



# **ANALYSIS OF THE NORMATIVE AND INSTITUTIONAL FRAMEWORK OF CHILD FRIENDLY JUSTICE IN SERBIA**

**-summary report and recommendations-**

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## Summary Report

Sixteen years after the last comprehensive reform of criminal legislation in the field of child justice, international standards in this area have reached a significantly higher level of detail and comprehensiveness. At the same time, the long-term application of the Law on Juvenile Delinquents and Criminal Protection of Juveniles has crystallized in practice the need to regulate certain issues differently. Based on these bases, the expert team of the Institute of Criminological and Sociological Research, supported by the UNICEF Office in the Republic of Serbia, conducted a comprehensive assessment of the compliance of Serbian criminal legislation<sup>i</sup> with relevant international standards<sup>ii</sup> in June 2021-January 2022. In addition, the expert team conducted a comparative analysis of the institutional framework in terms of possible choices of institutional coordination of public policies in the field of child friendly justice.

Regarding general issues relevant to the position of juveniles in criminal proceedings, regardless of whether they are in the role of perpetrator, witness or injured party, it was concluded that it is necessary to harmonize the concept of a child who in international standards means a person under 18 years. Additionally, the need to prescribe more detailed criteria and procedures for assessing the best interests of the child was identified. The need to prescribe the obligation of continuous professional training for professionals in contact with minors was recognized, followed by establishing the obligation to respect the dignity and integrity of the child at the level of criminal procedure, but also for more precise and comprehensive guarantees of juvenile privacy, including media and justice.

The position of juvenile offenders needs to be improved by extending the possibility of criminal prosecution to juvenile offenders who face up to eight years in prison, but also to expand the list of educational warrants and enable the prosecutor to apply all educational warrants in the pre-trial stage. Starting from the principle that the deprivation of liberty is the last mean, it is necessary to improve the conditions in detention units, to expand the use of alternatives to detention, including the consideration of the ban on its use for juveniles aged under 16. The procedural position should also be improved through audio / video recording of the interrogation. The need for improvement was also identified with regard to the execution of criminal sanctions, and especially with regard to the procedure and conditions for the execution of institutional educational measures and the punishment of juvenile imprisonment, especially in the part related to the application of disciplinary measures. Post-penal care of juveniles remains an inadequately / insufficiently regulated area, which directly negatively affects the recidivism of this category of perpetrators.

The position of juvenile victims of criminal offenses is inadequately regulated, starting with the inconsistent use and duality of the terms "victim" and "injured party" in the national criminal legislation. Juvenile victims were not provided with systematic professional support during the procedure, based on a preliminary assessment of individual needs, as well as the presence of a trusted person at the hearing.

There is still no obligation of the body of procedure to inform the injured party about the release of the defendant from custody, i.e. from serving a prison sentence or juvenile imprisonment, depending on the age of the perpetrator, except when there is a risk of retaliation. Despite the adequate legal framework, the realization of compensation claims in criminal proceedings is almost impossible in practice, so in addition to the consistent application of the Guidelines issued by the Supreme Court of Cassation, it is necessary to regulate prosecutorial role with general instructions of the Republic Prosecutor, followed by training and use of uniform forms.

The most comprehensive interventions are needed in the Criminal Code, as inconsistencies have been identified in a number of areas, including the penalties prescribed for crimes against sexual freedom committed against minors, and thus the statute of limitations for the same category of crimes.

Harmonization of criminal ranges, as well as the act of execution itself, is necessary for the criminal offense of Trafficking in Human Beings, as well as its clearer demarcation with related criminal offenses.

It is necessary to include in the Criminal Code new incriminations, starting with the criminal offense of selling a child, through criminal offenses incriminating enforced disappearances and wrongful removal of a child, to the explicit prohibition of recruitment and exploitation of minors in hostilities by armed groups other than the armed forces.

