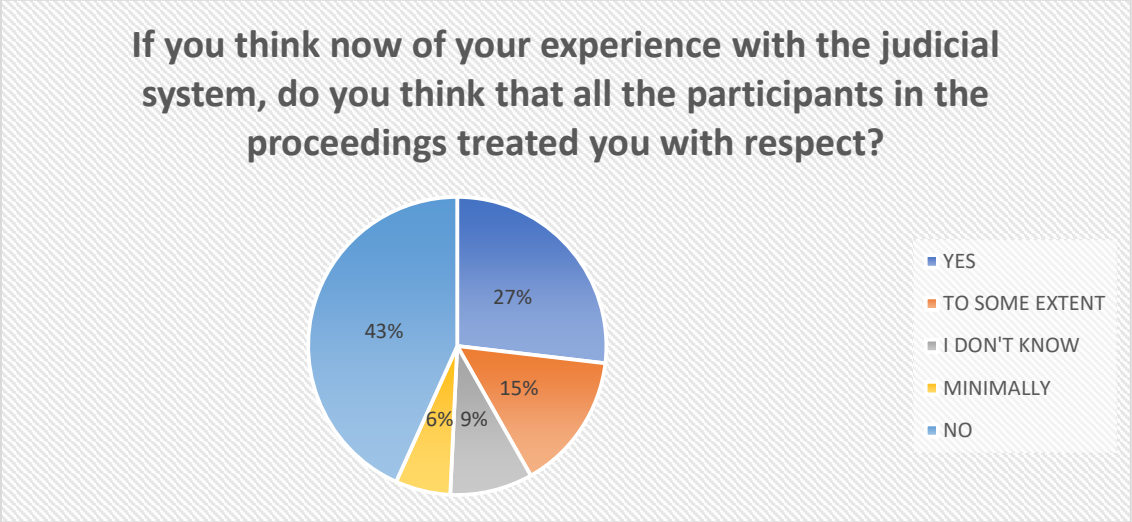


In relation to the reason why they did not feel safe in the proceedings, several respondents state the reasons that are directly related to violence. Namely, one respondent states "they did not behave well towards me, they hit me", two respondents "because of the police shouting at me", and one respondent "they looked at me rudely". A number of respondents refer to the fear of beating as the

reason to feel insecure. Thus, 10 respondents (15% of the total number of respondents) stated that they were "afraid of being beaten" or that they were "afraid of being beaten in the police". Respondents also state that they felt injustice and disinterest of professionals, which also affected their sense of security. One respondent states “I felt great injustice and disinterest in my story with major distrust“.

2.5. Respect and dignity

The results of the research in relation to the achievement of standards of respect and dignity are particularly worrying. Over 1/2 of the respondents indicate that during the proceedings not all participants treated them with respect or that they treated them with minimal respect.

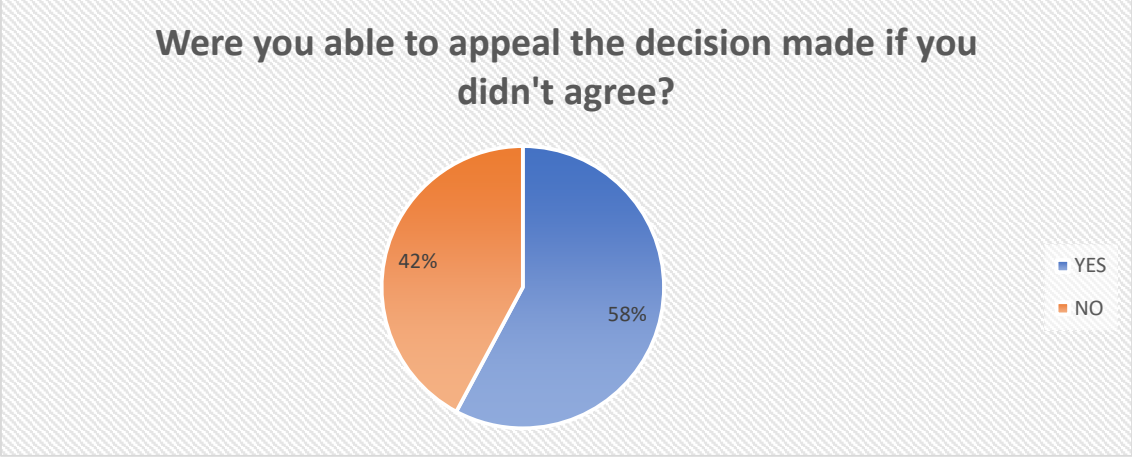


The largest number of respondents, almost 1/2, cite the police (29 respondents) as professionals who treated them with the least respect, while a smaller number cite prosecutors and social workers (six respondents), lawyers (three respondents) and judges and experts (one respondent).

