

## CHILD VICTIMS IN SERBIA - NORMATIVE FRAMEWORK, REFORM STEPS AND EU STANDARDS\*

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*Despite the fact that the Law on Juvenile Offenders and Criminal Protection of Juveniles at the time of its adoption represented an important step towards introducing and reviving the principles of child-friendly justice in the legal system of the Republic of Serbia, its application, as well as the lack of necessary, continuous improvement based on the practice observed problems in implementation, but also harmonization with other relevant laws, and primarily with the new Code of Criminal Procedure, support the conclusion that in this important work has been stopped half way. Bearing this in mind, the author analyzes the challenges faced by Serbian lawmakers and the judiciary in the context of improving the position of child victims in criminal proceedings in the framework of compliance with relevant international standards and benchmarks for progress in the process of accession negotiations with the EU.*

*KEY WORDS: child-friendly justice / child victims / international standards / EU*

### INTRODUCTION

Protection of a physical and psychological integrity of a victim have been recognized as one of the imperatives in criminal law theory and practice for decades, but its importance becomes even a more significant in criminal proceedings which includes child victims. Considering this, several main principles of this type of criminal proceedings have been integrated in main international legal instruments, but also in national legal systems all around the world.

When it comes to international standards on dealing with child victims they exist as a part of universal standards on victims' rights, mostly developed through the EU legislation. (Kovačević, M, Turanjanin, V. 2014, 307-324) In parallel, a special

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treatment of the child victims became a main topic of various international instruments dedicated exclusively to the rights of child.

Serbian penal legislation made significant step forward in this regard by adoption of a Law on Juvenile Offenders of a Crime and Criminal Protection of a Juveniles (hereinafter: Law on Juveniles) in 2005. However, multiple unsuccessful attempts to amend this law or to adopt a new one which will be aligned with the newest international standards as well as with the Criminal Procedure Code from 2011 (hereinafter: CPC) resulted in a various discrepancies between relevant laws and numerous problems in their implementation. The limited progress has been made through some project initiatives, but significant and sustainable developments are still required and will be measured also as a part of EU accession negotiations process.

## 1. EU STANDARDS ON VICTIMS' RIGHTS AND CHILD VICTIMS

As it mentioned above, the child victims have been recognized as vulnerable group in the main international legal instruments aimed at improvement of the victims' rights.<sup>1</sup>

The Framework Decision and the Directive on Compensation to Crime Victims were just the first step made to improve victims' rights. The real step forward towards regulation their position in general but also in cross-border criminal proceedings, aimed at ensuring minimum of victims' rights within the EU, regardless of their citizenship or nationality, was adoption of the EU Directive **of the European Parliament and of the Council of 25 October 2012** establishing minimum standards on the rights, support and protection of victims of crime on the strengthening of the position of victims of crime (EU/2012/29) (hereinafter Victims' Directive). Beside above-mentioned Directive which rules the position of victims in general, there are numerous relevant international instruments dealing with position of particular vulnerable groups such women, children, LGBTI, Roma, victims of war crimes, national minorities, etc., that require special measures of protection and support. Even the Victims' Directive emphasizes a need to provide tailor made treatment for "victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organized crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

The Best interests of the child, as main principle contained in the UN Convention on the Rights of the Child<sup>2</sup> was well interpreted through the recommendation to Serbia that says

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<sup>1</sup> The United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power (A/RES/40/34), adopted by the UN General Assembly on 29 November 1985 (hereinafter: The UN Declaration (A/RES/40/34)), was a substantive leap forward in the process of legislative developments for victims of crime worldwide. When it comes to EU, a period of intensive legislative activities through the adoption of policy decisions and legal instruments started with the EU Council Framework Decision on the Standing of Victims in Criminal Proceedings (2001/220/JHA) from 15 March 2001 (hereinafter: EU Council Framework Decision (2001/220/JHA)) and the EU Directive on Compensation to Crime Victims (2004).