Having in mind the number of issues related to the inconsistency of the criminal legislation of the Republic of Serbia with the relevant international standards in the field of child friendly justice, it is necessary that the competent institutions enter the harmonization process without delay, first by assessing this can be done at all through amendments to the Law on Juveniles or it is necessary to draft a completely new law, which would comprehensively respond to the requirements for harmonization but also real needs to overcome problems in practice.

At the same time, it is necessary to approach the amendments to the Criminal Code and the Code of Criminal Procedure, especially bearing in mind that these amendments have been postponed several times, for which there was no justification, especially considering that these laws were amended in other segments.

Through a comparative analysis of the institutional framework in the field of child-friendly justice, the organizational structures and capacities of the Ministries of Justice of Austria, Hungary, Croatia, Montenegro, Slovenia and Serbia were analysed. It was noticed that the Ministry of Justice of the Republic of Serbia does not deviate from the practices of the analysed countries in terms of competencies and entrusted tasks, but that there are significant deviations in terms of organizational structure and capacity. Having in mind the scope of competences of the Ministry of Justice of the Republic of Serbia regarding criminal substantive and procedural law, the lack of a specialized organizational unit that would deal exclusively with criminal law, which is common practice of the observed states, is a serious obstacle to full compliance with numerous international standards. areas of child rights. In addition, the insufficient staffing capacity of the Ministry of Justice, as well as the lack of specialization of officials to work on regulations relevant to children's rights, further complicate reform efforts in the area of children's rights.

## Recommendations for further harmonization of the criminal legislation of the Republic of Serbia with relevant international standards in the field of child friendly justice

1.	Amend the Criminal Code and the Law on Juvenile Delinquents and Criminal Protection of Juveniles, to adopt a <b>definition of a child</b> that includes a person under 18 years of age, in accordance with Article 1 of the Convention on the Rights of the Child and other relevant international instruments in the field of justice the child. By introducing the term "child under 14 years ", at the terminological and conceptual level, preserve the need for additional criminal protection of persons under 14 years.
2.	By amendments to the Criminal Procedure Code and the Law on Juvenile Delinquents and Criminal Protection of Juveniles, regulate in more detail the criteria and procedure for assessing <b>the best interests of the child</b> in accordance with General Comment No. 14 to the Convention on the Rights of the Child.
3.	By amendments to the Law on Juvenile Delinquents and Criminal Protection of Juveniles provide for the obligation of continuous training in the field of children's rights (including the rights of child victims) for all professionals dealing with juveniles in the criminal justice system. This should be regulated by laws governing issues of professional development within the judiciary and the police.
4.	Amend the Criminal Procedure Code and the Law on the Treatment of Juveniles in Criminal Procedure to explicitly provide for the obligation to respect and protect the dignity and integrity (not only) of persons under 18 years, whether in the capacity of perpetrators, victims or witnesses . The ideal solution would be to envisage this obligation at the level of the horizontal principles.
5.	Amend Article 48 of the Law on Juvenile Delinquents and Criminal Protection of Juveniles, in such a way that the existing obligation to respect the privacy of minors, which is prescribed in relation to participants in the proceedings, would be extended to the authorities and institutions requested notices, reports or opinions, as well as media and victim support and assistance services.
6.	Amendments to the Law on Juvenile Delinquents and Criminal Protection of Juveniles, in a unique and comprehensive manner, regulate the conditions and procedure for storing, sharing and publishing data on juveniles in criminal proceedings, including the context of cooperation with the media.
7.	By amending Article 58 of the Law on Juvenile Delinquents and Criminal Protection of Juveniles, extend the possibility of applying the opportunity of criminal prosecution to juvenile perpetrators of criminal offenses punishable by up to eight years in prison.
8.	By amendments to the Law on Juvenile Delinquents and Criminal Protection of Juveniles, expand the list of educational orders and give the prosecutor the opportunity to apply all educational

