

CHILDREN AS WITNESSES IN COURT PROCEEDINGS

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When children are confronted with the judicial system, they are particularly vulnerable to stressful and complex situations. Complying with international standards promoting child-friendly justice is crucial for preventing negative impacts on their development. The Slovenian legal system has implemented several measures to safeguard the rights and well-being of child victims and witnesses in criminal proceedings, such as excluding minors from direct confrontation with the accused, utilising videoconferencing for testimony, and establishing child-friendly spaces. The model of "Barnahus" or "Children's House" has been adopted as well, emphasising a multidisciplinary approach to addressing child victims of sexual abuse and other crimes. The Supreme Court has actively pursued child-friendly justice, producing informative booklets to guide child witnesses through legal processes. These and other initiatives underscore Slovenia's commitment to balancing the rights of the accused with the protection and support of child victims in the criminal justice system while leaving room for further development.

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OTROCI KOT PRIČE V SODNIH POSTOPKIH

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Ko se otroci soočijo s pravosodnim sistemom, so še posebej ranljivi za stresne in kompleksne situacije. Spoštovanje mednarodnih standardov, ki spodbujajo prijazno pravosodje do otrok, je ključno za preprečevanje negativnih vplivov na njihov razvoj. Slovenski pravni sistem je uvedel več ukrepov za varovanje pravic in dobrega počutja otrok žrtev in prič v kazenskih postopkih, kot so izključitev mladoletnikov iz neposrednega soočenja z obtoženim, uporaba videokonferenčnih zaslišanj ter vzpostavitev otrokom prijaznih prostorov. Model "Barnahus" ali "Otroška hiša" je bil prav tako sprejet, saj poudarja multidisciplinarni pristop k obravnavi otrok žrtev spolnih zlorab in drugih kaznivih dejanj. Vrhovno sodišče aktivno sledi prijaznemu pravosodju do otrok in pripravlja informativne brošure, ki otrokom pričam pomagajo pri navigaciji skozi pravne postopke. Te in druge pobude poudarjajo zavezanost Slovenije k uravnoteženju pravic obtoženih z zaščito in podporo otrokom žrtvam v kazenskem pravosodnem sistemu, pri čemer pa puščajo prostor za nadaljnji razvoj.



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1 Introduction

Children unavoidably take on different roles in judicial and other legal proceedings, regardless of their vulnerable position. Most commonly, they are involved in family proceedings concerning custody rights, access and visitation rights, as well as issues related to maintenance, administrative proceedings concerning their citizenship, or criminal proceedings, in which they may be involved as victims, witnesses, or perpetrators of criminal offences. According to data from 2017, around 2.5 million children participate in judicial proceedings across the EU every year, affected by parental divorce or as victims of, or witnesses to, crime (FRA, 2017, p. 3). Moreover, roughly 1.5 million children worldwide are deprived of liberty per year on the basis of a judicial or administrative decision, while the actual number of children deprived of liberty is estimated to be much higher, exceeding 7 million per year. This includes 410,000 children in prisons and detention centres, at least a million in police custody, and around 5.4 million children living in various institutions or homes (Nowak, 2019).

When confronted with the judicial system, children find themselves in a highly stressful and complex situation. Therefore, it is crucial to ensure that access to justice and corresponding procedures are always as child-friendly as possible. Thirty-five years have passed since the adoption of the United Nations Convention on the Rights of the Child (CRC, 1989), which applies universally and thus guarantees equal rights to children worldwide. Furthermore, significant progress has been achieved concerning the legal protection of children at both international and national levels. Regardless, children in certain parts of the world continue to live in dire conditions, their fundamental rights are being violated, and even in the most developed countries, not all children enjoy equal rights in practice. The Covid-19 pandemic has resulted in a further increase in physical, psychological and sexual violence against children and shown the vulnerability of child protection systems in times of crisis. (Council of Europe, 2022, p. 13). The treatment of children in judicial systems thus continues to raise some concerns and requires further attention.