<sup>2</sup> Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance

that the state should strengthen its efforts to ensure that this right is appropriately integrated and consistently interpreted and applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children. The same principle basically reflects main two aspects of the child victims' treatment, in detailed defined in the articles 12 and 19 of the Convention. The Art. 12 of the Convention stipulates that the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law, while the Art. 19 says that states Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Therefore, the right of the child to be heard in the criminal procedure, but to stay maximally protect from revictimization are the core principles that state parties needs to strive for.

These principles have been detailly reflected in the Guidelines of the Committee of the Ministries of the Council of the Europe on child-friendly justice (hereinafter: Guidelines) from 2010<sup>3</sup>. According to the Guidelines, the child-friendly justice is: accessible; age appropriate; speedy; diligent; adapted to and focused on the needs of the child; respecting the right to due process; respecting the right to participate in and to understand the proceedings; respecting the right to private and family life; respecting the right to integrity and dignity. The Guidelines emphasized importance of the right to the legal counsel and representation; right to be heard and express views; right to reasonable length of the procedure, child-friendly environment (interviewing premises) and language; presence of their parents during the interviewing; use of specialized investigative methods and equipment; avoiding repeated interviews; specialized support and therapeutic programs. The all of these require highly educated judges, prosecutors, police officers and other relevant staff.

## 2. RELEVANT PROVISIONS OF THE SERBIAN LAW

The Law on Juveniles, in general, provides solid normative framework for child-friendly criminal proceedings where victim of a crime is a child.

The mandatory specialization for judges and public prosecutors<sup>4</sup> for investigation, prosecution and decision -making in criminal proceedings where juveniles are victims of a crime is stipulated by the Part Three (Special provisions on protection of minors as victims in criminal proceeding), Article 150 of the Law on juveniles. According to this provision, a

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with article 49, available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, last accessed on April 28, 2018.

<sup>3</sup> Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, available on: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3>, last accessed on April 28, 2018.

<sup>4</sup> For more on specialization of judiciary in this field see: Kolaković-Bojović, M. (2015) Jačanje kapaciteta Pravosudne akademije kao preduslov održivosti kvaliteta obuke za postupanje u krivičnim postupcima prema maloletnicima, *Maloletnici kao izvršioци i žrtve krivičnih dela i prekršaja*, (Kron, L. ur.), Institut za kriminološka i sociološka istraživanja, 395-404.

bench, presided by a judge with special skills in the field of the rights of the child, and criminal protection of juveniles, shall try adult offenders for the criminal offences committed against minors, set forth by the Criminal Code and listed in the Law of juveniles.<sup>5</sup> The state prosecutor with special skills in the field of the rights of the child and in criminal protection of minors, shall initiate proceeding against adult perpetrators of other criminal offences stipulated by the Criminal Code, in compliance with the provisions of the Law on Juveniles, if in his opinion it is necessary to do so for purpose of protecting personality of minors as victims in criminal proceedings.

The Law on Juveniles regulates, in the Article 151, that the CPC is the source of general rules for conducting criminal proceeding against perpetrators of above listed criminal offences. The same article provides for specialization of an investigative judge with special skills in the field of the rights of the child, and criminal protection of minors as well as of the specialized members of the police authorities with special skills in the field of the rights of the child and criminal protection of minors shall participate in investigation of criminal offences prejudicial to minors, when particular activities are delegated to these authorities.

