

CRIMES IN WHICH CHILDREN ARE PRIMARY OBJECT OF CRIMINAL LAW PROTECTION IN THE CRIMINAL CODE OF THE REPUBLIC OF SLOVENIA

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The author discusses criminal offences in which children are the primary object of criminal law protection in the Criminal Code of the Republic of Slovenia. Children enjoy special state protection and care. This also includes the criminal law protection of the interests and benefits of children and minors. As for all other areas, criminal law is considered to be the last and the least appropriate means for protecting legally protected goods. Criminal law protection only becomes relevant when legally protected goods are damaged or highly endangered. Nevertheless, in the case of serious violation of the benefits of children and minors, it is not possible to renounce criminal law intervention, as it is a good of such importance that it also deserves criminal law protection.

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KAZNIVA DEJANJA, V KATERIH SO OTROCI GLAVNI PREDMET ZAŠČITE KAZENSKEGA PRAVA V KAZENSKEM ZAKONIKU REPUBLIKE SLOVENIJE

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Avtor v prispevku obravnava kazniva dejanja, v katerih so otroci glavni subjekt zaščite kazenskega prava po pravni ureditvi Kazenskega zakonika Republike Slovenije. Otroci uživajo posebno državno zaščito in skrb. To vključuje tudi kazenskopravno zaščito interesov in koristi otrok in mladoletnikov. Kot pri vseh drugih področjih, se kazensko pravo šteje za zadnje in najmanj primerno sredstvo za zaščito pravnih dobrin. Zaščita kazenskega prava postane pomembna le, ko so pravne dobrine poškodovane ali močno ogrožene. Kljub temu pa v primeru resnih kršitev koristi otrok in mladoletnikov ni mogoče zanikati kazenskopravnega posredovanja, saj gre za dobrino takšnega pomena, da si zasluži tudi zaščito kazenskega prava.



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1 Introduction

Children enjoy special protection and care. According to article 56 of the Constitution of the Republic of Slovenia¹, children enjoy special protection and care.² Several provisions of the Criminal Code-1³ of the Republic of Slovenia explicitly refer to children and minors. Let me name just a few of these provisions. Article 15a of the Criminal Code-1 determines the method of prosecuting perpetrators of crimes committed to the detriment of minors.⁴ The term 'minors' certainly also covers children, as minors are persons up to the age of 18, while children are persons up to the age of 14 under Slovenian law.

Article 21 of the Criminal Code-1 expressly excludes children (persons up to the age of 14) as potential perpetrators of crime.⁵

Paragraph two of article 84 of the Criminal Code-1 regulates providing data from criminal records in the case of conviction for certain criminal acts committed against minors.⁶

¹ Constitution of the Republic of Slovenia (Ustava Republike Slovenije): Uradni list Republike Slovenije [Official Gazette of the Republic of Slovenia], Nos. 33/91-I; 42/97 – UZS68; 66/00 – UZ80; 24/03 – UZ3a, 47, 68; 69/04 – UZ14; 69/04 – UZ43; 69/04 – UZ50, 68/06 – UZ121,140,143; 47/13 – UZ148; 47/13 – UZ90,97,99; 75/16 – UZ70a; 92/21 – UZ62a.

² Children shall enjoy special protection and care. Children shall enjoy human rights and fundamental freedoms consistent with their age and maturity. Children shall be guaranteed special protection from economic, social, physical, mental, or other exploitation and abuse. Such protection shall be regulated by law. Children and minors who are not cared for by their parents, who have no parents or who are without proper family care shall enjoy the special protection of the state. Such protection shall be regulated by law.

³ The Criminal Code (Kazenski zakonik): Uradni list Republike Slovenije [Official Gazette of the Republic of Slovenia], Nos. 55/08; 66/08; 39/09 (KZ-1A); 91/11 (KZ-1B); 54/15 (KZ-1C); 38/16 (KZ-1D); 27/17 (KZ-1E); 23/20 (KZ-1F); 91/20 (KZ-1G); 95/21 (KZ-1H); 186/21 (KZ-1I) and 16/23 (KZ-1 J).