The article will address the issue of children participating in judicial and other legal proceedings as witnesses, with a special focus on the presentation and evaluation of measures adopted by the Republic of Slovenia to guarantee the protection of their rights and best interests within the framework of child-friendly justice. The analysis

will start by presenting relevant international and national legal sources before addressing the legislative approach to hearing child witnesses in the Republic of Slovenia in more detail. Furthermore, it will compile, explain and evaluate the most relevant measures aimed at protecting child witnesses and victims, especially those introduced with the transposition of EU Directives into the Slovenian legal system and the Barnahus project as an example of good practices.

2 Legal protection of children participating in judicial proceedings

2.1 International legal instruments

Child-friendly justice originates in international law, primarily in the CRC, but also in numerous other legal acts and instruments developed by the United Nations, Council of Europe, and the European Union, including guidelines, principles, standards and case law pertaining to children.

The CRC, adopted by the General Assembly of the United Nations on November 20, 1989, played a crucial role in recognising a child as a bearer of rights. The CRC is universally recognised and is distinguished as the most widely ratified human rights treaty in history, with 196 countries being party to it in 2023, including every member of the United Nations except the United States. With fifty-four articles and three optional protocols, the CRC defines fundamental human rights that should be enjoyed by all children worldwide (e.g. the right to life, survival and development, protection from all forms of exploitation, inhumane treatment and unnecessary detention, etc.) and establishes fundamental standards for children's development across various age groups and aspects of their lives. Aiming to protect children as a distinct and vulnerable group, it introduced the best interests of the child as the primary consideration in all actions concerning children (CRC, 1989, article 3).

Another pivotal provision influencing the child's role as a subject in legal proceedings is article 12 of the CRC, which grants every child who is capable of forming their own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. This includes 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 (CRC, 1989, article 12). Furthermore, article 40 of the CRC provides special procedural guarantees and protection to children alleged as, accused of, or recognised as having infringed the penal law (CRC, 1989, article 40). Consequently, children have finally been given their voice in legal proceedings (Kraljić, 2016, pp. 11–30).

Likewise, the Charter of Fundamental Rights of the European Union emphasises the importance of the child's best interests as a primary consideration in all actions relating to children, whether taken by public authorities or private institutions, explicitly grants children the right to such protection and care as is necessary for their well-being, as well as the right to express their views freely and have such views taken into consideration on matters which concern them in accordance with their age and maturity (EU Charter, 2012, article 24).

Directive 2012/29/EU 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, and replacing Council Framework Decision 2001/220/JHA (Directive 2012/29/EU, 2012) and Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (Directive (EU) 2016/800, 2016) also impose an obligation on the EU Member States to ensure that the child's best interests are always a primary consideration in respective judicial procedures.

The most extensive compilation of standards concerning child-friendly justice is contained within the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice of 2010. These guidelines ensure effective access to judicial protection for children, appropriate treatment in justice, and protection from secondary victimisation by the justice system (Guidelines on Child-Friendly Justice, 2010, p. 8). They serve as a crucial instrument, addressing various issues such as the minimum age of criminal responsibility, protection of private and family life or deprivation of liberty.

While the European Convention on Human Rights fails to address children as a separate group explicitly, the right to a fair trial (ECHR, 1950, article 6) also applies to children, who are to be treated differently than adults in judicial proceedings.

2.2 Protection of children in Slovenian legislation

In addition to the CRC, which is directly applicable, the Republic of Slovenia is a signatory to all major declarations, conventions, and agreements regulating the issues concerning violence against children and their protection in criminal proceedings (including those mentioned above). The most important recent legislative developments were the transpositions of the Directive 2012/29/EU and the Directive (EU) 2016/800 into the Slovenian legal system. The Directive 2012/29/EU was transposed into Slovenian law in October 2019 with a four-year delay, partially with the Act Amending the Domestic Violence Prevention Act (ZPND-A, 2016) and partially with the Act Amending the Criminal Procedure Act (ZKP-N, 2019) and the Act Amending the Social Assistance Act (ZSV-I, 2019), whereas the Directive (EU) 2016/800 was transposed with the Act Amending the Criminal Procedure Act (ZKP-O, 2020), which came into force in 2021.

The system of protection and care for children in the Republic of Slovenia is thus in line with international standards and, according to international rankings, monitoring and criteria, provides a high level of realisation of the rights and well-being of children (Ministry of Labour, Family and Social Affairs and Equal Opportunities, 2019; Janjatović, 2020, p. 37).