The Article 152 reflects the best interest of the child principle and stipulates that, when conducting proceeding for criminal offences committed against juveniles, the state prosecutor, investigative judge and judges of the bench shall treat the victim with care, having regard to his age, character, education and living circumstances, particularly endeavouring to avoid all possible prejudicial consequences of the proceeding on his character and development. Questioning of a child or juvenile shall be conducted with the assistance of psychologist, pedagogue or other qualified person. The Law limits number of questioning of a child on two and exceptionally more if necessary to achieve the purpose of criminal proceeding. If the juvenile is questioned more than twice, the judge shall particularly have regard for the protection of personality and development of the juvenile. The same article provides for use of technical devices for transmitting of image and sound if, due to the nature of the criminal offence and the juvenile's character the judge considers it necessary. In that case judge shall order questioning of the juvenile with the aid, and the questioning shall be conducted without presence of the parties and other participants in the proceeding in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogue, social worker or other qualified person. The additional option allowed by the Law is that juveniles may be questioned as witness-victims in their apartment or other premises and/or authorised institution – organisation that is professionally qualified for questioning of minors. In order to avoid revictimization, when a juvenile has been questioned in aforementioned cases, the record of his testimony shall always be read at the main hearing or a recording of the questioning heard. The Law on Juveniles regulates also in the article 153, that if a juvenile is questioned as witness, who due to the nature of the criminal offence, consequences or other circumstances is particularly vulnerable or is in a particularly

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<sup>5</sup> Murder (Article 114), Inducement to suicide and assistance in suicide (Article 119), Heavy bodily harm (Article 121), Abduction (Article 134), Rape (Article 178), Sexual assault of a defenseless person (Article 179), Sexual assault of a child (Article 180), Sexual assault by misconduct in office (Article 181), Indecent assault (Article 182), Procuration and facilitating sexual intercourse (Article 183), Mediation in prostitution (Article 184), Display of pornographic material and pornographic abuse of children (Article 185), Common law marriage with a juvenile (Article 190), Capture of a minors (Article 191), Altering family status (Article 192), Neglect and abuse of a minor (Article 193), Family violence (Article 194), Withholding financial support (Article 195), Incest (Article 197), Burglary (Article 205) Robbery (Article 206), Extortion (Article 214), Facilitation of the use of narcotics (Article 247), War crime against civilians (Article 372), Slave trade (Article 388), Child trafficking for adoption (Article 389), Slavery and transport in slavery (Article 389).

difficult mental state, confrontation between him and the defendant is prohibited. The Law (art. 154) also prescribes as a mandatory presence of a legal representative from the first questioning of the defendant (chosen or 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).

The special protection of a child victim is also contained in the art. 155 which stipulates that if recognition of the defendant is done by a juvenile who is a victim, the Court shall proceed with particular care and shall conduct such recognition in all phases of the proceeding in a manner that completely prevents the defendant from seeing the juvenile.

However, the first decade of the implementation of the Law on Juveniles shows various gaps and inconsistencies in the application of this law require its continuous monitoring and improvement. The same goes for initial training of judges, prosecutors and police officers, who were not obliged (or even offered) to continue their education in this regard. These issues, combined with new *acquis* in the field of procedural safeguards and changed concept of the CPC resulted in significant requirements regarding juvenile justice legislation in the Chapter 23 of accession negotiation with EU.

### 3. CHAPTER 23 REQUIREMENTS AND PROTECTION OF CHILD VICTIMS AND WITNESSES

The opening of the accession negotiations with EU<sup>6</sup> resulted in additional obligations for Serbia in the field of victims' rights, including child victims. Progress made in these fields, the EC will measure through the interim benchmarks (hereinafter: IB) contained in the Common negotiation position that requires "Serbia to strengthen its investigative, prosecutorial and judicial bodies including ensuring a more proactive approach and the confidentiality of investigations, providing for training for new and current staff members, improving its witness protection and victim support system and ensuring access to justice for all victims." (IB no. 18)<sup>7</sup>. Additionally, under the Subchapter Fundamental Rights, the