Lawyers (20 respondents) and judges (15 respondents) had the most respect for children and young people in the proceedings. Some participants stated that they were treated with respect by social workers (four respondents), police officers (two respondents), prosecutors (one respondent), psychologists (one respondent) and teachers (two respondents).

2.6. Right to a legal remedy

The results of the research indicate that a large number of respondents believe that they were not entitled to a legal remedy. When asked *"Were you able to appeal the decision that was made?",* out of 67 respondents, 27 respondents stated that they could not appeal the decision that was made in the proceedings. Given that about 1/5 of the respondents indicated that the decision made in the proceedings was not explained to them or was minimally explained to them, along with the fact that they could not appeal the decision, all this could be related to the violation of their right to information.



2.7. Exercise of the rights of children deprived of liberty

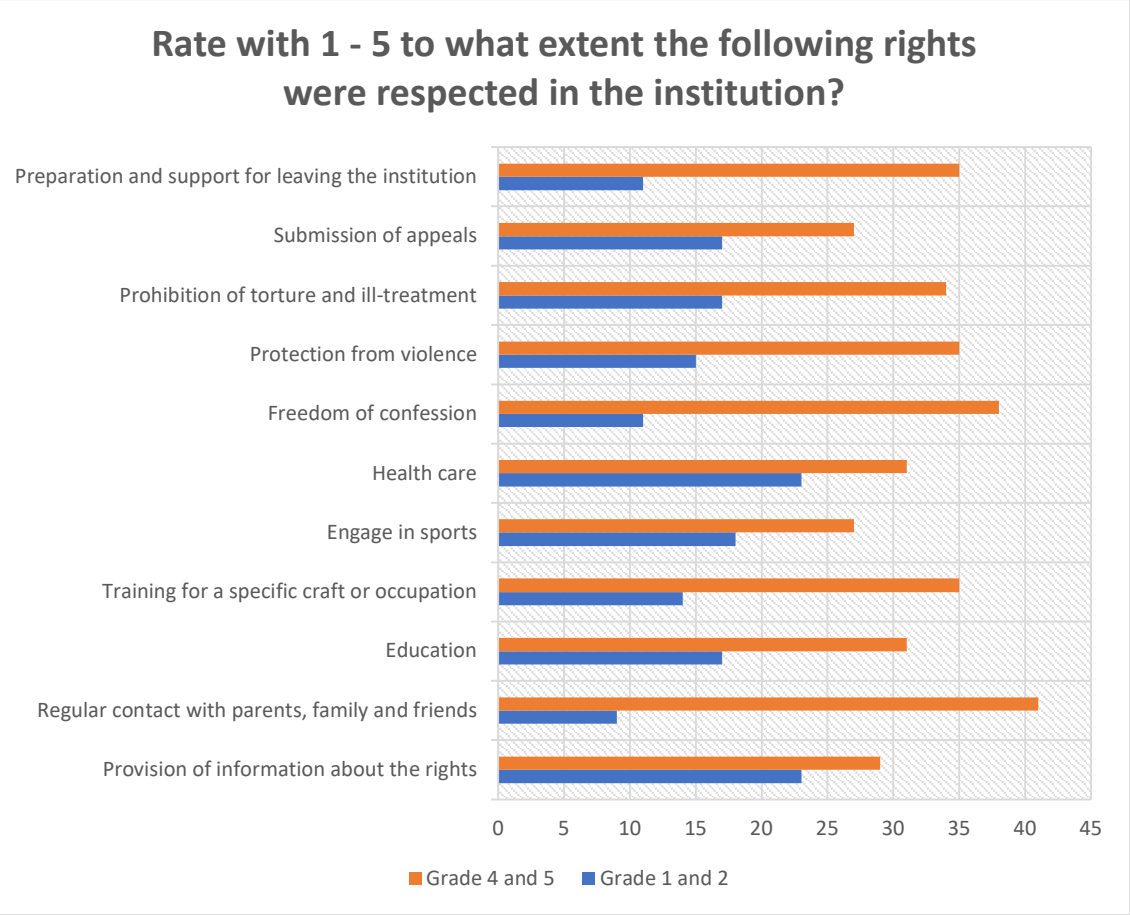
Within this part of the research, the level of the exercise of guaranteed rights of children deprived of liberty was considered. The following rights were considered in particular: informing on rights, keeping regular contact with the family, the right to education, the right to play, engage in sports and cultural activities, the right to health care, the right to protection from violence, freedom of religion and the right to a legal remedy.