At a national level, the Constitution of the Republic of Slovenia stipulates that children shall enjoy special protection and care, as well as human rights and fundamental freedoms consistent with their age and maturity. It further provides them with special protection from economic, social, physical, mental, or other exploitation and abuse and special protection by the state if they are not cared for by their parents (Slovenian Constitution, 1991, article 56).

When adopted in 2008, the Slovenian Criminal Code stipulated that a special act shall determine the criminal liability of minors (KZ-1, 2008, article 5). However, even though 15 years have passed since then, no such act addressing juvenile offenders and victims has been adopted. For that reason, the provisions of the former Criminal Code (KZ, 1994) continue to apply to respective issues until the long-awaited adoption of the special law (KZ-1, 2008, article 375). In addition to the Criminal Code, two other Acts govern different aspects of criminal proceedings involving minors: the Criminal Procedure Act (ZKP, 1994) and the Enforcement of

Criminal Sanctions Act (ZIKS-1, 2000). Both contain special chapters or provisions concerning the treatment of children.

The most recent legislative achievement concerning the protection of children involved in criminal proceedings is the Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act (ZZOKPOHO, 2021), which established grounds for the comprehensive treatment of minor victims and witnesses in pre-trial and criminal proceedings (see 4.7 below).

3 Children as witnesses in Slovenian judicial proceedings

3.1 The concept of a child in Criminal Code

Under the CRC, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (CRC, 1989, article 1). The terminology in Slovenian Criminal Code is less consistent and contains multiple terms for a person who has not yet reached the age of 18, including a child, a minor and an underage person. With article 21 of KZ-1 stipulating that “anyone who commits an unlawful act when he or she is under the age of 14 years (a child) cannot be a perpetrator of a criminal offence” (KZ-1, 2008, article 21), the resulting confusion was addressed by the Supreme Court, which provided the proper interpretation of the term ‘child’ used in definitions of criminal offences. In its judgement, I Ips 5335/2010-96 of 7 February 2013, the Supreme Court stated the following: “When interpreting the provision of article 192 of the KZ-1, which, in the KZ-1B amendment, replaces the word ‘child’ used in the previous text of article 192 of the KZ-1 with the term ‘underage person,’ the term ‘child’ cannot be defined in the sense of article 21 of the KZ-1, which defines the term ‘child’ solely in terms of the age limit of criminal responsibility.” It thus concluded that the term ‘child’ used in contexts other than the above-cited article 21 of KZ-1 is to be interpreted as referring to a person who has not yet reached the age of 18 instead of 14 (Supreme Court of the Republic of Slovenia, 2013; Filipčič, 2018).

3.2 Children testifying as witnesses

The position of a witness is generally less stressful than that of an accused person; however, when the witness is a child (who may also be a victim of a criminal offence), the situation becomes considerably more complicated.

For a long time, children were not considered suitable for the role of a witness because they were presumed incapable of providing credible information due to a lower capacity to memorise events and their inability to distinguish between truth, falsehood and imagination. However, different studies have largely refuted such beliefs. Even very young children have sensory abilities comparable to adults. If an event seems significant to them, they will perceive it equally well or even better than adults (Šugman Stubbs, 2000, p. 208). Researchers have also strongly disputed that children cannot distinguish between reality and imagination or between truth and falsehood. They even estimate that young children are no less truthful than older children or adults. Furthermore, children turned out to be no more susceptible to suggestions than adults, and age is not the primary factor influencing suggestibility. Arguments could even be reversed: adults are presumed to consciously lie more frequently, and because they simultaneously have more developed mechanisms for justifying their actions and can better conceal their emotions, such lies are harder to detect. Based on these insights, there is no objective reason to believe adult witnesses more than children (Šugman Stubbs, 2000, p. 209).

Slovenian Criminal Procedure Act does not contain any provisions that would explicitly exclude a specific category of persons as absolutely incapable of being a witness or determine an age limit at which a child may be questioned as a witness. Instead, any person can be generally heard as a witness as long as they are capable of providing a reasonable statement before the court and are likely to be able to provide some information about the criminal offence. This includes children, who are capable of testifying if they can comprehend the significance of testifying and credibly recount important facts. Naturally, the questioning itself must be adjusted to their developmental stage (Janjatović, 2020, p. 39–40).