⁴ In cases concerning a criminal offence referred to in the chapters relating to criminal offence committed against life and limb, against human rights and freedoms, or against sexual integrity or other criminal offences referred to in this Code with elements of violence committed against minors, the provisions of this Code relating to the filing of a motion or bringing a private action shall not apply to the method of criminal prosecution and the perpetrator shall be prosecuted *ex officio*.

⁵ 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.

⁶ Upon a reasonable request from institutions or associations entrusted with the education, guidance, protection or care of children or minors, information from the criminal record shall also be provided regarding the expunged convictions for criminal offences under article 170, article 171, article 172, article 173, article 173a, paragraph two of article 174, and paragraph two of article 175, committed against a minor, and under article 176 of this Code.

Paragraph three of article 90 of the Criminal Code-1 regulates the limitation of criminal prosecution for some crimes committed against minors.⁷

In the following, I will limit myself to reviewing criminal acts in which children or minors are defined as the primary object of criminal law protection. It is understood that children and minors are also protected in other cases where the object of criminal law protection is humans.

2 Crimes in which children or minors are explicitly involved as objects of criminal law protection:

- a) genocide (article 100 of the Criminal Code-1) - one of the forms of committing this type of crime is forcible transfer of children of one group to another group;⁸
- b) crimes against humanity (article 101 of the Criminal Code-1) - one of the forms of committing this type of crime is enslavement, which means performing of a particular or all justifications arising from the property right over a person and also includes carrying out such justification in trafficking in human beings, especially women and children;⁹
- c) war crimes (point 2 of article 102 of the Criminal Code-1) - one of the forms of committing this type of crime is conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;¹⁰
- d) enabling the escape of prisoners (article 293 of the Criminal Code-1) - defines the enabling of the escape of minors from a correctional facility for juveniles.¹¹

⁷ Notwithstanding paragraph one of this article, the time limit for the statute of limitations in criminal offences against sexual inviolability and criminal offences against marriage, family or youth, committed against a minor, shall begin when the injured person reaches adulthood.

⁸ Whoever with the intention of destroying in whole or in part a national, ethnic, racial or religious group or gives an order: - to forcibly transfer children of the group to another group shall be sentenced to imprisonment for at least fifteen years.

⁹ Whoever orders or carries out the following acts as part of a larger systematic attack against the civilian population and which the perpetrator is aware of: enslavement, which means the exercise of any or all of the powers attached to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; shall be sentenced to imprisonment for at least fifteen years.

¹⁰ - conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities; shall be sentenced to imprisonment for at least fifteen years.

¹¹ Whoever by force, threat, deception, or otherwise enables the escape of a person serving a sentence in a prison, or a detained person or a person subject to compulsory psychiatric treatment and confinement in a mental health institution, or a minor in a correctional institution, shall be punished by imprisonment of up to three years.

3 Crimes in which the fact that an act is committed against a child or a minor constitutes a qualifying circumstance:

3.1 Enslavement (article 112(3) of the Criminal Code-1)¹²

3.2 Trafficking in human beings (article 113 of the Criminal Code-1)¹³

3.3 Solicitation to and assistance in suicide (article 120 of the Criminal Code-1)¹⁴

3.4 Abduction (article 134 of the Criminal Code-1)¹⁵

¹² (1) Whoever, in violation of international law, brings another person into slavery or a similar condition, or keeps another person in such a condition, or buys, sells or delivers another person to a third party, or brokers the buying, selling or delivery of another person, or urges another person to sell his freedom or the freedom of the person he supports or looks after, shall be sentenced to imprisonment between one and ten years. (2) Whoever transports persons held in slavery conditions or in a similar condition from one country to another shall be sentenced to imprisonment for between six months and five years. (3) Whoever commits a criminal offence referred to in paragraph one or two of this article against a minor shall be sentenced to imprisonment for between three and fifteen years.

