Ranka Vujović*

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LEGAL PROTECTION OF CHILDREN'S RIGHTS TO MENTAL HEALTH IN THE REPUBLIC OF SERBIA

The child's right to mental health is one of the key rights within the right to health. This paper analyzes the normative framework for the protection of the child's right to mental health in the Republic of Serbia, with special reference to the application of international standards and domestic legislation in the domain of basic children's rights, the rights of minor patients with mental disorders, and the limits of parental authority and responsibility in exercising the child's right to mental health protection. Although the legal basis exists, practice indicates challenges in implementation and the need to strengthen institutional protection and preventive mechanisms.

***Keywords**: children's rights, right to mental health, person with mental disorders, health institution, court, court procedure.*

* Ranka Vujović, PhD, assistant professor at the Faculty of Law, Union University in Belgrade and assistant director of the Republic Secretariat for Legislation,
email: ranka.vujovic@pravnifakultet.rs

1. Supporting children's mental health: a brief overview of the state, policies, law and practice

Mental health of children and young people has become one of the key issues of today. While previous decades were marked by stigma and a lack of adequate attention to mental health in general, including that of young people, today it is absent, so there is an increasing interest in psychiatric disorders that affect children and adolescents and the ways to help them and protect their right to health. Growing up has never been a simple process, but today's generations face additional challenges. Children do not grow in a vacuum. The entire social climate in which modern humanity lives favors the growth of mental disorders in children. The psychological pressures they are exposed to, from parents, school, peers and social media, to the socio-economic status of the family, impose unrealistic standards that often lead to feelings of failure, powerlessness and worthlessness. "While combating with those challenges, they cannot pursuit the happiness, yet they are drawn into a struggle for existence" (Ćorić, 2022: 215). Parents often don't manage, some don't feel responsible, institutions are overloaded, social services are understaffed. These are challenges faced by almost all modern countries, so the question of how to help children and their parents and how to protect the child's right to mental health is very topical.

In the Republic of Serbia, a study on the prevalence of psychiatric disorders in children and adolescents was recently completed, in order to clearly see the needs of the developing population and improve the availability of services, increase the number of experts and facilitate the planning and implementation of preventive activities. The research was carried out in cooperation with the Institute for Mental Health and the Faculties of Medicine and Philosophy in Belgrade, as part of a project approved by the Working Group for the Support of Mental Health and Youth Safety of the Government of the Republic of Serbia.[1] The goal of the research was to better understand the current situation

[1] The Government of the Republic of Serbia made the decision on the establishment of the Working Group for the Support of Mental Health and Safety of Young People on May 11, 2023, a week after two separate mass crimes committed by one child (in the elementary school "Vladislav Ribnikar" in Belgrade) and one young adult (in the towns of Dubona and Malo Orašje), in which a large number of children and young people, mostly peers of the killers, were killed (for details: see *notam infra*). The working group was given the task of preparing a proposal for a program to support the mental health and safety of young people, with a special emphasis on the establishment of multi-sector cooperation that would include educational institutions, health institutions and other organizations and social communities that deal with or have an impact on the mental health of young people, to coordinate measures and activities to support the mental health and safety of young people, as well as to coordinate the implementation and measurement of the effects of those measures and activities, and in case it determines that it is necessary to initiate new or change existing regulations related to the mental health and safety of young people. The Government's decision was published in the "Official Gazette of the Republic of Serbia", no. 39/23.

and to point out the need to increase the availability of mental health services, after the tragic events of May 2023, which shook Serbia, when a large number of children and young people were killed by their peers in mass shootings.[2] 1,932 respondents from 34 schools, ages 11 to 19, took part in the research. The sample in this research was representative – the average age of the respondents was 14.5 years, the gender distribution was even, and schools throughout Serbia were included. The research was conducted using the internationally recognized structured clinical interview Mini International Neuropsychiatric Interview for Children and Adolescents (MINI-Kid). The main goal was to take stock of the current state of the frequency of psychiatric disorders and to relate them to various biological, psychological and social factors. Now, for the first time, Serbia has a concrete and numerical picture of the mental health of young people – and that picture is deeply worrying.