However, this does not imply that the duty to testify is unlimited. The Criminal Procedure Act lays down several exceptions and privileges allowing witnesses, regardless of age, to refuse to testify or answer particular questions. Paragraph one

of article 236 thus grants legal privilege to witnesses with close family or blood ties to the accused, exempting them from the duty to testify. The reason for the privilege is to prevent the conflict between persons with the closest and (legally recognised) trusted relationship (Dežman & Erbežnik, 2003, p. 405). Among the so-called privileged witnesses are the accused person's descendants, siblings and adoptees (or, more precisely, blood relatives in the direct line, relatives in the collateral line up to the third degree and relatives by marriage up to the second degree). Furthermore, paragraph three of article 236 of the ZKP explicitly states that minors who, due to their age and mental development, are not capable of understanding the significance of the right of not having to testify (which is a question on facts determined by the court itself or with the assistance of an expert in the relevant field), may not be heard as witnesses, except if the accused person so demands or if the court deems it in the minor's best interest (ZKP, 1994, article 236; Horvat, 2004, pp. 546–547).

This provision is contentious as it prioritises the right of the accused to defence over the interests of the minor witness. The minor witness who fails to comprehend the significance of legal privilege is seemingly at a disadvantage compared to other privileged witnesses, which is especially questionable when the child is also a victim of a criminal offence. Defendants accused of violence against a child are often the parents or individuals living with or frequently interacting with the child, who may easily pressure the child to testify in their favour. In such cases, the accused may insist on the child being questioned (Janjatović, 2020, p. 40). For that reason, case law has taken the stance that the respective provision should not be interpreted to mean that the court must always question a minor witness whenever the accused person so demands. Such proposals should always be assessed in line with the criteria established by the Constitutional Court of the Republic of Slovenia for deciding on proposals for evidence, and the potentially harmful effects of such questioning on the mental state of the minor should always be weighed against the right of the accused to defence in accordance with the principle of proportionality (Supreme Court of the Republic of Slovenia, 2009).

The courts frequently refer to experts with questions concerning the child's understanding of legal instructions and, consequently, their ability to participate in legal proceedings. Generally, it is estimated that a child with intellectual abilities consistent with their chronological age and with average experiences in interpersonal relationships and verbal communication is capable of understanding legal

instructions reliably from the age of nine or ten, assuming the instructions are presented in a suitable manner. In the case of children under the age of ten, an expert is usually appointed to determine whether the child is capable of understanding legal instructions in a specific case. However, the child's chronological age should not be the sole criterion for such assessment (Žmuc Tomori, 2014, p. 13).

3.3 Children testifying as victims

Though undoubtedly traumatic, questioning the child is often unavoidable in cases where reasonable suspicion exists that the child is a victim of sexual abuse or other criminal offence. Such testimony constitutes evidence that is almost impossible to obtain in any other way and is, as such, often irreplaceable. Experts agree that children almost never fabricate claims of sexual abuse, especially when they are younger and lack the knowledge to invent such a story. The greater challenge is the fact that they often remain silent, even if the abuse has been happening over a longer period of time. Children may talk about such incidents more frequently as if they happened to a friend, testing the response of the person they wish to confide in and only revealing the truth if the reaction is appropriate or if they are explicitly asked if something similar happened to them (Horvat, Čobec & Strle, 2017, pp. 24–25).