¹³ (1) Whoever purchases, takes possession of, accommodates, transports, sells, delivers or uses another person in any other way, or recruits, exchanges or transfers control over another person or acts as a broker in such operations, for the purpose of exploiting prostitution or other forms of sexual exploitation, forced labour, slavery, servitude, or committing the criminal offences of trafficking in organs, human tissue or blood, shall, notwithstanding the possible consent of such person, be sentenced to imprisonment for between one and ten years and imposed a fine. (2) If an act referred to in the preceding paragraph is committed against a minor or with force, threats, deception, abduction or the exploitation of a subordinate or dependent position or by giving or taking payment or benefits in order to obtain the consent of a person who exercises control over another person, or in order to force a victim to become pregnant or be artificially inseminated, shall be punished by imprisonment for between three and fifteen years and by a fine. (3) Whoever, with a view to committing an act referred to in paragraph one or two of this article, keeps, seizes, hides, damages or destroys an official document proving the identity of victims of trafficking in human beings, shall be sentenced to imprisonment for up to three years and imposed a fine. (4) Whoever knows that a person is a victim of human trafficking and uses such services as a result of the exploitation of this person described in paragraphs one and two of this article shall be sentenced to imprisonment for up to three years and imposed a fine. (5) Whoever carries out an act referred to in paragraph one, two or three of this article as a member of a criminal organisation, or if large proceeds are gained through the commission of the act, the perpetrator shall be sentenced to imprisonment for between three and fifteen years and imposed a fine.

¹⁴ (1) Whoever intentionally solicits another person to kill him- or herself or assists him or her in doing so and that person indeed commits suicide shall be sentenced to imprisonment for between six months and five years. (2) Whoever commits an act referred to in the preceding paragraph against a minor above fourteen years of age or against a person whose capacity to understand the meaning of his or her act or to control his or her conduct is substantially diminished shall be sentenced to imprisonment for between one and ten years. (3) In the event of an act referred to in paragraph one of this article being committed against a minor under fourteen years of age or against a person who was not capable of understanding the meaning of his or her act or of controlling his or her conduct shall be punished in the same manner as for manslaughter or murder. (4) Whoever treats his or her subordinate or a person who is his or her dependant in a cruel or inhuman manner, resulting in this person's suicide, shall be sentenced to imprisonment for between six months and five years. (5) Whoever, under particularly mitigating circumstances, assists another person in the commission of suicide and that person indeed commits suicide, shall be sentenced to imprisonment for up to three years. (6) If in relation to an act referred to in the preceding paragraphs the suicide has only been attempted, the Court may reduce the punishment of the perpetrator.

¹⁵ (1) Whoever abducts another in order to compel him or her or any other person to perform an act or to omit to perform an act or to suffer any harm shall be sentenced to imprisonment for between six months and five years. (2) Whoever commits an act referred to in the preceding paragraph against a minor or threatens the abducted person with murder or serious bodily harm shall be sentenced to imprisonment for between one and ten years. (3) A perpetrator of an act referred to in paragraph one or two of this Article who releases the abducted person before the demand that was the motive for abducting the person is satisfied may be sentenced more leniently or his or her sentence may be remitted.

3.5 Exploitation through prostitution (article 175 of the Criminal Code-1)¹⁶

3.6 Illicit manufacture and trade in narcotic drugs, illicit substances in sport and illicit drug precursors (first and second paragraph of article 186 of the Criminal Code-1)¹⁷

3.7 Facilitating the consumption of narcotic drugs or illicit substances in sport (first and second paragraph of article 187 of the Criminal Code-1)¹⁸

4 Criminal acts that are entirely intended to protect children and minors

I will pay some more attention to criminal acts that are entirely intended to protect children and minors.