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<sup>6</sup> Republic of Serbia has taken an obligation to align its legal system with EU *acquis* by opening the accession negotiations in 2015. Anyway, the process of alignments had started much earlier and became very intensive since 2013 after coming-in screening phase. The Screening of Serbian normative and institutional framework with relevant *acquis* within chapters 23 and 24 started by the end of 2013 with explanatory screening (presentation of the relevant *acquis* and EU standards to the Serbian institutions). This stage has served as starting point for assessment of an alignment level of the Serbian legislative and institutional framework with the *acquis* and EU standards, during the bilateral screening in December 2013. The screening process resulted in publishing of the screening reports by European Commission (hereinafter: EC) in 2015 for both chapters that tackle issues related to position of victims. Since Chapter 23 deals with the victims' issue through the organization of judiciary as well as through the protection of fundamental rights (including procedural safeguards and vulnerable groups) and prosecution of war crimes, the Chapter 24 deals with position of victims in criminal proceedings for organized crime, human trafficking, etc. Recommendations given in both screening reports obliged Serbian authorities to draft, (in inclusive and transparent process that assumes inclusion of all relevant stakeholders and CSOs) but also to adopt and implement the detailed action plans that should serve as a "reform road map" and starting point for adoption and implementation of dedicated strategic documents in various fields relevant for treatment of victims in general as well as those coming from vulnerable groups. It is important to notice that several of them have already been drafted and adopted in parallel with the action plans for Chapter 23 and Chapter 24 (e.g. Dedicated Action Plan for national minorities and the Roma Strategy). The all abovementioned policy papers contain numerous activities aimed at improvement of victims' position in Serbian legal and social care system. That is unambiguous indication of Serbian dedication to effectively deal with numerous shortcomings that currently exist.

<sup>7</sup> It's important to notice that IB no. 18 is listed in the context of section dedicated to war crimes issues. However, it shouldn't be considered in such a narrow context, having in mind universal nature of EU standards on victims of crime rights.

issue of child friendly justice is addressed through the interim benchmark which stipulates that Serbia is obliged to step up the respect of rights of the child, with particular attention for socially vulnerable children, children with disabilities and children as victims of crime. Serbia should also actively work on reducing institutionalisation to the benefit of increasing family care solutions; adopt and implement a Strategy and Action Plan for preventing and protecting children from all forms of violence and establish a child friendly justice system, including through amending and implementing the Law on juveniles, improving the work of the Juvenile Justice Council, providing training on dealing with juvenile offenders, improving alternative sanctions for juveniles and measures to reintegrate juvenile offenders back into society. (IB no. 42) The APCH23 addresses these requirements through the comprehensive list of activities that could be considered divided in two groups: The first group of activities refers to improvement of the position of all categories of victims of a crime, regardless their age, gender or type of crime. The second group of activities relevant for achieving abovementioned benchmarks is related to improvement of child/friendly justice.

### 3.1. Activities needed in order to improve position of victims in general

When it comes to general measures that should be, or have already been taken, the APCH23 provides wide spectrum of planned activities in order to improve normative framework that regulates victims' rights, but also to establish centralized, sustainable, well-coordinated and accessible victims and witnesses support country-wide system. The activities could be divided in three stages: analytical, legislative amendments and building of the new institutional set up.

The first stage is finalized and resulted in comprehensive analysis of the legislative and institutional framework.<sup>8</sup> Results of the analytical process should serve as a base for developing and adoption of an overarching strategy for improvement of the victims' position accompanied with dedicated Action plan during the 2018. These two policy papers shell determine all relevant steps, with precise timeline as well as the subjects in charge of certain activities. After setting up the strategic framework it is necessary to align penal as well as legislation dealing with organization of judiciary and accompanying bylaws with Victims' Directive and other relevant sources of EU standards in this field. The Action Plan for Ch. 23 recognizes (activity 3.7.2.19) that the prerequisite for efficient implementation of the amended normative framework will be strengthening of the existing institutional and administrative capacities in cooperation with relevant and well experienced civil society organizations, academic community and centers for social care and protection. (Kolaković-Bojović, 2018)

Based on all relevant data compiled during the analytical phase, the Ministry of Justice has defined the key principles and steps that should be followed in developing a nationwide victim support network. As the main principles are defined availability, maximum utilization of available resources and sustainability. The MoJ emphasizes that the main steps that should be make are: maximum usage of existing victim support capacities within institutions of state as well as among civil society organizations; definition of the clear and objective criteria that potential providers should fulfil to become members of the network;