	orders in the phase preceding the criminal proceedings against the juvenile (in the pre-investigation phase).
<b>9.</b>	Amend the Law on Juvenile Delinquents and Criminal Protection of Juveniles in terms of specifying, ie expanding the possibilities for the application of alternative models of detention. For younger minors (ages 14 to 16), the possibility of imposing detention should be explicitly prohibited, but only, if necessary, alternative measures, such as temporary accommodation in an appropriate institution (shelter) or family.
<b>10.</b>	Continuously work on improving the structure of detention units with an emphasis on separate and adequate accommodation of juveniles.
<b>11.</b>	In relation to any deprivation of liberty, it is necessary to consistently implement at the normative level and practice the provisions of the Convention on the Rights of the Child relating to the treatment and conditions of deprivation of liberty in institutions where deprivation of liberty takes place (Article 37c of the Convention on the Rights of the Child). 2016) 800EU in terms of Article 12.
<b>12.</b>	Amend the provisions of the Law on Juvenile Delinquents and Criminal Protection of Juveniles related to the issue of conduct and conditions of penitentiary educational measures and juvenile imprisonment, and especially in the part related to the application of disciplinary measures.
<b>13.</b>	Complement the provisions of the Law on Juvenile Delinquents and Juvenile Justice with provisions on the possibility of audio-visual recording of interrogations regulated by Article 9 of Directive (2016) 800EU and respect for the right to a "fair trial", in accordance with the decisions of the European Court of Human Rights.
<b>14.</b>	In cooperation with the Judicial Academy and the Bar Academy of Serbia, improve the training system through the extended duration of initial training, but also the introduction of mandatory continuous professional training of lawyers during their professional careers.
<b>15.</b>	Amend the normative framework related to the post-penal care of persons against whom measures of an institutional nature and sentences of juvenile imprisonment have been executed. With the amendments to the legal framework, prepare a set of bylaws to avoid current inconsistencies and delays in the adoption of bylaws.
<b>16.</b>	By amending the Criminal Procedure Code and the Criminal Code, fully align with Article 2 of Directive (2012) 029EU and eliminate legal ambiguities and inconsistencies arising from the inconsistent use and duality of the terms "victim" and "injured party" in national criminal law.
<b>17.</b>	By amendments to the Criminal Procedure Code, the Law on Execution of Criminal Sanctions and the Law on Juvenile Delinquents and Criminal Protection of Juveniles, explicitly prescribe the obligation of the authorities to inform the injured party about the release of the defendant from custody or juvenile imprisonment, except when there is a risk of retaliation.
<b>18.</b>	Amendments to the relevant provisions of the CPC, prescribe the obligation of providing an oral and written information to the minor victim about the rights that belong to him in criminal proceedings and available support and assistance services in accordance with Art. 4 and 6 of Directive (2012) 029EU, where such notification should be given in understandable and child friendly language.

19.	By amendments to Part III of the Law on Treatment of Juveniles in Criminal Proceedings prescribe the obligation, competencies, conditions and procedure for conducting an individual assessment of the needs of a juvenile victim for protective and support and assistance measures. Expand the system of protective measures against juvenile victims in criminal proceedings with regard to the limited application of medical examinations and the prohibition of cross-examination aimed at preventing secondary victimization.
20.	By amendments to the Article 153 of the Law on Juvenile Delinquents and Criminal Protection of Juveniles and / or Article 104 of the Criminal Procedure Code introduce the possibility for a trusted person to attend the hearing of a juvenile victim, in addition to legal counsel, except in cases of when the authority assesses that there is a conflict of interest.
21.	Develop and implement binding instructions issued by the Republic Public Prosecutor, based on the guidelines set out in the Guidelines of the Supreme Court of Cassation, which would improve the implementation of the public prosecutor's legal obligation to collect evidence relevant to the decision on property claims under Article 256 of the Criminal Procedure Code.
22.	Consistently apply the Guidelines for deciding on property claims in criminal proceedings and uniform forms which would enable criminal courts to make decisions on property claims based on good practice of civil courts on damages claims and improve the effectiveness of compensation claims as a remedy available to victims in context the victim's right to reparation.
23.	By amendments to Chapter XVIII of the Criminal Code ensure full compliance with the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Article 33) and Directive 2011/093 (Article 15) as regards the statute of limitations for prosecution.
24.	<p>In order to fully harmonize with the relevant international standards governing the protection of the child from trafficking in human beings, it is necessary to make the following amendments to the CC:</p> <ul style="list-style-type: none"> <li>- specify the act of committing the criminal offense of Trafficking in Human Beings under Article 388 of the CC, by more precisely defining the sale as offering, surrender and acceptance, which would enable only offering for sale to be considered a completed criminal offense of trafficking in human beings;</li> <li>- harmonize penal ranges for basic and qualified forms of crime and Art. 388. CC as well as criminal offenses under Art. 51 and 52. ZPLJO and Art. 51 and 52 of the Criminal Procedure Code, when the act was committed to the detriment of a minor;</li> <li>- consider a clearer distinction between criminal offenses under Art. 388 and 390 of the CC.</li> <li>- delete Article 184, para. 2. CC.</li> </ul>
25.	By amendments to Chapter XIX of the Criminal Code, Crimes against Marriage and the Family, prescribe a new criminal offense of Sale of a Child, which would achieve full harmonization with the Second Optional Protocol to the Convention on the Rights of the Child.