¹⁶ (1) Whoever participates for exploitative purposes in the prostitution of another or instructs, obtains or encourages another to engage in prostitution by force, threats or deception shall be sentenced to imprisonment for between three months and five years. (2) Whoever participates for exploitative purposes in the prostitution of a minor, or exploits the prostitution of a minor, or whoever instructs, obtains or encourages the prostitution of a minor by force, threat, deception, recruitment or solicitation, shall be sentenced to imprisonment for between one and ten years. (3) If an act referred to in paragraph one or two of this article is committed against several persons or within a criminal organisation, the perpetrator shall be sentenced to imprisonment for between one and twelve years.

¹⁷ (1) Whoever illicitly produces, processes, sells or offers for sale or, for the purpose of sale or placing on the market, buys, stores or transfers or acts as an agent in the sale or purchase of or otherwise unlawfully places on the market plants or substances that are classified as narcotic drugs or illicit substances in sport, or the precursors used to manufacture narcotic drugs, shall be sentenced to imprisonment for between one and ten years. (2) Whoever sells, offers for sale or distributes free of charge narcotic drugs or precursors used to manufacture narcotic drugs, or illicit substances in sport to a minor, mentally disabled person, a person with a temporary mental disturbance or severe mental retardation or a person undergoing treatment for addiction or rehabilitation, or, if the act is committed in educational institutions or in the immediate vicinity thereof, in prisons, military units, public bars and restaurants or at public events, or if an act referred to in paragraph one is committed by a public employee, priest, physician, social worker, teacher or educator who thereby exploits his or her position, or whoever in order to commit the aforementioned act uses minors, shall be sentenced to imprisonment for between three and fifteen years.

¹⁸ (1) Whoever solicits another person to use narcotic drugs or illegal substances in sport or provides a person with drugs for their personal consumption or to be consumed by a third person, or whoever provides a person with a place or other facility to use narcotic drugs or illicit substances in sport or otherwise facilitates others to use such substances shall be sentenced to imprisonment for between six months and eight years. Whoever solicits another person to use narcotic drugs or illegal substances in sport or provides a person with drugs to be used by him or her or by a third person, or whoever provides a person with a place or other facility to use narcotic drugs or illicit substances in sport shall be sentenced to imprisonment for not less than six months and not more than eight years. (2) Whoever commits an act referred to in paragraph one against several persons, a minor, a mentally disabled person, a person with a temporary mental disturbance or severe mental retardation or a person undergoing treatment for addiction or rehabilitation, or if the act is committed in educational institutions or in the immediate vicinity thereof, in prisons, military units, public bars and restaurants or at public events, or if an act referred to in paragraph one is committed by a public employee, priest, physician, social worker, teacher or educator who thereby exploits his or her position, shall be sentenced to imprisonment for between one and twelve years.

4.1 Infanticide (article 119 of the Criminal Code-1)¹⁹

This crime is a privileged form of manslaughter. This is a special form of crime that can only be committed by the mother of the child victim of the crime, during or immediately after childbirth. The woman must be under the influence of childbirth, which affects her entire psychophysical condition as the perpetrator. The perpetrator can only be a mother, and other participants in the crime would be held accountable as participants in the crime of manslaughter. This crime can only be committed with intent (either direct or eventual). This act may be accomplished by commission or omission.

If the death of a child occurs at birth or after birth through negligence, the act should be defined as negligent homicide, which is quite illogical, as causing death by negligence is punishable more severely than infanticide (Deisinger, 2017, pp. 137–138).

In recent literature, there are many concerns against treating infanticide as a privileged form of homicide (Korošec & Škrubej, 2017, pp. 77–117).

4.2 Sexual assault on a person below fifteen years of age (article 173 of the Criminal Code-1)²⁰

This crime is based on the Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse and Directive of the European Parliament and the Council on combating the sexual abuse and sexual exploitation of children and child pornography.

¹⁹ A mother who takes her child's life during or immediately after giving birth by reason of mental disturbance provoked by giving birth shall be sentenced to imprisonment for up to three years.