The results of the research indicate that the experience of the respondents regarding the exercise of their individual rights varies. Thus, a certain number of respondents state that their rights were fully respected, while some respondents believe that their rights were not respected.

The highest level of the exercise of rights exists in relation to keeping regular contact with parents, family and friends and freedom of religion. Thus, almost 2/3 of the respondents rate the respect of their right to keep regular contact with parents, family and friends and freedom of religion with a score of four or five (on a scale of 1 – 5, with 1 being the lowest level of family contact and 5 the highest).

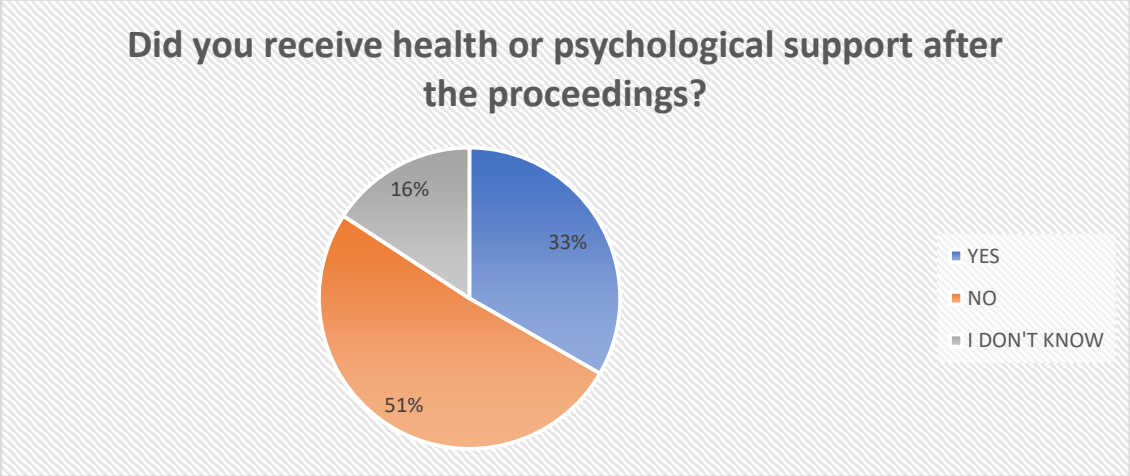
Respect for the right to health care could be singled out as the most problematic. Namely, more than 2/5 of the respondents rate the level of respect for this right with a grade of 1 or 2, while four respondents independently added a zero on a scale from 1 to 5, which they circled.

The fact that almost 1/4 of the respondents believe that their right to protection from violence, prohibition of torture and ill-treatment, attending classes, training for a certain craft or occupation, playing sports and filing complaints was not respected is also distressing.



2.8. Reintegration and rehabilitation – psychosocial support

In relation to this standard, the research aimed to determine whether children and young people received some kind of psychosocial support following the proceedings. The results of the research indicate that different practice exists in relation to compliance with this standard and that only slightly more than 1/3 of the respondents received some kind of health or psychological support following the proceedings. It is worrying that the majority of respondents did not receive this type of support once the proceedings were finalised.



2.9. Recommendations of children and young people for improvement of the child-friendly justice system

The last question was open-ended to allow respondents to write their suggestions and ideas about methods to improve the judicial system to make it more child- and youth-friendly. The proposals of children and young people refer to several different aspects of advancing child-friendly justice.