26.	By amendments to Chapter XVIII of the Criminal Code, Criminal Offenses against Sexual Freedom, harmonize the penal ranges for the criminal offense of Adultery by Abuse of Office, Article 181, paragraph 2-3, in a manner that would prescribe a special minimum of three years for paragraph 2 and eight years for paragraph 3 of this part.
27.	Izmenama i dopunama Glave XVIII KZ, Krivična dela protiv polne slobode, Izvršiti usklađivanje krivičnih raspona predviđenih u čl. 185 i 185a sa čl. 3, st. 4-5 i čl. 4 st. 2-4. Direktive 2011/093EU. By amendments to Chapter XVIII of the Criminal Code, Criminal offenses against sexual freedom, harmonize the criminal ranges provided for in Art. 185 and 185a are art. 3, para. 4-5 and Art. 4 st. 2-4. Directive 2011 / 093EU By amendments to Chapter XVIII of the Criminal Code, Criminal offenses against sexual freedom, To harmonize the penal ranges provided for in Art. 185 and 185a are art. 3, para. 4-5 and Art. 4 st. 2-4. Directive 2011 / 093EU.
28.	By amendments to Chapter XXXIV of the Criminal Code, Crimes against Humanity and Other Goods Protected by International Law, make a distinction in Article 388, para. 3, 8 and 9. regarding the exploitation of a minor, ie a child for prostitution, as well as the use of prostitution services provided by a minor, ie a child who is a victim of this type of exploitation. Consequently, it is necessary to make additional harmonization of penal ranges, for such newly established paragraphs of Article 388 with Directive 2011 / 036EU and Directive 2011/093.
29.	By amending Article 185 of the Criminal Code, harmonize penal ranges with the provisions of Directive (Article 5) 2011 / 093EU, so that: - the minimum prescribed punishment for the act referred to in Article 185, paragraph 1 of the Criminal Code shall be at least one year. -in Art. 185, paragraphs 4 and 5 of the CC, by prescribing a special minimum at the level of 2 years for paragraph 4 and from 1 year for paragraph 5. Also, the requirement of the Directive is that an attempt to commit this act is punishable. - in Article 185, paragraph 2, a special minimum of 6 months to 5 years shall be for a period of three years. Also, the requirement of the Directive is that an attempt to commit this act is punishable. - Make changes in accordance with the Directive (Article 6, paragraph 2) which stipulates the obligation to prescribe a criminal attempt to commit an offense under Article 185, paragraphs 2 and 3, which is not the case under the current legal solution.
30.	By amendments to the Criminal Code provide for two new criminal offenses under Chapter XXXIV, namely Enforced Disappearance under Article 2, as well as Wrongful Removal of Children under Article 25 of the International Convention for the Protection of All Persons from Enforced Disappearance. When prescribing these incriminations, adequately address their execution by prescribing a set of aggravating circumstances, especially in the case of death of a missing person or enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons (Article 7 of the Convention). With regard to prescribing enforced disappearance and illegal removal of children as autonomous offenses, ensure, through adequate penalties, that statutes of limitations guarantee the possibility of prosecution commensurate with the seriousness of the crime (Article 8 of the Convention).