²⁰ (1) Whoever has sexual intercourse or performs any other sexual act with a person of the same or opposite sex under the age of fifteen years shall be sentenced to imprisonment for between three and eight years. (2) Whoever commits an act referred to in the preceding paragraph against a vulnerable person under the age of fifteen or by threatening him or her with a direct attack on life or body, or, by acting in such manner, commits the aforementioned act against another person, shall be sentenced to imprisonment for between five and fifteen years. (3) A teacher, educator, guardian, adoptive parent, parent, clergyman, doctor or any other person who through the abuse of his or her position has sexual intercourse or performs any other sexual act with a person under the age of fifteen that has been entrusted to him or her for teaching, education, medical treatment, protection or care shall be sentenced to imprisonment for between three and ten years. (4) Whoever in the circumstances referred to in paragraphs one, two or three of this article violates the sexual integrity of a person under the age of fifteen years shall be sentenced to imprisonment for up to five years. (5) The act referred to in paragraph one of this article shall not be unlawful if it is committed with a person of comparable age and if it is appropriate to that person's mental and physical maturity.

The perpetrator of this criminal offence may be anyone, either a male or female person. In the case of a criminal act according to paragraph three, the perpetrator must have special personal characteristics. Specific intent is required for the commission of all forms of this crime. The perpetrator must be aware that the victim is under fifteen years of age. Paragraph one covers cases of sexual intercourse and all cases of sexual acts between perpetrators of both sexes and victims of both sexes who are less than fifteen years old. All sexual intercourses, according to paragraph one of this article, must be voluntary, or at least without resistance, by a person under the age of fifteen.

Paragraph three of this article defines an aggravated form of offence. These are cases of rape of a person under the age of fifteen, cases of other sexual acts and cases of (sexual) abuse committed against weak persons of both sexes under the age of fifteen, but without the use of force or threats.

Paragraph three of this article defines an aggravated form of crime, considering the perpetrator's special personal characteristics. Under this paragraph, a perpetrator of the crime may be a teacher, educator, guardian, adoptive parent, parent, clergyman, doctor or any other person who, through the abuse of their position, has sexual intercourse or performs any other sexual act with a person under the age of fifteen who has been entrusted to him or her for teaching, education, medical treatment, protection or care. All of these perpetrators abuse their position to achieve sexual intercourse or other sexual acts. Cumulatively, two conditions must be met: that the perpetrator abused his position and that a person under the age of fifteen was entrusted with his custody for learning, education, treatment, protection or care. Of course, it suffices that a person under the age of fifteen has been entrusted to the perpetrator for one of the aforementioned purposes.

Paragraph four defines a privileged crime. These are cases where, under the circumstances referred to in paragraphs one, two or three, the perpetrator otherwise affects the sexual integrity of a person under the age of fifteen. In accordance with paragraph five of this article, the act is not illegal if it is committed with a person of comparable age and corresponds to the mental and physical maturity of this person (Deisinger, 2017, pp. 295–298).

4.3 Solicitation of persons under fifteen years of age for sexual purposes (article 173a of the Criminal Code-1)²¹

This crime is defined by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography. This is a preparatory act for a crime referred to in paragraph one of article 173 of the Criminal code-1.

The perpetrator of this crime may be anyone. Such a crime is committed with intent. Crime is committed by soliciting persons under the age of fifteen for an encounter. The perpetrator carries out the solicitation by using information or communication technologies.

The perpetrator's intent is to commit a crime referred to in article 173 of the Criminal code-1. The criminal act is completed when the perpetrator succeeds in soliciting an encounter with the victim (Deisinger, 2017, p. 301).

4.4 Presentation, manufacture, possession and distribution of pornographic material (article 176 of the Criminal Code-1)²²

This crime is defined by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography. Anyone may commit such a crime. Such a crime can only be committed with intent.

²¹ (1) Whoever proposes, by means of information and communication technology, to meet with a person under fifteen years of age for the purpose of committing a criminal offence referred to in paragraph one of article 173 or for the purpose of producing photographs or audiovisual or other items with pornographic or other sexual content, and where this proposal is followed by material acts in order to realise such a meeting, shall be sentenced to imprisonment for up to one year. (2) The act referred to in the preceding paragraph shall not be unlawful if it is committed for the purposes of carrying out the act referred to in paragraph one of article 173 provided that the conditions referred to in paragraph five of article 173 of this Code are met.