The preliminary results of the Study of the Prevalence of Psychiatric Disorders in Children and Adolescents in Serbia confirmed that there is a serious crisis in the mental health of young people. According to data, one in five children and adolescents in Serbia has at least one psychiatric disorder. More precisely, 20.1% of students in the senior grades of primary and secondary schools meet the criteria for some of the most common psychiatric disorders. Among them, over 9% for suicide ideations and attempts. Major depressive disorders follow with 8.7%, which, according to the experts who participated in the research, indicates clinical depression and not transient emotional states.

Similar studies in other countries record the range of mental disorders among children and youth from 10 to 20 percent, depending on the country, methodology, age. In the context of international comparisons, data from the World Health Organization indicate that around 15% of children and adolescents of the same age in the world have symptoms of a mental disorder (WHO & UNICEF, 2024: 16). When it comes to neighboring countries, research conducted somewhat earlier in Croatia recorded results similar to the Serbian study: 10.4% of suicide attempts among high school students (Ričković, Ladika, 2021). Therefore, the results from Serbia do not deviate significantly from the global level, but they are worrying because they are finally concretely visible.

One of the most significant indicators of the development of mental health disorders and difficulties are failures in parental care. The results of the National Survey on

[2] In the elementary school "Vladislav Ribnikar" in Belgrade, on May 3, 2023, a horrible crime took place, the likes of which Serbia has not seen, in which a student of that school, aged less than 14 years, shot dead nine children, students of that school and a school guard, and injured five more students and a history teacher. A day later, on May 4, Serbia was shaken by another mass crime, committed near Belgrade, in the villages of Dubona and Malo Orašje, which administratively belong to the city of Smederevo, where a 20-year-old man, also with a firearm, killed nine and wounded 13 mostly young people, of whom the youngest victim was 14 and the oldest 25.

peer violence and wellbeing, carried out as part of the joint project "Integrated response to violence against women and girls in Serbia III", which is implemented by UNICEF, UN Women, UNFPA and UNDP in partnership with the Government of the Republic of Serbia, point to the need to improve parental competence, since only a third of the children surveyed (35%) stated that they do not believe that their parents apply an authoritative parenting style (Žegarac et al., 2023), which is data that must be of concern in every society.

Children's mental health is essential for their proper development, education, socialization and subsequent integration into social flows. Therefore, the question of how the protection of the child's right to mental health is ensured in a society is becoming increasingly relevant.

In the Republic of Serbia, the legal protection of the child's right to health, including mental health, is based on international contractual obligations and national legislation. The goal of the normative framework is to ensure that mental health policies, systems, services and programs are implemented and available to all those to whom they apply, in accordance with international human rights standards, and in case of violation of those rights – effective mechanisms of legal protection. The life needs of children with mental disorders, as a "sensitive social group", differ from the needs of other persons with mental disorders, as well as from the needs of the general population. They need special help and support from society, family, various services in the community, in order to be able to achieve regular life activities and needs, or at least part of them – and this is comprehensively expressed in the rights guaranteed in international treaties and national legislation. However, on a practical level, among the services intended for children with mental disorders and their families, the traditional form of care through placement in health and social care institutions is still present to a significant extent in Serbia (Sjeničić, M., Marković, M., 2017: 11). The key regulation in the area of protection of the right to mental health is the Law on the Protection of Persons with Mental Illness. It contains provisions on the principles, organization and implementation of mental health care, the method and procedure of treatment, the organization and conditions of treatment of persons with mental disorders in inpatient and other health institutions. The adoption of that law in 2013 represented significant progress in realizing the rights of persons with mental disorders, including children, especially in terms of limiting and prescribing strict conditions for accommodation and treatment, especially in situations where the patient's consent is absent. The health system, which was established in accordance with the Law on Health Care, implies a fairly organized and geographically well-distributed health service. But in terms of available mental health services and treatment options for mentally chal-

lenged patients, it doesn't offer much choice. Accommodation in an inpatient health facility is often the only choice, in the absence of other types of support for independent living. Treatment in residential institutions is not always the best choice, especially for minor patients with mental disorders, but alternative services in the community, which take into account the health needs of the child with manifested mental difficulties while simultaneously needing to protect the safety of others, have not been developed. The process of gradual transformation of the system is ongoing and requires time, because deinstitutionalization does not mean only dehospitalization, but also enabling the return of the patient to the community, which is possible only through systemic solutions.