The first proposal concerns systemic changes in the judicial system and educational measures. Thus, one respondent states *"to radically change and reorganize the judicial system as well as to examine their previous ways of working",* another states *"my proposal is that fixed penalties should be introduced for juvenile offenders and I believe that penalties for more simple - minor offenses should be lesser because it is not right that someone who, for example, committed violent behaviour, petty theft ... has the same punishment as someone who committed rape, murder, trafficking and distribution of narcotics"*, while the third states *"the sanctions should be more lenient."*

The second proposal refers to establishment of a higher level of understanding and respect for children and young people. Thus, one participant states *"a little more respect for us and approval of some things",* while another states *"in my opinion, the judge should check how (someone) spent his childhood, whether he grew up on the street, whether he was tortured by the elderly".*

The third proposal refers to the improvement of the protection of children from violence. Thus, one participant proposes *"that commanders and police stop harassing people and children, excessive use of force".*

The fourth proposal refers to the promotion of the right to engage in sports while placed/detained in institutions. The participant states that *"a sport should be introduced so that I can train (not football and basketball), so that I can run somehow, because my legs have atrophied".*

The fifth proposal refers to the improvement of the quality of nutrition in institutions. The participant states *"it would be nice if the food was eatable since we are still developing".*

The sixth proposal refers to the improvement of the manner of implementation of educational measures from the point of view of separating children and young people based on their gender. Several participants stated that boys and girls should not be separated in institutions. Thus, one participant states "in closed institutions, you should not separate the sexes because it is unnatural, connect boys and girls", while another states "that no differences are made between the sexes“.

3. CONCLUSIONS

Despite a number of reforms undertaken in the process of improving child-friendly justice, research on child-friendly justice conducted with children and youth shows that a number of challenges in practice still remain and seriously hinder the full exercise and respect of the rights of children in contact with the judicial system.

The research shows that none of the standards of juvenile justice covered by the research, guaranteed by the UN Convention on the Rights of the Child, the Council of Europe Guidelines on Juvenile Justice and other international documents, as well as the provisions of the Law on Juvenile Offenders and Criminal Protection of Juveniles, is not sufficiently achieved.

The lowest level of achievement of standards of child-friendly justice exists in relation to the child's right to information, the right to safety of the child and the right to dignity.

The standards of child-friendly justice clearly define that from the moment the child first comes into contact with the judicial system and other competent authorities including during the proceedings, the child must be informed of his or her rights in the proceedings, as well as the process itself, the procedures, methods of hearing, available services and support mechanisms, exercise of compensation claim and other. The information provided to children must be adapted to the child's age and maturity, in adjusted language so that the child can understand it and be sensitive to its gender and cultural context.

However, the results of the research unequivocally show that the child's right to information is not sufficiently exercised, neither in relation to informing about the rights a child has in the proceedings, nor in relation to informing about the reasons why he/she was summoned to one of the institutions within the judicial system and the process itself. Thus, only 1/2 of the respondents indicate that when they arrived at the institution, they were fully explained why they were summoned and what the proceedings will look like, while 1/5 of the respondents were not explained or were minimally explained these matters. Also, only 1/3 of the respondents were fully explained which rights they have in the proceedings, while 1/2 of the respondents were not informed or were minimally informed of the rights they have.

This research suggests that when addressing children, the professionals often do not use language that is sufficiently adapted to the child. Thus, almost half of the respondents indicate that they are not satisfied or are minimally satisfied with the way they were given information and report that they could not fully understand them.

Insufficient exercise of the right to information also exists in relation to the communication of decisions made in the proceedings. Namely, only 60% of respondents indicate that the decision was fully explained to them, while 1/5 of respondents were not explained the decision or it was explained to them minimally. Incomplete information regarding the decision is further reflected in the exercise of the right to a legal remedy, so the results of the research indicate that 42% of children believe that they did not have the opportunity to appeal the decision made.

This research shows that young people generally do not know what rights they have if they come into contact with the judicial system, neither in relation to criminal nor in relation to civil proceedings. Thus, only 9% of respondents from the general population fully know what rights they have in criminal proceedings in case they are victims or witnesses of criminal offences or offenders, while only 12% of children know exactly what rights they have in civil proceedings. Most respondents do not know their rights or have very little knowledge.

Although the standards of child-friendly justice require that children are provided with all relevant information using child-friendly material, the research indicates that the most important resources children in the general population use to learn what rights they have in the judicial system are

parents/guardians, schools and the media. In addition, young people learn about their rights through independent research and through various websites.

With all this in mind, it is necessary to continuously work on improving the child's right to information through the development of various contents using language tailored to the child, which contains information on child-friendly justice, the rights that children have in the judicial system and the process itself. Given that children and young people refer to school classes, digital media and social networks as the best ways to increase their awareness of the rights they have in the judicial system, further increasing of their knowledge on their rights in the judicial system should be performed through education in school and development of digital online platforms.