²²(1) Whoever sells, presents or publicly exhibits documents, pictures or audiovisual or other items of a pornographic nature to persons under fifteen years of age, enables them to gain access to these in any other manner, or presents to them a pornographic or other sexual performance, shall be punished by a fine or imprisonment for up to two years. (2) Whoever by force, threat, deception, excessive or abusive powers, recruitment or solicitation, or for exploitative purpose instructs, obtains or encourages a minor to produce photographs, audiovisual or other items of a pornographic or other sexual nature, or uses them in a pornographic or other sexual performance, or is knowingly present at such performances, shall be sentenced to imprisonment for between six months and eight years.

A criminal act referred to in paragraph one of this article can only be committed against a minor who is under the age of fifteen. Pornography must be of such intensity that negative consequences for the child's development can be identified. Establishing this fact often requires obtaining the opinion of a court-appointed expert psychologist during criminal proceedings.

Paragraph two of this Article defines an aggravated form of crime. This provision protects not only children, but also all minors – all persons under the age of eighteen. An aggravated form of crime is committed by whoever, by force, threat, deception, exceeding or abusing powers, recruitment or solicitation, or for exploitative purpose instructs, obtains or encourages a minor to produce photographs, audio-visual or other items of a pornographic or other sexual nature, or uses them in a pornographic or other sexual performance or is knowingly present at such performances. An aggravated form of crime is also committed when the perpetrator consciously attends a pornographic performance involving the participation of minors.

The case in paragraph three of this article is a *delictum sui generis* that is committed by whoever, for themselves or any third person, develops, produces, distributes, sells, imports, exports or otherwise provides pornographic or other sexual materials depicting minors or their realistic images, or supplies them in any other way, or possesses such materials, or obtains access to such materials by means of information and communication technologies, or discloses the identity of a minor in such materials (Deisinger, 2017, pp. 309–310).

4.5 Alteration of family status (article 189 of the Criminal Code-1)²³

This criminal offence is also the so-called offence of status. This offence is completed only when it results in an unlawful situation. Further existence of an unlawful situation is not relevant for this criminal offence.

(3) The same punishment as referred to in the preceding paragraph shall be imposed on whoever, for himself or herself or any third person, produces, distributes, sells, imports, or exports pornographic or other sexual materials depicting minors or their realistic images, or supplies them in any other way, or possesses such materials, or obtains access to such materials by means of information and communication technology, or discloses the identity of a minor in such materials. (4) If an act referred to in paragraph two or three of this article is committed within a criminal organisation for the commission of such criminal offences, the perpetrator shall be sentenced to imprisonment for between one and eight years. (5) The pornographic or other sexual materials referred to in paragraphs two, three and four of this article shall be confiscated or their use shall be appropriately prevented.

²³ Whoever substitutes a child for another or otherwise alters its family status shall be sentenced to imprisonment for not more than three years.

This criminal offence can only be committed with intent. If the alteration of family status arises out of negligence, there cannot be a question of a criminal offence.

A child's family status applies to his affiliation to a given family, personal name and citizenship. Interestingly, in this criminal offence, a child is not deemed to be a minor attaining the age of 14 years, but only a baby or a child up to the age when he is not yet aware of his affiliation to a given family. It is different with mentally disabled children, who can be the object of this criminal offence until they reach the age of 14 (Deisinger, 2017, pp. 317–318).

4.6 Abduction of minors (article 190 of the Criminal Code-1)²⁴

This criminal offence can be committed by any person, including by one of the parents. A perpetrator of this crime cannot be only one of the parents or the person to whom a child has been entrusted for education and care by an enforceable judgment.