In the latest reports of the European Commission, as well as within the recommendations of the treaty bodies of the United Nations that monitor the implementation of international agreements, during the Universal Periodic Review for Serbia, in addition to pointing out the existence of inconsistencies between the legislative framework and its practical application, the necessity of further work on improving the normative framework was highlighted, both in the direction of harmonizing the Law on the Protection of Persons with Mental Illness with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD, 2006), and in the direction of deinstitutionalization and finding solutions for the development of the social support system, which will ensure the right of persons with mental disorders to full integration into society, and the way in which that process will be organized.

In the reports on the realization of the right to mental health, which, as part of their activities, are periodically published by various civil society organizations registered in Serbia whose goals are aimed at monitoring the state of human rights in this area, it is indicated that despite the existence of a basic legislative and institutional framework, in the Republic of Serbia at the moment there is not a sufficiently developed, comprehensive and institutionally and financially sustainable system for the protection of the right to mental health. Despite the relatively good and progressive *Program for the Protection of Mental Health in the Republic of Serbia for the period 2019-2026*, which represents an important strategic document in this area and contains a system of measures, conditions and instruments of public policy that the Republic of Serbia should implement for the protection of mental health, the expected results are absent. The action plan for the last three-year implementation period of the Program 2019-2026 has not been adopted, so the Program is entering its final phase without an accompanying action plan, which makes it difficult to implement and fulfill the established goals and measures (Stojadinović et al., 2024).

Preservation of mental health is a topic that has found its place in the Strategy for the Development of Education and Training in the Republic of Serbia until 2030, as a

measure aimed at reaffirming and strengthening the educational role of educational institutions in pre-university education, as part of their public and cultural function in achieving collective well-being. However, activities for the implementation of that measure were completed in 2022, in accordance with the first Action Plan. The current Action Plan (adopted for the implementation of the Strategy for the period 2023-2026) does not foresee any activity in terms of preserving mental health in pre-university education. This deficiency was compensated through the activities of the Working Group for the Support of Mental Health and Safety of Young People of the Government of the Republic of Serbia. In the last two years, as a result of the work of the Working Group and the projects carried out under its supervision, new programs have been developed to improve the competences of employees in the education system in the field of mental health of young people (two programs received accreditation from the Ministry of Education and are part of the system of continuous professional development of educators).

In addition to the segment related to the education system, as part of the project implemented by the Working Group of the Government of the Republic of Serbia, a year ago the first youth model center (CEZAM) was established in the capital, Belgrade, where psychosocial support services are available free of charge to young people between the ages of 10 and 30 and their parents in crisis situations. This service is provided both in the premises of the Center and through the remote counseling system, via video calls. It is accompanied by intensive promotional activities through social media, communication adapted to the preferences of young people, includes the dissemination of short-format audiovisual material on channels mainly used by young people. The work of the Center is organized with the involvement of facilitators from peer groups, who are prepared through targeted volunteer programs. In addition to psychosocial crisis support, CEZAM's activity includes preventive activities for children and young people (calming, creative and collaborative workshops), educational activities (workshops based on informal supplementary education, the goal of which is the development of life skills, learning techniques, assertive communication, etc.), as well as programs aimed at improving parental competence in topics related to mental health, parenting and child development. The aforementioned activities are fully in line with the goals of the current Program for the Protection of Mental Health, which unequivocally insists on the need to develop new ones in addition to existing resources in order to support the reform process, especially in the field of ensuring the further development of support services and treatment and protection of mental health in the environment where persons with mental disorders live, with the application of the least restrictive approach to treatment. The challenge that arises at this moment is how to ensure CEZAM's financial sustainability after the end of the Working Group project, that is, how to integrate CEZAM into the existing system of

health and/or social protection and make it part of the institutional system of mental health protection for children and youth. Another issue that arises is the modification of the normative framework in a way that will enable the establishment of a legal basis and an organizational structure that ensures that the services developed in the model center become available to all children who need them, in the place where they live.