It goes without saying that special care is needed when questioning an underage victim of a criminal offence to protect them from secondary victimisation. The victim is primarily victimised by the crime itself, which triggers a sense of hurt and destroys their feelings of safety and trust. Further trauma occurs when the child decides to speak out or when others notice their distress, even before the initiation of criminal proceedings (Filipčič, 2006, p. 80; Janjatovic, 2020, p. 32; Nikolić-Ristanović, 2003, p. 3). During this time, the child experiences severe doubts about whether to disclose the actions of a person they usually care about, betraying them in the process (in their mind). If they do report the abuse, they might not be believed by trusted adults or may face significant pressure regarding what to say and how to say it. When questioned by teachers, caregivers, social workers, doctors and others, the child may feel guilty, believing they did something wrong or are the main cause of the perpetrator's punishment (Žmuc Tomori, 2014, p. 11). Finally, the trauma of the functioning of the criminal justice system emerges. The child suddenly becomes another source of evidence, one of the cogs in a justice system accustomed to dealing with adults. The court premises and the proceedings are purposefully designed to be

intimidating and authoritative, which is even more effective when children are involved. It can be very difficult for them to understand what is happening, what is expected of them and what the consequences of their actions will be, even if they are given instructions and explanations (Šugman Stubbs, 2000, p. 207). Furthermore, the prosecutor, judge, and attorneys may ask invasive questions, which are intended to discover the truth, but for the child, they might seem like an attack. They might get the impression that the adults do not believe their testimony or that they have done something wrong. Secondary victimisation is defined as victimisation that does not occur as a direct result of the criminal act but arises due to (inappropriate) responses of institutions and individuals concerning the victim (Janjatović, 2020, p. 34; Nikolić-Ristanović, 2003, p. 3).

Secondary victimisation can cause even more trauma to the child than primary victimisation. It can be aggravated as a result of inadequate professional training of teachers, school counsellors, police officers, and doctors; inconsistent actions by individuals and services responsible; inadequate facilities for the professional treatment of abused children; repeated questioning of the child; the presence of multiple individuals during the child's interview; the lack of female investigators; the presence of parents during interviews; or repeated reliving of the criminal offence (Umek, 2001, p. 205).

Protection of victims from secondary victimisation is thus primarily achieved through educating law enforcement agencies and other participants in the criminal justice system, legislative reforms, and practical measures to support victims and minimise the adverse consequences of criminal proceedings (Janjatović, 2020, p. 34; Nikolić-Ristanović, 2003, p. 5).

A particularly important mechanism for preventing secondary victimisation are the provisions of the Criminal Procedure Act aimed at limiting any unnecessary contact between the victim and the accused. Thus, the authority conducting pre-trial and criminal proceedings must ensure that the victim does not come into unwanted contact with the accused unless such contact is indispensable for the successful implementation of pre-trial or criminal proceedings (ZKP, 1994, article 65, par. 5). Furthermore, the accused person may not be present during the hearing of a witness younger than 15 years who is the victim of a criminal offence against sexual integrity,

marriage, family and youth, enslavement, or human trafficking (ZKP, 1994, article 178, par. 4).

The Act Amending the Criminal Procedure Act (ZKP-N, 2019) introduced additional mechanisms to protect minor witnesses. For example, the testimony of a witness under the age of 15 who was a victim of the criminal offences mentioned above must always be recorded (ZKP, 1994, article 84). Direct questioning of such victims is not permitted at the main hearing; in such cases, the court reads the record of the previous questioning of such persons (ZKP, 1994, article 331). Their testimony may also be taken using modern technical devices for the transmission of image and sound, i.e., videoconference (ZKP, 1994, article 244a). The use of communication technology and audiovisual recordings of testimonies is crucial in preventing contact between the child and the accused and unnecessary repetition of questioning. In any case, if a person under the age of eighteen is heard as a witness, the panel may order that the public be excluded from the hearing. After their testimony, they are removed from the courtroom as soon as their presence is no longer required (ZKP, 1994, article 331; Horvat, 2004, p. 697).

The summarised provisions represent a departure from the principle of immediacy in presenting evidence at the main hearing. While it is crucial to organise criminal proceedings so as not to unjustifiably imperil the life, liberty or security of witnesses and victims, such measures must not deprive the accused of their fundamental right to confront an incriminating witness during the main hearing (see for example, *Y. v. Slovenia*, 2015). Therefore, carefully balancing the rights of the accused and the rights of the victim in criminal proceedings is particularly challenging. The proper balance can be achieved, for example, by informing the accused of the victim's testimony, allowing them to follow the questioning and pose questions to the victim, but not necessarily directly. Instead, technical means can be applied to prevent direct contact between the victim and the accused (Tratnik Zagorac, 2010, pp. 31–32; Janjatović, 2020, p. 46).