In this criminal offence, unlawfulness is not just an element of the general notion of crime, but also its constitutive statutory element. Therefore, a perpetrator of this crime must be aware that they are acting unlawfully. If a perpetrator is convinced that they act according to the law, while there are no legal grounds for their act, a perpetrator is mistaken. Since unlawfulness is an indispensable statutory element of a criminal offence, a mistake which is originally a mistake of law (mistake as to unlawfulness), turns into a mistake of fact in the narrow sense of the word (mistake regarding statutory elements of a criminal offence) and therefore also has a respective effect – the exclusion of the perpetrator's criminal intent. Since it is a question of a criminal offence, which, following the definition set out in the Act, can only be committed with direct intent, the mistake about the act's unlawfulness (mistake of law) excludes a perpetrator's culpability.

²⁴ (1) Whoever unlawfully abducts a minor from his parent, adoptive parent, guardian, institution or a person who has been entrusted with the custody of the minor, or whoever detains a minor or prevents him from living with the person he is entitled to live with, or whoever malevolently prevents the implementation of an enforceable judgement referring to a minor shall be punished by a fine or sentenced to imprisonment for not more than one year. (2) If the offence caused deterioration of mental or physical health of a minor or threatened his development, the perpetrator shall be sentenced to imprisonment between one and five years. (3) If the Court imposes a suspended sentence, it may order the perpetrator to relinquish the minor to the rightful claimant or enable the implementation of the enforceable judgement. (4) If the perpetrator referred to in paragraph one of this article has relinquished a minor to the rightful claimant by his own free will and made possible the implementation of the enforceable judgement, his punishment may be remitted.

The act of completion of crime is set out in alternative forms. That means that it is sufficient for a perpetrator of this offence to accomplish at least one of the alternatively stipulated forms of the completion of this crime (abduction, detaining, preventing the implementation of an enforceable judgement). For the commission of this offence, it is necessary to commit cumulatively the abduction or detaining of minor person as well as the prevention of his or her contacts with persons entitled to live with. In both cases, this results in the interruption of direct custody over a minor, exercised by the person he or she has been entitled to live with until then (Deisinger, 2017, pp. 319–320).

Paragraph two of this article provides for an aggravated form of this crime. An aggravated form of this crime is committed when the act causes a deterioration of the mental or physical health of a minor or presents a threat to their development.

If the Court imposes a suspended sentence, it may order the perpetrator to relinquish the minor to the rightful claimant or enable the implementation of the enforceable judgment regarding the minor.

Paragraph four of this article contains a provision which enables the remission of the punishment of a perpetrator who has relinquished a minor to the rightful claimant by their own free will or made possible the implementation of the enforceable judgement.

In connection with this criminal offence, there is a problem of how to define a perpetrator's act of »stealing« and appropriating a baby. It is obviously not a criminal offence of theft, as a baby is not another's movable property but a human being. The Criminal Code-1 of the Republic of Slovenia seems to contain no provision that would adequately address such a case. Theoretically, it would be possible to legally define such conduct as a criminal offence of alteration of family status according to article 189 of the Criminal Code-1 (as the appropriation of a baby generally also means the alteration of the baby's family status) or as the offence of the abduction of minors according to article 190 of the Criminal Code-1. Despite the dilemma regarding the definition of this offence, I think that it would be more appropriate to define this act following article 190 of the Criminal Code-1, since »stealing« and the appropriation of a child represent a form of unlawful taking of a minor from his parent or the person who is actually exercising custody of the minor. In this legal

classification, it is, however, very disturbing to see how extremely lenient is the sentence prescribed for the abduction of a minor. For the crime of theft, the prescribed sentence is imprisonment of up to three years, while the sentence provided for the abduction of a minor is imprisonment of up to one year. In this case, this means that a perpetrator stealing a motorcycle could be sentenced to imprisonment for up to three years, while a perpetrator stealing a child could be punished only by imprisonment for a maximum of one year. This is obviously an absurd situation that should be resolved. The problem could be solved by adding to article 190 of the Criminal Code-1 the aggravated form of this crime (stealing and appropriating another person's child) and prescribing an appropriate sentence per the gravity of the offence.