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<sup>8</sup> For more about results of the Analysis, see: Altan, L. 2016. *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU*. Belgrade: MDTF, World Bank.

linking the all available providers into the unified network for the whole territory of the Republic of Serbia; development and establishment of the referral mechanism at the level of high courts, high prosecutorial offices and police administrations, with the clear plan for network expansion in next few years; introduction of coordination contact points in order to establish formal types of communication between the most important stakeholders; establishment of the central coordination body in charge of coordination, administration and development of the victim support network; establishment of the Fund for periodic allocation of funds to service providers; identification of a sources of inflow of funds into the Fund; establishment of the system of specialized training with the emphasis on ToT. (Kolaković-Bojović 2017, 145-148).

### 3.2. Measures aimed at improvement of support to the victims coming from vulnerable groups, especially children

Beside abovementioned measures that should establish a new approach in treatment of the victims in general, the Action plan for Ch. 23 contains numerous planned activities related to improvement of the normative and institutional framework as well as implementation of various actions aimed at protection and support to victims belong to vulnerable groups, including child victims.

The Victims Directive recognizes child victims as the one of the most vulnerable categories. Their vulnerability is particularly highlighted when it comes to risk of secondary victimization in criminal proceedings. That the Republic of Serbia also approaches that problem on the same way, it's obvious from developing of a new Strategy dealing with prevention as well as protection of children from violence, that is ongoing. It is well known that the high risk of secondary victimization especially lays in multiple and/or inadequate interviewing. This has been identified as an issue that requires intervention in the Action Plan for Ch. 23 that stipulates several activities aimed at reduction or elimination of negative effects that criminal proceeding could have on child victims. (activities 3.6.2.15.-3.6.2.24.)

Probably the most important is to "define practical guidelines for interviewing children, based on best practices of EU countries and provide conditions for the uniform application of protective measures of child victims and witnesses." Since the efficient implementation of such guidelines is of the key importance the Action Plan envisages "distribution of educational materials and conducting training and informative sessions for police officers, public prosecutors and deputy public prosecutors, judges and employees of Centres for Social Work, on the protection of child victims / witnesses in criminal proceedings in order to avoid secondary victimization." This type of knowledge incensement is precondition for introducing of post-traumatic counselling and support for child victims as well as children witnesses.

The Action Plan for Ch. 23 also recognizes that family support, especially in vulnerable communities might be the right approach to prevent victimization of women and children in family violence but also to prevent discrimination and victimization based on national identity or sexual orientation and gender identity through the strengthening and support to families. Having that in mind it is planned to "establish pilot centres for family support in order to: Target population of multiply deprived communities (paying particular attention to the availability for Roma families and children); Support a parent who suffers domestic violence; Support children at risk of dropping out of school; Support families at risk of

separation (children and parents); Support child victims of crime; Support children with disabilities from vulnerable families and at risk of placement in institution." (activity 3.6.2.3.)

#### 4. RECENT DEVELOPMENTS RELATED TO CHILD VICTIMS IN SERBIA

The most important steps made in order to improve position of child victims in Serbia were implemented within the IPA 2013 Strengthening the justice and social welfare systems to advance the protection of children in Serbia, implemented by UNICEF from 2014 to 2017<sup>9</sup>. The Project included component dedicated to child victims was designed as package of activities starting from the Base-line study on application of legally defined protection measures of child victims/witnesses. The project also included technical assistance to MoJ for defining amendments to the law and by-laws on juvenile justice with aim of accelerating efficiency in proceedings, defining stimulative mechanisms for application of diversionary schemes and resolving financing issues.

In order to secure conditions for uniform application of protection measures for children as victims/witnesses in criminal proceedings, the Project included set of six activities. The all of them were designed on a way that enables measuring the progress made due to implementation of the project. An important activity for measuring the progress was related to commissioning baseline and end-line studies to determine the extent to which preventing secondary victimization is actually respected in the criminal proceedings involving children victims/witnesses after the intervention, based on predefined indicators.<sup>10</sup>

The first of six activities was to define clear and practical guidelines for a child hearing based on good practice examples from EU countries.