4 Child-friendly justice in the Republic of Slovenia

The ZKP contains several provisions aimed at promoting child-friendly justice in the Republic of Slovenia, some of which were already included in the first version of the act and some that were introduced into the legislation as a result of the

transposition of the Directive 2012/29/EU (2012). These provisions represent a significant step in strengthening the position of victims and establishing child-friendly justice. However, it is worth noting that the majority of protective measures (especially mandatory ones) concerning the hearing of minor witnesses and victims are limited to persons up to a certain age (15 years) who are victims of the most severe criminal offences (against sexual integrity, marriage, family and youth, enslavement, or human trafficking). Considering the definition of a child in the CRC (1989), such regulation is not entirely consistent with international standards, and protective measures should be equally guaranteed to all minor victims and witnesses, thus leaving further room for improvements in this area (Janjatović, 2020, p. 43).

4.1 Principle of treating victims with particular care and due consideration

The ZKP-N introduced the general principle requiring all authorities and participants in pre-trial and criminal proceedings to treat victims with particular care and act with due consideration where necessary because of their vulnerability, such as age, health condition, disability or other similar circumstances (ZKP, 1994, article 18a). This is even more important when hearing a minor, especially if such person has suffered harm from the criminal offence, in order to avoid possible detrimental consequences to their mental state. If necessary, the hearing of a minor is carried out with the assistance of an educational or other expert (ZKP, 1994, article 240, par. 4).

4.2 The right to information

The ZKP provisions give special emphasis to the victim's right to information by precisely defining the scope and type of the information provided, which depends on the personal characteristics and vulnerability of the victim, their specific needs for protection, the nature, gravity and circumstances of the crime and the stage of pre-trial or criminal proceedings (ZKP, 1994, article 65a).

A child summoned to court is under a significant amount of stress, which is why it is crucial to inform them properly about the proceedings they are about to face. To minimise the negative impact of legal proceedings on the child's development, the Supreme Court of the Republic of Slovenia has been engaged in the creation of special informative publications since 2010. Based on the experiences of experts and

judges working with children in criminal proceedings, these illustrated publications are tailored to children of different age groups (5 to 9 years and 10 to 14 years) who participate as witnesses in criminal proceedings before the court. In an easily understandable manner, combining visuals and text (including some activities such as connect-the-dots, connect the person with the colour of their gown, crosswords, etc.), the booklets explain who a witness is and what their role is, who the defendant is, how the court looks, and who will be present in the room alongside the child being examined. They encourage the child to understand that they have an important task ahead and instruct them to tell the truth while emphasising that they are helping the court and did nothing wrong. Children invited to court as witnesses receive this booklet along with the summons (Supreme Court of the Republic of Slovenia, 2022; Janjatović, 2020, p. 38).

4.3 Exclusion of the public

The ZKP provisions further stipulate that if a person under the age of eighteen is heard as a witness, the panel may decide to exclude the public from the hearing. After their testimony, the minor should be removed from the courtroom as soon as their presence is no longer required (ZKP, 1994, article 331).

4.4 Child-friendly premises

The environment where a child is being questioned can significantly impact the outcome of the testimony, as children are more willing to cooperate and provide more information in a child-friendly environment that gives a sense of homeliness (e.g., a room with a couch and toys) compared to the formal atmosphere of a courtroom (Janjatović, 2020, p. 41; Šugman Stubbs, 2000, p. 209). The importance of hearing a child in a child-friendly environment is also emphasised in the Guidelines on Child-Friendly Justice (2010, p. 30).

The hearing of a witness who is a victim with a special need for protection may be carried out in specially adapted premises, depending on their personal circumstances. In order to prevent secondary victimisation, such hearing is mandatory when hearing the witness who is younger than 15 years and who was the victim of the criminal offence against sexual integrity, marriage, family and youth, enslavement, or human trafficking, unless this is not necessary for justifiable reasons that must be

substantiated explicitly by the court (ZKP, 1994, article 240, par. 6). Child-friendly premises (equipped with toys, colourful furniture, cameras, separate entries) are available at all district courts in the Republic of Slovenia.