In this context, a question could also arise as to the relationship between the crime of alteration of family status and the crime of abduction of minors. Although Deisinger writes in his commentary that a joinder of these two offences is not possible (Deisinger, 2017, p. 318), I nevertheless believe that, in some situations, a joinder is possible and also rational. Let us take a perpetrator who steals a baby, appropriates it and then, by deceiving an administrative authority, achieves its entry in the official register as their own child. Such a perpetrator would simultaneously qualify as the perpetrator of the two aforementioned criminal offences. I think no circumstance would make us believe that the joinder is merely apparent. It would, therefore, be a question of a real joinder of the two offences.

4.7 Neglect and maltreatment of a child (article 192 of the Criminal Code-1)²⁵

A criminal offence referred to in paragraph one of this article is a special offence, which can be committed only by persons with certain duties to a minor. It is an intentional offence. The act of completion is formulated in paragraph one of this article and consists of neglecting a minor with serious breaches of obligations, care and education rights. These acts are deemed criminal offences when they represent

²⁵ (1) A parent, guardian, foster parent or other person who seriously breaches his or her obligations towards a minor shall be sentenced to imprisonment for up to three years. (2) A parent, guardian, foster parent or other person who forces a minor to perform excessive work or to perform work unsuitable to his or her age or to give up his or her work, or who for self-serving motives solicits a minor to mendicancy or other conduct prejudicial to his or her proper development, or who maltreats or tortures a minor, shall be sentenced to imprisonment for up to five years.

a threat to a minor person's education, development or health. Less serious cases are considered to be minor breaches of law and order.

Child neglect has in its act of completion a form of physical and psychological abuse of a minor or rough treatment, which manifestly exceeds the limits of usual educational measures for minors, of the omission of care to provide for the basic needs of a minor in terms of nutrition, personal care, healthcare, clothing and education. Such conduct is deemed a criminal offence only when it constitutes a perpetrator's permanent activity, not in the case of individual rough measures taken against a minor. The act of completion of this crime, which has been repeated several times, constitutes a single criminal offence.

The criminal offence referred to in paragraph two of this article is a general criminal offence, as it may be committed by anyone (Deisinger, 2017, pp. 324–325).

4.8 Incest (article 195 of the Criminal Code-1)²⁶

This criminal offence can be committed only by an adult person who has a sexual intercourse with an underage lineal relative or with an underage brother or sister. A perpetrator has to be aware that he or she has a sexual intercourse with an underage lineal relative or with an underage brother or sister. When a perpetrator, who is aware of the kinship relationship, nevertheless decides to have a sexual intercourse, this is uniquely the case of a crime committed with direct intent.

If a perpetrator who has sexual intercourse is not aware of the kinship relationship, he or she is in the situation of mistake of fact in a narrow sense of the word. The perpetrator's culpability is excluded, even though he or she was in a mistake by negligence.

Consensual sexual intercourse between the underage lineal relatives and with underage brothers and sisters is not punishable, nor is a sexual intercourse between adult blood relatives. An underage person, with whom a perpetrator has a sexual intercourse, is not deemed to have committed a criminal offence. The unlawfulness of this act is not excluded also in the case when an underage person himself/herself

²⁶ An adult who has sexual intercourse with an underage lineal relative or underage brother or sister shall be sentenced to imprisonment for up to two years.

induces a linear adult parent to have sexual intercourse (Deisinger, 2017, pp. 338–339).

5 Conclusion

Children enjoy special state protection and care. This also includes the criminal law protection of the interests and benefits of children and minors. As for all other areas, criminal law is considered to be the last and the least appropriate means for protecting legally protected goods. Criminal law protection only becomes relevant when legally protected goods are damaged or highly endangered. Nevertheless, in the case of serious violation of the benefits of children and minors, it is not possible to renounce criminal law intervention, as it is a good of such importance that it also deserves criminal law protection.

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