The subject of this paper is a critical presentation of the current normative framework for the protection of children's rights to mental health in the Republic of Serbia, with a focus on its practical application and the more recent viewpoints of theoreticians, presented in the legal literature and available reports of relevant bodies, with the aim of assessing systemic shortcomings and room for improvement of existing legal regulations. Considering the purpose of the paper, the subject of the analysis will be limited to the application of legal protection standards arising from confirmed universal international legal acts, and especially to the standards on which the basic rights of the child, the rights of patients with mental disorders, as well as the limits of parental authority and responsibility in exercising the child's right to mental health protection are based. This work does not cover the measures that ensure the protection of the mental health of minors, prescribed in criminal (substantive, procedural and executive) legislation.

2. International standards and mechanisms for protecting the children's right to mental health

The principles of basic human rights that should be universally protected are contained in the Universal Declaration of Human Rights (UDHR, 1948), as the first document that represents a universal catalog of human rights in the history of human society that included all human beings, including children. Article 1 of the UDHR already contains the most important message. "All human beings are born free and equal in dignity and rights." The provisions of the UDHR, although formally non-binding, have acquired the property of *ius cogens* by the fact that, almost all of them, were incorporated into later binding documents of an international character. Among those documents, the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) are particularly significant. Both mentioned documents, already in the introductory provisions, in Articles 2 and 3, oblige the member states to respect and to guarantee that the rights recognized in them will be realized without any distinction on any basis, which includes birth or other status, and that the right to enjoy all the rights recognized by those treaties belongs equally to women and men. The family, as a natural and fundamental unit of society, is granted the right to special protection by society and the state (Article 23, paragraph 1 of the ICCPR),

while, with regard to the rights of children, it is prescribed that every child, without any distinction based on race, color, sex, language, religion, national or social origin, property or birth, has the right to protection measures from his/her family, society and the state as required by his/her status as a minor (Article 24 of the ICCPR). The widest possible protection and assistance should be provided to the family, which is the natural and fundamental cell of society, especially during the time when the family is responsible for the support and upbringing of the children it cares for (Article 10 of the ICESCR).

The ICCPR is also of particular importance because it established, for the first time at the international level, a treaty body in charge of supervising the actions of member states in the exercising and protection of human rights – the Human Rights Committee (Articles 28-45). Other institutional mechanisms of protection are provided by optional protocols with subsequently adopted conventions – the United Nations Convention against Torture (CAT, 1984) and United Nations Convention on the Rights of Persons with Disabilities (CRPD, 2006). Based on those conventions and protocols, the Committee against Torture, authorized to investigate cases of systemic torture in the member states, and subcommittees for prevention (and the obligation to establish national prevention mechanisms[3]) were established, as bodies responsible for monitoring the implementation of the provisions of the said conventions and fulfilling the obligations of the member states.[4]

That the principles of human rights protection apply equally to children was confirmed by the Declaration of the Rights of the Child (1959), on the basis of which, three decades later, a legally binding document was created that is the basis of the international protection of all children's rights – the United Nations Convention on the Rights of the Child (CRC, 1989)**.** This unique Children's Constitution stipulates that every child has the right to the highest level of health and medical care and to rehabilitation (Article 24), and that the right of a child, who has been cared for by the competent authorities for the purpose of care, protection or treatment of his/her physical or mental health, to periodic checks of the treatment provided to the child and all other circumstances of importance for his/her care (Article 25), that member states are obliged to ensure that the institutions, services and establishments that are responsible for the care or protection of children comply with the standards established by the competent authorities, especially in the area

[3] In the Republic of Serbia, the work of the National Torture Prevention Mechanism (NPM) is carried out by the Protector of Citizens, in cooperation with representatives of civil society.

[4] In September 2023, the Serbian Parliament ratified the Optional Protocol to the ICESCR, which establishes a special mechanism for individual complaints, i.e. it enables individuals or groups who claim that their rights have been violated under the Convention, to request protection of their rights before the United Nations Committee on Economic, Social and Cultural Rights, when a violation of rights occurs and it is not adequately protected before domestic courts.

of safety and health and the number and suitability of staff, as well as professional supervision (Article 3, paragraph 3), and to take all appropriate legislative, administrative and other measures to realize the rights of the child recognized in that convention. They are also obliged to provide the child with such protection and care as is necessary for his/her well-being, taking into account the rights and obligations of his/her parents, legal guardians or other individuals who are legally responsible for the child, and to that end, take all necessary legislative and administrative measures (Article 3, paragraph 2 and Article 4). According to the CRC, the state has a special role in implementing the principle that both parents have a joint responsibility in raising and developing the child, and that, in order to guarantee and promote the rights of the child, it provides parents with appropriate assistance in fulfilling their duty of raising and educating the child and ensures the development of institutions, facilities and services for child care (Article 18, paragraph 2).