With regard to compliance with safety and security standards, the results of the research are distressing. Child-friendly justice standards clearly provide that a child should be protected from all harm during the proceedings, including violence, intimidation and secondary victimization. However, the research shows that only 1/2 of the respondents, who were in contact with the judicial system and who are placed in juvenile justice institutions, felt safe or somewhat safe during the proceedings. A large number of respondents, as many as 40%, indicated that they did not feel safe or that their sense of safety was minimal.

Reasons why children do not feel safe in the proceedings can only be justified in a small number of cases due to their fear of the educational measure, while in most cases the fear is related to violence by professionals they experienced or may have experienced during the proceedings or insufficient interest and a lack of understanding by professionals. The fact that one respondent indicated during the research that he had been beaten and two respondents that they were shouted at in the police station is of particular concern. The standards of child-friendly justice clearly provide that a child should be protected from all harm during the proceedings, including violence, intimidation and secondary victimization.

The results of the research demonstrate worrying results in relation to the respect for the dignity of children during the proceedings. Although the standards of child-friendly justice clearly provide that a child must be treated with respect during the proceedings, more than a half of the respondents indicated that some professionals did not treat them with respect or treated them with minimal respect during the proceedings. Bearing in mind that members of the police, and to a lesser extent prosecutors and social workers are most frequently mentioned by the respondents as professionals who do not respect the child sufficiently, this should be kept in mind in further development of capacity building programs for professionals working in this field.

This research illustrates that there are also various challenges in terms of adhering to standards related to hearing of a child. The most problematic aspect indicated by the research results is that the hearing of the child is mostly performed in premises that are not adapted to children. Thus, almost 2/3 of the respondents indicated that the premises in which they were interrogated during the proceedings were not adapted for children. Likewise, the fact that it still happens that a parent/guardian or the professionals who are legally obliged to attend the hearing are not present at the hearing of a minor is worrying. Namely, two respondents stated that they were alone in the premises where they were interrogated, one of them was alone all the time during the interrogation, while the other reported that a lawyer arrived during the interrogation.

The research also demonstrates that a small number of children receive some form of psychosocial support after the proceedings. Thus, only 1/3 of the respondents stated that they received some kind of medical or psychological support after the proceedings.

When it comes to the realization of individual rights of children who are in institutions (Educational-Correctional Institution in Kruševac, Institute for Education of Children and Youth in Nis, Institute for Education of Children and Youth in Belgrade, Institute for Education of Children and Youth in

Knjaževac), the research shows that many guaranteed rights of the child are not fully exercised and that their further improvement should be continued. This particularly refers to the right to health care, in relation to which 2/5 of the respondents consider not to be respected or to be minimally respected. Intensive work should also be done to improve the child's right to protection from violence and the prohibition of torture, which was pointed out by 1/4 of the respondents. Further work should be done to improve the right to education, especially in relation to training for a specific craft or occupation.

Enabling the participation of children through this research is an important step in the process of developing the judicial system and provides important information to professionals on the level of respect for the standards of child-friendly justice from the perspective of children and youth. Improving the child-friendly justice requires that all the challenges highlighted by children and young people in this study be considered and taken into account in its further development in order to ensure the full exercise of children's rights in contact with the judicial system and respect all guaranteed standards of child-friendly justice.

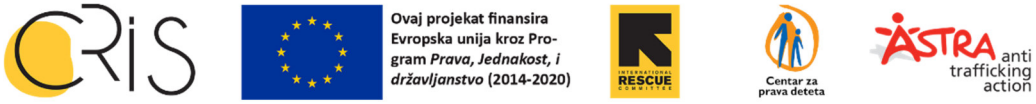
JOINT RECOMMENDATIONS (PARTS 1-4)