31.	Amend the Penal Code to explicitly prohibit the recruitment and exploitation of minors in hostilities by armed groups other than the armed forces of the state, as provided for in the First Optional Protocol to the Convention on the Rights of the Child, by prescribing a new article in Chapter XXXIV or by amending Articles 386b and / or 388.
32.	By amendments to Article 391b of the CC provide for new qualified forms of the crime from paragraphs 1-2. of this article, which would enable stricter punishment of recruiting minors for terrorism.

<sup>i</sup> Law on Juveniles Offenders and Criminal Responsibility of Juveniles (Law on Juveniles) (2006); Code of Criminal Procedure (2011); Criminal Code (2005); Law on special measures to prevent the commission of criminal offenses against sexual freedom of minors (2013); Law on Execution of Penal Sanctions (2014); Law on Execution of Non-Custodial Sanctions and Measures (2014); Law on Prevention of Domestic Violence (2016); Family Law (2005), Law on Civil Proceedings (2011) and the Law on Free Legal Aid (2018).

<sup>ii</sup> Convention on the Rights of the Child (1990); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000); Principles and Guidelines on access to legal aid in criminal justice systems (2012); UN CRC General Comments (No. 12 on children's right to be heard (2009); No. 13 on the right of the child to freedom from all forms of violence (2011); No. 14 on the right of the child to have his or her best interests taken as a primary consideration (2013); No. 21 on children in street situations (2017); No. 24 on children's rights in the child justice system (2019) that replaced the general comment No. 10 (2007) on children's rights in juvenile justice; No. 25 (2021) on children's rights in relation to the digital environment); UN CRC Committee concluding observations for Serbia (2017); Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Concluding observations for Serbia; Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding observations for Serbia; International Convention for the Protection of All Persons from Enforced Disappearance, adopted on 20 December 2006 during the sixty-first session of the General Assembly by resolution [A/RES/61/177](#); ECOSOC Commission on Crime Prevention and Criminal Justice, Fourteenth session Vienna, 23-27 May 2005, Guidelines in Matters involving children victims and witnesses of crime; Standard Minimum Rules for the Treatment of Prisoners; Guidelines for Action on Children in the Criminal Justice System, Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Adopted by General Assembly resolution 45/113 of 14 December 1990; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol). Directive on procedural safeguards for children who are suspected or accused persons in criminal proceedings (2016); Directive establishing minimum standards on the rights, support and protection of victims of crime (2012); 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 its victims, and replacing Council Framework Decision 2002/629/JHA; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the



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sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA; Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA; Directive 2012/13/EU of The European Parliament and of The Council of 22 May 2012 on the right to information in criminal proceedings; Directive 2013/48/EU of The European Parliament and of The Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; Directive 2010/64/EU of The European Parliament and of The Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings; Directive 2016/343/EU of The European Parliament and of The Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings; Directive 2016/1919/EU of The European Parliament and of The Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings; EU strategy on the rights of the child 2021 – 2024 (2021); Strategy on victims' rights for 2020 – 2025 (2020); European Judicial Training Strategy for 2021 – 2024 (2020); EC Annual Country Reports for Serbia. European Rules for juvenile offenders subject to sanctions and measures (2008); European Convention on the Exercise of Child Rights; Guidelines on Child Friendly Justice (2010); Convention on preventing and combating violence against women and domestic violence - Istanbul Convention (2011); Convention on Protection of Children against Sexual Exploitation and Sexual Abuse - Lanzarote Convention (2007); Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005; Strategy for the Rights of the Child 2016-2021 (2016); European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24/11/1983.