All rights of the child, according to the CPC, are realized and protected by the application of four fundamental principles, namely: non-discrimination, respect for the best interests of the child, the child's right to participation (to express an opinion on all issues and to participate or be adequately represented in all procedures that concern him/her) and the right to life, survival and development.

In almost all universal international legal acts related to the right to mental health and the protection of that right, the leading ethical and legal principles in the field of exercise and protection of human rights are contained, such as respect for dignity, respect for the physical and mental integrity of each person, as well as special standards concerning the protection of the rights of persons with mental disorders, such as: the right of persons with mental disorders to live in the community and to be cared for in the least restrictive environment, the prohibition of torture, abuse and other inhuman or degrading procedures and treatments.

The dignity of every human being is a fundamental principle in the theory of human rights, the one on which all other human rights rest and through whose prism the degree of their realization is appreciated (Vujović, 2020: 76). The principle of dignity and humane treatment found its place in the First Principle of the UN Body of Principles for the *Protection of All Persons* under Any Form of Detention or Imprisonment [A/RES/43/173 (1988)]. This is a particularly important principle, because the protection of children with mental disorders often requires their detention for treatment in a health institution, for a shorter or longer period, with or without their consent. According to the First Principle, all detained persons, that is, all persons in any form of detention, should be treated in a humane manner, and with respect for the innate dignity of every human being.

Children with mental disabilities enjoy protection under the provisions of the CRPD, since that convention defines persons with disabilities as those who have permanent physical, mental, intellectual or sensory impairments, which, in interaction with various obstacles, may hinder their full and effective participation in society on an equal basis with others (Article 1, paragraph 2). The right to family life is expressed in this convention through the principle of respect for home and family, by obliging the signatory states to, among other things, ensure that children with disabilities have equal rights in terms of family life. This further creates the obligation of states to, through the establishment and operation of appropriate services and other measures, ensure services and support for children with disabilities and their families, to ensure that the child will not be separated from the parents based on the disability of either child or one or both parents and that the child will not be separated from the parents against their will, unless the competent authorities, based on a judicial review, determine, in accordance with the law and applicable procedures, that such separation is necessary in the best interests of the child In addition, if the family is unable to take care of a disabled child, the state is obliged to make every effort to provide alternative care within the extended family or, if this is not possible, within the community in a family environment (Article 23). According to the CRPD, every person with disabilities has the right to respect for their physical and mental integrity on an equal basis with others (Article 17), and the signatory states are obliged to adopt immediate, effective and appropriate measures to raise awareness throughout society, including at the family level, about people with disabilities, and to foster respect for their rights and dignity (Article 8). This convention also promotes the principle of prohibition of inhuman and degrading treatment of persons with mental disorders. This principle explicitly includes the prohibition of undergoing medical or scientific experiments without the consent of the patient (Article 15), and the signatory states are required to take effective legal, administrative, judicial or other measures in order to prevent persons with (mental) disorders, on an equal basis with others, from being exposed to abuse or cruel, inhumane or degrading treatment or punishment. It should be noted that involvement in sexual activities with a child could be committed by the abuse of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence (Pavlović, Paunović, 2020: 322).

The child's right to mental health, according to the CRPD, implies the same choice, quality and standard of free or affordable health care and programs offered to other persons, including in the field of sexual or reproductive health and public health programs intended for the general population; health services specifically needed by a child with a mental impairment, including early detection and intervention, as appropriate; services that minimize and prevent further impairment of mental health; services as

close as possible to the communities where the child lives, including rural areas; the right to a service by professional healthcare workers that is provided on the basis of the free and informed consent of the patient, including by spreading knowledge about human rights, dignity, autonomy and needs of the mentally ill, through training and in compliance with established ethical standards that are equally valid for public and private healthcare (Article 25). The right to mental health includes services that need to be provided at the earliest possible stage and are based on a multidisciplinary assessment of individual needs and abilities. Also, the signatory states will take effective and appropriate measures, including through peer education and exchange of experiences among children in similar situations, to enable the mentally ill to achieve maximum independence, full physical, mental, social and professional capacities, and complete inclusion and participation in all aspects of life. In order to achieve this goal, the signatory states will promote the development of initial and continuing professional development training for experts and staff working on habilitation and rehabilitation services (Article 26).