This Project segment took into account that though the justice system in Serbia already established Victims support units at courts and prosecutions are dominantly intended for basic support and information sharing, without psychological expertise in working with children. In these conditions, the IPA established four new regional units, envisaged to act as mobile teams for interviewing children in criminal proceedings at the request of a prosecutor or a judge. Units were formed in the cities where the courts of appeal are seated, with a mandate to cover the areas of the courts' jurisdiction. Each of the four Child victim support units was equipped with mobile recording equipment and vehicles with the purpose of conducting child-friendly hearings outside of the courts as much as possible. Professionals for this new service were recruited from the psychologists employed at public institutions within the social system, with extensive previous experience of dealing with children. According to the UNICEF data, from the period of the launching of the new service offered by the Units (from March 2015 to January 2016), until the September 2017,

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<sup>9</sup> For more info on Project achievements see: Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), available on: [https://www.unicef.org/evaldatabase/files/Summative\\_evaluation-Justice\\_for\\_Children\\_Reform\\_Serbia-ENG.pdf](https://www.unicef.org/evaldatabase/files/Summative_evaluation-Justice_for_Children_Reform_Serbia-ENG.pdf), last accessed on April 25<sup>th</sup> 2018.

<sup>10</sup> For more info see: Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), available on: [https://www.unicef.org/evaldatabase/files/Summative\\_evaluation-Justice\\_for\\_Children\\_Reform\\_Serbia-ENG.pdf](https://www.unicef.org/evaldatabase/files/Summative_evaluation-Justice_for_Children_Reform_Serbia-ENG.pdf), last accessed on April 25<sup>th</sup> 2018.



the Units conducted 158 interviews with children in criminal proceedings.<sup>11</sup> During the interviews, no standardized monitoring sheets for the Units were prepared to record data cases in which they have provided assistance. Consequently, there is no detailed data on victims and cases. Together with the formal (legal and organizational status of the Units, this issue should be considered in the process of establishing victim support services on the national level.

The project also contributed to strengthening professional capacities for interviewing children in a way which takes into account their age and capacities and avoids secondary victimization. The capacity building included study visit but also comprehensive training sessions with large number of participants. Training sessions also included post-traumatic counselling as a topic.

As a part of capacity building activities, information sessions on the theme in all municipalities for relevant courts, public prosecution offices, CSWs and police were held.<sup>12</sup> The topics covered international and national policy context on children victims and witnesses, as well as forensic interviewing.

Additionally, the Project provided technical assistance for advancing regulations/policies for data management in courts so that the application of the principle of respecting the best interests of the child is documented in criminal proceedings.

The Project results were measured based on the baseline study of current practices related to the five main indicators. The all indicators reflect the main principles of criminal proceedings with juvenile participants. These include: labelling the case involving a child as urgent; duration of a trial; location at which a hearing takes place; obligatory legal representation and usage of inappropriate introductory ‘warning’ before the hearing.

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<sup>11</sup> Belgrade (41), Niš (49), Kragujevac (39) and Novi Sad (29).

<sup>12</sup> The agenda included a presentation on the particularities of children in criminal proceedings and their emotional state, as well as a presentation of the new Units, including a Q&A session. In total, 89 info sessions were held, with a total of 1 015 participants - 393 judges, 180 public prosecutors, 247 CSW representatives, 166 police members and 29 representatives of other institutions. (See more in: Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), available on: [https://www.unicef.org/evaldatabase/files/Summative\\_evaluation-Justice\\_for\\_Children\\_Reform\\_Serbia-ENG.pdf](https://www.unicef.org/evaldatabase/files/Summative_evaluation-Justice_for_Children_Reform_Serbia-ENG.pdf), last accessed on April 25<sup>th</sup> 2018.)