	RECOMMENDATIONS
1.	Amend the Criminal Code and the Criminal Procedure Code to align with the relevant international standards which define **the notion of the child and the notion of the victim.**
2.	Amend the Criminal Code to eliminate existing illogicalities **regarding sanctioning ranges** for criminal offenses that may be committed to the detriment of a minor, along with consistent implementation of existing legal provisions with an aim to impose effective and proportionate sanctions in criminal proceedings and unify case law.
3.	Amend the Law on Human Organ Transplantation and the Law on Human Cells and Tissues to eliminate existing illogicalities regarding the **sanctioning ranges** for criminal offenses prescribed by these laws when they are committed to the detriment of a minor.
4.	**Adopt a new Law on Juvenile Offenders and Criminal Protection of Juveniles** or adopt fundamental and comprehensive amendments to the existing law in accordance with the requirements contained in the key strategic documents, UN CRC recommendations and recommendations of the Council for Monitoring and Improving the Work of Criminal Procedure Bodies and Enforcement of Criminal Sanctions against Juveniles and the Council for the Rights of the Child.
5.	Amend the Criminal Procedure Code in order to fully transpose the standards regarding the **protection, support and assistance to victims and witnesses of criminal offenses** contained in the Directive (2012) 029EU and the Directive (2011) 036EU, identified and specified in relevant national strategic documents, and to prescribe an obligation to grant the status of a particularly vulnerable witness to all child victims, prohibit confrontation of particularly vulnerable witnesses i.e. child victims with the defendant and exclude the possibility for particularly vulnerable witnesses i.e. child victims to be heard in the courtroom in the presence of the defendant.
6.	Consistently implement the provisions of the CPC, as well as the Guidelines of the Supreme Court of Cassation governing the exercise of compensation claims in criminal proceedings, and further improve the **victim's right to compensation** through ratification of the European Convention on Compensation to Victims of Violent Crimes, subsequent alignment of national legislation and establishment of a State fund for victim compensation; amendments to the relevant provisions of the Criminal Procedure Code in a way that would enable the participation and exercise of the rights of the injured parties in the case of plea agreement.
7.	Provide adequate financial and human resources for the implementation of relevant standards in the field of **protection, support and assistance to victims and witnesses of criminal offences** contained in the Directive (2012) 029EU and the Directive (2011) 036EU, which would ensure sustainability and continuity, particularly when it comes to particularly vulnerable categories of victims and witnesses, primarily those with multiple vulnerable factors, such as migrant children and asylum seekers, unaccompanied children and children of victims of trafficking, focusing on establishing a National Network of Victim and Witness Support and Assistance Services, as well as providing technical preconditions for providing protection and support, including interrogation through video links, premises for support services, and separated victim waiting rooms.

8.	**Engage** organizations, independent bodies and relevant institutions, especially social welfare institutions, **in the prevention of sexual and labor exploitation** of minors in order to reduce risk factors and vulnerability, particularly in relation to at-risk groups (members of ethnic minority groups, residents of social welfare institutions, families in social welfare system records).
9.	Strengthen the social protection system and the work of CSW (in terms of human, administrative and financial capacity and improvement of knowledge and skills) to **ensure provision of comprehensive support to children from particularly vulnerable groups** (children without adequate parental care, children in human trafficking situation, sexual exploitation, abuse, Roma children, children in street situations, refugees and migrant children and asylum seekers).
10.	Improve assistance and support to victims **through cooperation of state bodies and specialized associations** engaged in the rights of child victims.
11.	Continuously work on **improving the curriculum and training for police officers and holders of judicial functions,** in order to facilitate the identification, empowerment and provision of adequate treatment for juvenile offenders who are hidden victims of trafficking in human beings in the form of exploitation of criminal activities, especially when it comes to children in a street situation, as well as to unify court practice and adopt an individualized approach oriented to the rights of child victims, while respecting the degree of vulnerability of a child in a particular situation.
12.	Improve the existing solutions in the Law on Juvenile Offenders and Criminal Protection of Juveniles, by introducing the obligation that **expert witnesses** who perform assessment in cases involving minors as injured parties in criminal proceedings have acquired **special knowledge in the field of children's rights**, by analogy with the obligation prescribed for procedural bodies and attorneys.
13.	Continue to **strengthen administrative capacity** for the consistent implementation of guarantees of adequate treatment of children migrants and asylum-seekers, especially unaccompanied children, and ensure timely implementation of the recommendations of national and international monitoring mechanisms.
14.	**Continuously monitor case law** regarding the position and rights of victims of trafficking in human beings and related criminal offences, especially child victims.
15.	**Improve statistical monitoring and data collection** on child victims, particularly on children in situations of vulnerability.
16.	**Improve the mutual harmonization of reform measures** contained in the national strategic documents, through the strengthened role of the Council for Monitoring and Improving the Work of Criminal Procedure Bodies and Enforcement of Criminal Sanctions against Juveniles and the Council for the Rights of the Child.
17.	Ensure **evidence-based policy making approach to criminal law reform**, based on the recommendations of academia, the judiciary, and the supporting professions, with an aim to fully implement the principle of the best interests of the child.
18.	**Increase the knowledge of professionals about the rights of the child and the standards of justice tailored to the child and strengthen their capacity to apply these standards in practice.**