The fact that the prohibition of torture and instructions regarding the duties of health workers and other persons who may in any way participate in the care and protection of some forcibly detained or imprisoned person must be integrated into national legislation, moreover, that they should be an integral part of the education of medical personnel and other involved persons, is prescribed in Article 10 of the CAT. Additionally, the principle of prohibition of forced detention is contained in Article 37 of the CRC in the form of a requirement that: "no child shall be unlawfully or arbitrarily deprived of liberty. The arrest, detention and imprisonment of a child shall be in accordance with the law and applied only as a last possible measure and for the shortest possible period of time".

Treaties adopted under the auspices of the Council of Europe, which concern the child's right to mental health and the protection of that right, starting with the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950), and the practice of treaty bodies responsible for monitoring the implementation of those conventions, continue to elaborate universally recognized human rights standards. Thus, in Article 8 of the Recommendation of the Committee of Ministers of the Council of Europe Rec (2004) 10, it is stated that persons with mental disorders have the right to be cared for in the least restrictive environment that is available, with the least restrictive or intrusive treatment available, taking into account their health needs and the need to protect the safety of others. The European Court of Human Rights, whose judgments are the source of law in the Republic of Serbia, has on several occasions taken the position that placing a child in a confined institution must be proportionate to the goal for which the child is deprived of freedom, and that it should be a measure of last resort, as well as

that, in the light of relevant international standards, the essential criterion for assessing proportionality is that the measure taken is in the best interest of the child and is aimed at preventing serious risks to the child's development (*Vasileva v. Denmark, app. 52792/99*, 37-42, 25 September 2003; *D.L. v. Bulgaria*, *app*. 7472/14, 74, 19 May 2016 et seq.).

3. National institutional and legal framework for the protection of the child's right to mental health

The Republic of Serbia, as a member of the United Nations and the Council of Europe, is obliged to directly apply universal and regional international legal acts adopted under the auspices of those international organizations and to implement in its legal system the legal protection standards contained in those documents and developed in the practice of treaty bodies that supervise their implementation.

The Constitution of the Republic of Serbia guarantees all citizens equal rights and equal legal protection, without discrimination, among other things, on the basis of mental disability (Article 21), guarantees the right to inviolability of mental and physical integrity (Article 25) and protection of mental and physical health to all citizens (Article 68), and especially takes care of the protection of children, proclaiming the special protection of children without parental care and mentally or physically handicapped children, with the duty of the state to protect children from mental, physical, economic and any other exploitation or abuse (Articles 64 and 66). In terms of mental health, protection is ensured through the application of the legal framework, which consists of several laws and bylaws that regulate the field of health, family and social protection, education and social insurance, among which the Law on the Protection of Persons with Mental Disabilities, Law on Health Care, Law on Health Insurance, Family Law and Law on Patient Rights stand out**.**

The Law on Health Care (LHC, 2019) recognizes the importance of mental health and provides the possibility of psychiatric and psychological assistance to children, while respecting the standards prescribed by confirmed international treaties. The principle of respect for human rights and values in health care, according to Article 20 of that law, implies the provision of the highest possible standard of human rights and values in the provision of health care, above all the right to life, the inviolability of physical and psychological integrity and the inviolability of human dignity, the provision of gender equality and the respect of moral, cultural, religious and philosophical convictions of citizens. The principle of respecting the rights of the child implies guiding the best interests of the child in all activities of health care providers, providing health services and procedures adapted to children, as well as the right of the child to proper development and