Table 1: Achievement of impact indicators concerning children victims/witnesses in criminal proceedings<sup>13</sup>

Baseline	Target	End- study findings
100% of the reviewed cases are not labelled as urgent due to the victim being a child	In over 50% of the reviewed cases, they are labelled as urgent due to victim being a child.	100% of the analysed cases have not been clearly marked as urgent due to the victim being a child
43.3% of cases last over 1 year in 2013	20% cases last over one year	67% cases last over one year
In 20% of the cases the child victim's hearing takes place in child-friendly space in the court	20% cases the child victim's hearings take place outside the court	4,7% of children victims' hearings take place in specially equipped premises adapted to the children's needs, age and maturity
In 63,6% of cases, the judge appoints a representative where this is obligatory by law	In over 80% of cases, the judge appoints a representative where this is obligatory by law	The study does not provide data on the percentage of cases where a representative was timely appointed but implicitly it can be concluded that the situation has not improved since the project beginning
In 100% of the reviewed cases, the judge uses standard/ inappropriate introductory 'warning' which is used for adult victims and is contrary to the procedure defined by law	80% of judges do not give a verbal warning to child witnesses and introduce the hearing in a manner adequate to the child's age/capacity	The study does not provide data on the percentage, but suggests that due to the fact that all Judicial Academy trainings insist on this, it is very rare that the judges give a verbal warning to the child anymore

The results listed in the Table 1 clearly show that well targeted Project activities did not result in expected improvements. Only in the case of use of inappropriate introductory 'warning', there were considerable changes registered in the court practice in comparison to the baseline study. In contrast, across all other indicators, no conclusive improvement has been recorded. This data can be considered on a different way. On one side, it could be understood as result of low quality of Project activities. On the other side, it could be just a result of the insufficient understanding of the importance of this topic as well as a lack of motivation and dedication of relevant subjects (judges, prosecutors, police officers).

In favour of the second option goes the data that only 15% of the CSW staff and 24% of judges and public prosecutors included in project activities provided the feedback (or even a contact info) on the influence of the Project on their work. The response rate was a bit higher among police officers (around 40%). The illustrative is also data that significant percentage of respondents were not aware of some Project achievements they should use in every day work- e.g. the Guidelines for Preparing Child Victims and Witnesses of Criminal Offences for Trial and Forensic Questioning. Moreover, 96% of the targeted judges and all of the prosecutors reported that the info sessions cleared-up some of the legal or procedural dilemmas they previously had concerning contact with children victims and witnesses. At the same time, only 27% of the judges reported changes in their practices when dealing with children victims or witnesses as opposed to 80% of the prosecutors. The judges who reported some changes in their practices did not actually specify in which way, while the prosecutors primarily relate their changed practices to the readiness to use the Units. Interestingly, 23% of the police officers stated they had no dilemmas that needed clearing, and as many as 55% stated they have not introduced any changes to their practices whatsoever, as a result of the info sessions. <sup>14</sup> Especially interesting are data on seeking

<sup>13</sup> Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), p. 61, available on: [https://www.unicef.org/evaldatabase/files/Summative\\_evaluation\\_Justice\\_for\\_Children\\_Reform\\_Serbia-ENG.pdf](https://www.unicef.org/evaldatabase/files/Summative_evaluation_Justice_for_Children_Reform_Serbia-ENG.pdf), last accessed on April 25<sup>th</sup> 2018.)