4.5 Mandatory representation

Before the ZKP-N amendment (2019), the ZKP stipulated that a minor who is a victim of certain criminal offences must have a legal representative during the criminal proceedings to ensure their rights, particularly regarding the protection of their integrity (if necessary, assigned by the court *ex officio*) (ZKP, 1994, article 65, par. 3). This provision was already an exception of the general rule that legal representation is a right of the victim and it is up to the victim whether they intend to exercise it or not (Horvat, 2004, p. 152). However, it did not require mandatory representation through a legal representative in the proceedings before the police when the child may already be exposed to traumas and other adverse effects (Šugman Stubbs, 2000, p. 213). Often, the offender influenced the victim even before the initiation of proceedings (judicial investigation) to prevent the victim from speaking about the incident during the questioning (Janjatović, 2020, p. 44; Nussdorfer, 2006, p. 17). With the adoption of the ZKP-N, it finally became mandatory for a minor who is a witness of certain criminal offences to have a legal representative even during the hearing in pre-trial proceedings, i.e., during the first contact with the police.

4.6 Presence of a trusted person

A child involved in pre-trial and criminal proceedings does not only need the assistance of a person with legal knowledge but also the support of someone they trust, who is capable of providing appropriate psychological assistance in overcoming traumas caused by both the criminal offence and the resulting secondary victimisation (Nussdorfer, 2006, p. 17).

Therefore, under the ZKP provisions, a minor as a victim may be accompanied by a person of their choosing in pre-trial and criminal proceedings unless this is contrary to the interests of the successful implementation of pre-trial or criminal proceedings or the benefit of the injured party (ZKP, 1994, article 65, par. 4). Such person could be the child's parent, relative or even an expert (Šugman Stubbs, 2000, p. 212).

However, the person chosen by the child is not always suitable, for example, if the same person is also a witness in the proceedings or a parent who does not believe the child and sides with the defendant. This raises the question of how the investigative or adjudicating judge should verify the suitability of the chosen person whom the child trusts (Janjatović, 2020, p. 45).

4.7 Project Barnahus

Barnahus, the leading European model for the treatment of child victims of sexual abuse, means “Children’s House” in Icelandic. The idea behind the model adopting a multidisciplinary approach to addressing child victims of criminal offences originated in the United States, with the first Child Advocacy Center (CAC) established in Alabama in 1985. The Barnahus model is designed to coordinate parallel criminal justice and child welfare assessment processes in suspected cases of children’s sexual abuse. It does this in a child-friendly way, in a manner that prevents the secondary victimisation of the child, by providing all necessary services to child victims under one roof (Mikec & Stankić Rupnik, 2022, p. 44).

Following the adoption of the ZZOKPOHO, the public institution Children’s House was also established in Slovenia. The formal opening of the Children’s House at Zaloška 59 in Ljubljana took place on 27 May 2022 (Mikec & Stankić Rupnik, 2022, p. 44).

The ZZOKPOHO regulates the manner of and conditions for the comprehensive treatment of minor victims and witnesses in pre-trial and criminal proceedings concerning specific criminal offences, which include, *inter alia*, criminal offences against humanity, against life and limb, against sexual integrity and against marriage, family and children (ZZOKPOHO, 2021, article 1–2).

The ZZOKPOHO will be implemented gradually. While it already applies to criminal offences against sexual integrity (since May 2022), it will apply to all other criminal offences specified in the second paragraph of article 2 of ZZOKPOHO (against marriage, family, and children, as well as other criminal offences) as of 1 May 2024. If the best interests of the child so require, comprehensive treatment may also be provided after 1 May 2024 to a child who is a victim of or witness to other

criminal offences or to a minor under 18 years of age against whom pre-trial or criminal proceedings are conducted (ZZOKPOHO, 2021, article 1 and 43).

The most important principles of comprehensive treatment provided by the ZZOKPOHO require ensuring the following:

- that the child receives the necessary information and explanations;
- that the protection and personal safety of the child are ensured to prevent exposure

to secondary victimisation and re-victimisation, intimidation and revenge;

- that the interviews and physical examinations of the child are only carried

out as far as this is absolutely necessary and that the number of interviews and examinations is kept to the minimum to prevent further victimisation;

- that the child is allowed to be heard;
- that the procedures are carried out without undue delay (ZZOKPOHO, 2021, article 3).