protection from all forms of violence, abuse, neglect and exploitation. A child up to the age of 18, as well as a single parent with children up to the age of seven, have the right to the highest possible standard of health and health care. According to the Law on Health Insurance (LHI, 2019), health care in the field of mental health is carried out by a selected doctor (Article 143, paragraph 1, point 9), and health services in public health institutions are free for all children up to the age of 18 and school children and students until the end of the prescribed education (Article 16). The law also stipulates that children, as a category of persons with mandatory health insurance, are provided with a series of preventive measures for the purpose of preserving and improving health, preventing, early detection and suppression of diseases and other health disorders, including: 1) health education, which is carried out by organizing special lectures or giving advice by a health worker and a health associate regarding the protection, preservation and improvement of health, acquiring knowledge and habits about a healthy lifestyle, discovering and suppressing risk factors; 2) preventive and other examinations of children until they reach the age of 18, i.e. until the end of the prescribed high school or higher education, and until they reach the age of 26 at the latest, and that the aforementioned preventive activities are carried out in the manner prescribed by the government programs for the prevention and early detection of diseases of major public health importance, i.e. screening programs, enacted by the government (Article 53 of the LHI).

The Law on Patient Rights (LPR, 2013) recognizes the special needs of children as a sensitive category and specifically regulates their position and rights when providing medical services in health institutions. From the point of view of the right to mental health protection, the provisions of this law, which, in the function of exercising the child's right to health, limit parental authority, are of particular importance. Children's rights and parental authority are systematically regulated by the Family Law (FL, 2005). The right of the child to be provided with the best possible living and health conditions for proper and complete development (FL, Art. 62, par. 1) is correlated with the right and duty of the parents to take care of the child's life and health, to represent the child in exercising rights and to receive all information about the child from health institutions (FL, Art. 68, 69, 72). A child who is capable of reasoning, regardless of age, according to the special rules contained in the law governing the rights of patients, has the right to confidential counseling even without parental consent, when it is in the best interest of the child (LPR, Art. 11, par. 8), and a child who has reached the age of 15 and who is capable of reasoning has the right to the confidentiality of the data contained in his/her medical documentation, except in the case of serious danger to the life and health of the child, when information about their health condition must be communicated to their parent (LPR, Art. 24).

Part of the parental authority includes giving consent to the undertaking of medical procedures on the child, considering that the parents are the legal representatives of the child, and that, even when they do not live together with the child, they have the right and duty to participate in decision-making on all issues that significantly affect the child's life (Vujović, 2021: 574). Parents represent the child in all legal affairs and in all proceedings beyond the limits of the child's business and legal capacity (legal representation), but they can also represent the child in legal affairs and in proceedings in which the child's special business and legal capacity has been recognized (voluntary representation), except when such representation is excluded by law (FL, Art. 72, par. 1 and 2). Domestic law recognizes the ability of a child who has reached a certain age and who is capable of reasoning to independently undertake certain legal actions (special legal capacity). In this sense, both mentioned laws stipulate that a child who has reached the age of 15 and who is capable of reasoning can independently give consent to the taking of a medical procedure (FL, Art. 62, par. 2; LPR, Art. 19, par. 4). A statement of consent, made by a minor who is capable of reasoning and has reached the age of 15, produces a legal effect as a statement made by a person with full legal capacity. However, if such a minor declares that he/she opposes the proposed medical measure – such declaration does not produce the same legal effect. Namely, the LPR prescribes the duty of a health worker to, when a child older than 15 years refuses the proposed medical measure, ask for consent from his/her parents, and if the child is without parental care from his guardian (LPR, Art. 19, par. 5). This rule from the LPR has no basis in FL, so it seems that, in terms of the scope of the recognized special business capacity of the child, these two laws are in conflict. When creating this special rule in the LPR, the legislator started from the assumption that the proposed medical measure is always in the interest of the minor child and that the consent of a minor capable of reasoning is sufficient for taking a medical measure, as well as that his/her refusal always requires the confirmation of his/her legal representative. When assessing the ability of a child who has reached the required age (15 years) to give a legally valid statement of consent/opposition to taking a medical measure, only his/her ability to reason – mental ability (capacity) is assessed. Assessment of mental capacity is a medical procedure that falls under the jurisdiction of a mental health specialist – to determine the child's individual capabilities to make his/her own choices. In practice, the outcome of that assessment directs further proceedings. "A patient for whom a deficit in mental capacity is assessed loses the right to make legally binding decisions about medical treatment, which at the same time means that the doctor does not have the duty to ask for his/her consent, but should still protect him/her from bad decisions" (Mujović-Zornić, 2011: 289). In fact, the convention principle of respecting the best interests of the child,