19.	Improve the capacity of professionals to inform children and young people in contact with the justice system about their rights and procedures, in a way adapted to the child-friendly language.
20.	Increase the level of knowledge of children and young people about the rights they have in contact with the justice system and about the standards of justice tailored to the child
21.	Ensure that the hearing of a child is conducted in accordance with the prescribed standards of child friendly justice, and in premises specially equipped for that purpose.
22.	Improve the system of reintegration and rehabilitation of children and youth who have been in contact with the justice system and strengthen psychosocial support programs.

ANNEX 1: Questionnaire on child friendly justice with children in contact with law



Questionnaire 1 – Child-friendly justice

This research serves to show what children and young people think about the justice system.

If you are under 18 and have been in contact with the police, prosecutor's office, court or centre for social work it would mean a lot to us to hear your experience and opinion about the justice system and ideas on how to improve it to be more adjusted to children and youth.

Your privacy in this research will be fully protected. We won't tell anyone how you answered the questions. If you do not want to answer any of the questions, feel free to skip it and move on to the next question. You can cancel your participation in this research at any time and stop filling out this questionnaire.

1. How old are you: _____
2. Gender: Male Female Other
3. Have you ever been in:

1.	Police	YES NO
2.	Prosecutors' office	YES NO
3.	Court	YES NO
4.	Centre for social work	YES NO
5.	Unit for child support in criminal proceedings	YES NO

4. Why have you been there? (If you have been to more than one place or you have been to one place more than once, if you can state for each place individually why you have been there).

   _____
   _____
   _____
   _____

5. When you arrived there, has anyone explained to you why you were invited and how the proceedings will look like?

   YES TO SOME EXTENT I DON'T KNOW MINIMALLY NO

   If you have been to several places (for example, you have been to both the police and the court) and you have not been explained why you were summoned and what the procedure will look like, please write us where it happened.

   _____
   _____
   _____

6. Who explained to you why you were summoned? *(You can choose multiple answers)*

   - Parent/guardian
   - Judge
   - Police
   - Lawyer
   - Social worker
   - Teacher
   - Friend
   - Another adult person (write who) _____
   - I learned myself (write how) _____
   - Nobody

7. Rate from 1-5 how satisfied are you with the way they explained to you why they invited you and what the proceedings will look like? How much could you understand them, ask if something is not clear to you and understand what is happening?(*Circle the grade that shows how satisfied you are. If it's 1 - I'm not satisfied at all, if it's 5 - I'm completely satisfied*)

   1 2 3 4 5

8. Has anyone explained which rights do you have?

   YES TO SOME EXTENT I DON'T KNOW MINIMALLY NO

   If you have been to more than one place (for example, you have been to both the police and the court) and you have not been explained which rights you have, please write us where this happened.

   _____
   _____
   _____
   _____

9. Who explained which rights you have? *(You can choose multiple answers)*

- o Parent/guardian
- o Judge
- o Police
- o Lawyer
- o Social worker
- o Teacher
- o Friend
- o Another adult person (write who) _____
- o I learned myself (write how) _____
- o I received a brochure on my rights
- o Nobody

10. Rate from 1-5 how satisfied are you with the way you were given this information? How much could you understand them, ask if something is not clear to you and understand what rights you have? (*Circle the grade that shows how satisfied you are. If it's 1 - I'm not satisfied at all, if it's 5 - I'm completely satisfied*)

    1 2 3 4 5

11. When they invited you to enter for hearing, has someone who was your support entered with you (for example, a parent, a lawyer, a psychologist, someone else you trust)?

YES NO

12. If yes, write who was with you? _____

13. How many other people were with you in the same premises:_____

If you know everyone who was present, write:

_____
_____
_____

14. Was the space where they interrogated you arranged so that it was adapted to children and young people? (For example, was the space tailored to the child - walls, tables, chairs, books, toys)?

YES NO

15. How many times were you heard during the proceedings? _____

If you have been heard more than once, if you know, write how much time has passed from your first hearing to the decision?