<sup>14</sup> Similarly, in spite of the fact that significant efforts were put in disseminating information about the Units during

assistance from Mobile Units when questioning children victims/witnesses, that shows the very low level of awareness and/or readiness to seek this very useful assistance.<sup>15</sup>

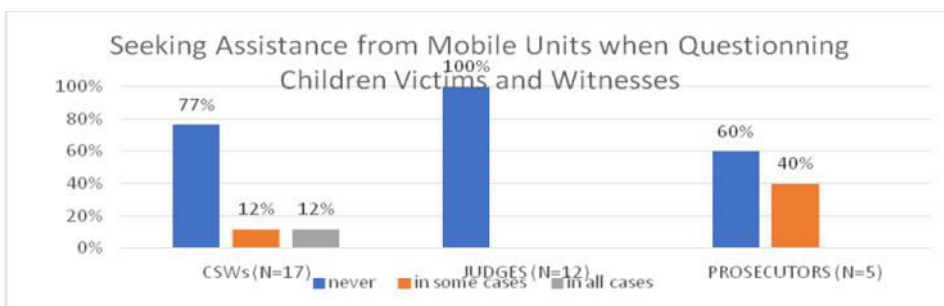


Figure 1: Survey results - Seeking assistance from Mobile Units when questioning children victims/witnesses<sup>16</sup>

Finally, it is pretty challenging to properly understand the data that 42% of CSW staff, 60% of prosecutors and 64% of judges think that the info-sessions contributed to the improved cooperation between the sectors to some extent, while 24% of the responding CSW staff think they have not contributed at all. The assessment of the police is different with as many as 64% stating that the info sessions have contributed or at least to a degree to the improvement of inter-sectoral cooperation.

## CONCLUSIONS

Considering significant delays in improving normative framework, but also the limited progress made by implementation of the recent projects in the field, there are still some concerns about truth dedication of Serbian authorities to follow and implement child-friendly justice in developing and implementing normative framework that deals with child-victims. Too condensed specialized training for judges, prosecutors and police officers, without continuity or renewal of knowledge; lack of child-friendly premises in court and prosecutors' offices; lack of adequate mobile equipment for interviewing children; inconsistent implementation of the relevant Law provisions; law awareness among judges, prosecutors and police officers on child-victims vulnerability and needs; obsolete systems of the Social Care Centres, remain just some of numerous obstacles on the way to ensure adequate normative and institutional guaranties for child-victims in criminal proceedings. Based on lessons-learned on other important issues and reform challenges, it is expected that Serbian authorities will find "additional motivation" for changes and improvements in the EU accession processes and the EC expectations in this regard.

the info-sessions, between 1/4 and 1/5 of the respondents from CSWs, judges and prosecutors have stated they did hear about them, although they have all participated at the sessions. See Summative evaluation to strengthen implementation of justice for children system in the Republic of Serbia (2010-2017), p. 61-62, available on: [https://www.unicef.org/evaldatabase/files/Summative\\_evaluation-Justice\\_for\\_Children\\_Reform\\_Serbia-ENG.pdf](https://www.unicef.org/evaldatabase/files/Summative_evaluation-Justice_for_Children_Reform_Serbia-ENG.pdf), last accessed on April 25<sup>th</sup> 2018.)

<sup>15</sup> The issue of insufficiently clear legal grounds for engaging the Units

<sup>16</sup> *Ibidem*.

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## DECA ŽRTVE U REPUBLICI SRBIJI - NORMATIVNI OKVIR, REFORMSKI KORACI I EU STANDARDI

*Uprkos činjenici da je Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica u vreme donošenja predstavljao značajan korak u pravcu uvođenja i oživotvorenja principa pravde po meri deteta u pravni sistem Republike Srbije, njegova primena ali i izostanak neophodnog, kontinuiranog unapređenja na osnovu u praksi uočenih problema u primeni, ali i usklađivanja sa ostalim relevantnim zakonima, a prvenstveno sa novim Zakonikom o krivičnom postupku, govore u prilog zaključka da se u ovom značajnom poslu zastalo na pola puta. Imajući ovo u vidu, autor u radu analizira izazove s kojima se suočava srpski zakonodavac i pravosuđe, u kontekstu unapređenja položaja dece žrtava u krivičnom postupku, a u kontekstu usaglašavanja sa relevantnim međunarodnim standardima i merilima napretka u procesu pristupnih pregovora sa EU.*

*KLJUČNE REČI: pravosuđe po meri deteta / deca žrtve / međunarodni standardi / EU*