Comprehensive treatment of a minor victim or witness in pre-trial or criminal proceedings may be provided on the basis of a court order issued after the court assessed whether such treatment in the Children's House is indeed in the best interests of the child (ZZOKPOHO, 2021, article 14). Activities carried out within the framework of comprehensive treatment include interviewing the child, physical examination of a child and crisis and psychosocial support.

The interview of the child is carried out on the basis of a written order issued by a court *ex officio* or on the parties' proposal. The court thus retains the substantive procedural management of the questioning, while the Children's House is responsible for its organisation and implementation. Before the interview, the preparatory meeting, led by the investigating judge, is always held on the premises of the Children's House. At this meeting, the participants may give their statements on the facts and circumstances relevant to the conduct of the interview, on the questions to be posed to the child and the method of conducting the interview. The

interview itself is carried out in accordance with the protocol for forensic interviewing of a child by a professional from the Children's House, who follows the starting points determined at the preparatory meeting. The interview space consists of two separate rooms connected via audio and video systems, which ensures that there is no unwanted personal contact between the child and the suspect or the accused immediately before, during and after the interview. The child and the professional conducting the interview are confined in one room, while all other participants are present in another. During the interview, the professional and the judge leading the interview communicate using electronic communications equipment. All interviews of a child are audio and video recorded. It is crucial that the recording of the forensic interview may be used in criminal proceedings and other court proceedings (e.g. family cases) and to provide crisis and psychosocial support to the child (ZZOKPOHO, 2021, article 16–28).

Physical examination of a child is carried out in a specially equipped space at the House for Children to ensure to the greatest extent possible that the child is treated with care and consideration. The court must take particular care in assessing whether the expert examination of physical injuries should be made solely based on medical documents and other information contained in the file or whether it should also include an examination of the child. If the child opposes the physical examination, the latter can be conducted only if this is necessary for the successful implementation of pre-trial or criminal proceedings (ZZOKPOHO, 2021, article 29–32).

The Children's House also provides crisis and psychosocial support to children. Crisis support constitutes, in particular, the psychological support provided to children during interviews and physical examinations, while psychosocial support represents a more permanent form of psychological, social and practical support provided to children after interviews or physical examinations (ZZOKPOHO, 2021, article 33). Crisis and psychosocial support is carried out by the counsellor of the child, who accompanies the child throughout the treatment. The appointed counsellor receives the child immediately before the interview or physical examination, calms the child, and explains the interview or examination process and further treatment. The counsellor observes the child's interview from a separate room. Immediately after the interview or physical examination, the counsellor provides the child with professional assistance and psychosocial support. The psychosocial support is provided for six months from the start of the treatment.

After this period, the counsellor can refer the child to relevant institutions outside the Children's House if the child needs further treatment (ZZOKPOHO, 2021, article 34–37).

In the first year of its existence, the Children's House already provided support to 26 children who were victims of criminal offences against sexual integrity and it continues to intensify its various activities (Children's House, 2023).

5 Conclusions

As presented in this paper, Slovenian legislation is generally consistent with international standards promoting child-friendly justice. Following the latest legislative developments, several measures were implemented or improved to safeguard the rights and well-being of child witnesses and victims in criminal proceedings, such as preventing direct contact and confrontation with the accused, utilising videoconferencing for testimony, and establishing child-friendly spaces in all regions in the Republic of Slovenia. The model of "Barnahus" or "Children's House" has been adopted as well, emphasising a multidisciplinary approach to addressing child victims of sexual abuse and other crimes. The Supreme Court has actively pursued child-friendly justice, producing informative booklets to guide child witnesses through legal processes. These and other initiatives underscore Slovenia's commitment to balancing the rights of the accused with the protection and support of child victims in the criminal justice system and are doubtlessly a step in the right direction. However, as modern society faces new challenges (epidemics, unrest, new technologies, climate change, etc.), continuous effort and attention are necessary at both international and national level to ensure a genuinely child-friendly justice, as far as this is even possible.

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