_____
_____

16. Has anyone explained to you the decision made?

YES TO SOME EXTENT I DON'T KNOW MINIMALLY NO

17. If YES, rate from 1-5 how satisfied are you with the way you were given this information? How much could you understand them, ask if something is not clear to you and understand what decision was made? (*Circle the grade that shows how satisfied you are about how clearly they communicated the decision to you. If it's 1 - they didn't tell me clearly at all, if it's 5 - they told me completely clearly*)

1 2 3 4 5

18. Were you able to appeal the decision made if you did not agree with it?

YES NO

19. Now that you remember your experience with the justice system, do you think that all the participants in the proceedings treated you with respect?

YES TO SOME EXTENT I DON'T KNOW MINIMALLY NO

20. Who treated you with the greatest respect in the proceedings?

_____

21. Who treated you with the least respect in the proceedings?

_____

22. Did you feel safe?

YES TO SOME EXTENT I DON'T KNOW MINIMALLY NO

23. If you felt discomfort/fear, write us why:

_____
_____
_____
_____

24. Did you receive medical or psychological support after the proceedings?

YES NO I DON'T KNOW

25. Have you ever been in:

1. Detention YES NO
2. Educational institution YES NO
3. Educational and correctional home YES NO
4. Juvenile prison YES NO

26. If YES, rate with 1-5 how much the following rights were respected in that institution? (*1 – that right was not respected at all 5 – that right was fully respected*)

Receiving information about what rights you have and how you can exercise them	1	2	3	4	5
Keeping regular contact with parents, family and friends	1	2	3	4	5
Attending classes	1	2	3	4	5
Training for a specific craft / occupation	1	2	3	4	5
Sports engagement	1	2	3	4	5
Medical care	1	2	3	4	5
Freedom of confession (religion)	1	2	3	4	5
Protection from violence	1	2	3	4	5
Prohibition of torture and ill-treatment	1	2	3	4	5
Submission of appeals	1	2	3	4	5
Preparation and support for leaving the institution	1	2	3	4	5

27. Do you have any suggestions on how to improve the justice system to make it more child- and youth-friendly? Write us your ideas!

_____
_____
_____
_____
_____
_____

Thank you very much!

Ovaj projekat finansira Evropska unija kroz Program *Prava, Jednakost, i državljanstvo* (2014-2020)

ANNEX 2: Questionnaire on child friendly justice with children from general population

This research serves to determine the level of information of children and young people about the rights they have if they come into contact with the justice system (e.g. the police or the court).

If you are under 18 it would mean a lot to us to hear your opinion. Your privacy in this research will be fully protected. You can cancel your participation in this research at any time and stop filling out this questionnaire.

1. How old are you*:* _____
2. Gender*:* Male Female Other
3. Assess the extent to which you think young people are informed about their rights if they come into contact with the justice system (police, prosecution, court or centre for social work)?
    1. Not informed at all
    2. Partially informed
    3. Fully informed
    4. I don't know
4. To what extent are you aware of the rights that children have in criminal proceedings if they are victims or witnesses of a crime?
    1. Not informed at all
    2. Partially informed
    3. Fully informed
    4. I don't know
5. To what extent are you aware of the rights that children have in criminal proceedings if they are perpetrators of a crime?
    1. Not informed at all
    2. Partially informed
    3. Fully informed
    4. I don't know
6. To what extent are you aware of the rights that children have in civil proceedings in the event that they are invited by a court or centre for social work to give their opinion (for example in parents divorce proceeding))?
    1. Not informed at all
    2. Partially informed
    3. Fully informed
    4. I don't know
7. Have you ever had contact with an institution within the judicial system - the police, the prosecutor's office, the court or the centre for social work?

Yes No I don't know

8. How have you been informed so far about the rights that children have if they come in contact with the police, court, prosecutor's office, centres for social work? (you can choose multiple answers)

    - Through media
    - In school
    - Personal research
    - Through social network
    - On various websites
    - Through a friend/peer
    - From parents/guardian
    - Other_____

    (enter)

9. How could children and young people be better informed about their rights? (You can choose multiple answers)

    - Through media
    - Facebook
    - Instagram
    - TikTok
    - YouTube
    - At festival
    - Films
    - Posters
    - Brochures
    - Other _____

    (enter)

10. If you have any other ideas so that children and young people can be better informed about their rights in the justice system, please write to us here:

_____
_____
_____

_____
_____
_____

Thank you very much!