proclaimed in domestic laws (FL and LPR), as well as the legal norms on parental authority and representation of the child, oblige the doctor to request the consent of the parents or guardians for the medical measure on behalf of the child who is not capable of reasoning at the time of health care, regardless of age. In practice, unfortunately, there have also been cases where consent to hospital treatment is given by persons brought by the police in an agitated state, although the statements given under such circumstances cannot be taken as legally relevant (Voskresenski, 2017: 95).

How is the best interest of the child protected if the parent also refuses the proposed medical measure? The Law on Patients' Rights does not consider this situation, because it is regulated thereby, and in the given circumstances the rules prescribed in the FL will be applied. When a doctor or a medical council is of the opinion that the proposed medical treatment of a minor is necessary, and the parent, as a legal representative, refuses to give consent – the health institution is obliged to contact the center for social work, which can decide to temporarily limit the parent's right to represent the child. This duty of the health care institution derives from the FL (Art. 263, par. 3) and is constituted for the protection of the child's rights (which implies that it also includes the child's right to mental health protection). The legal basis for the temporary limitation of the parental right to represent the child is contained in Article 132, par. 1. and 3 of the FL, according to which the center for social work (which in Serbian law has the function of a guardianship authority) can appoint a temporary guardian for a child, when the parent does not show the necessary attention and care for the child and for the protection of his/her interests. The duty of the temporary guardian is to ensure the temporary protection of the personality, rights and interests of the child, i.e. to make a decision in further proceedings, with the prior consent of the guardianship authority, to undertake medical intervention on the minor ward (FL, Art. 137, par. 4 (2.).

If the guardianship authority assesses that there are deficiencies in the behavior of the child's parents that require additional work with the parents and assistance in the proper exercise of parental rights, it will take corrective supervision measures prescribed in Article 80 of the FL. Among other things, corrective supervision over the exercise of parental rights can be realized through the issuance of a binding administrative act (decision) to parents on referral to a counseling interview or treatment in a specialized health or social institution, with the aim of increasing their parental capacities in order to establish proper care for the child. This is especially important when it comes to children whose mental health is at risk and who need additional support in protecting and preserving their mental health. But if there are elements of gross neglect of the health needs of the child (with mental disorders) in the parents' behavior or there is evident abuse of parental rights regarding the child's right to (mental) health, the center for social work is obliged to file

a lawsuit with the competent court to deprive the parents of parental rights (FL, Art. 81, 82). During the court proceedings, the child's rights are protected by a temporary guardian, appointed by the center for social work (Vujović, 2019: 202)

When it comes to younger children, consent to a medical measure is always given by their parents or guardian instead of a minor patient who has not reached the age and level of maturity required for independent consent. This does not mean that a child under the age of 15 is excluded from the decision-making process. In this regard, international legal protection standards are fully incorporated into domestic legislation. Every child who is capable of forming his/her own opinion has the right to give and freely express such opinion on any issue that concerns him/her (Article 65 of the FL). In terms of health care, this rule implies that every patient without legal/business capacity must be included in making a decision on consent to the proposed medical intervention, in accordance with his/her maturity and ability to reason (Article 35 of the LHC). Everything that was said above about the limitation of parental rights to represent a child, also applies to the representation of children under 15 years of age.

Although it represents a declaration of will, the patient's consent to treatment does not have the character of a legal transaction (Radišić, 2012: 40). The nature of the medical intervention, its necessity and urgency, does not tolerate such a character. Legal theorists point out that *ex ante* review of the given consent to a medical intervention is not allowed for all the traditional reasons prescribed as defects of consent (vitiating factors in consent) and represents a reason for voidability for legal transactions. This is especially true of a misconception. In order to prevent misconception, the duty of the doctor to fully inform each patient about the medical intervention to be taken is prescribed. Consent to treatment can be considered as free and informed only if it is based on "full, accurate and understandable information about the patient's condition and the proposed treatment" (Article 11 LPR). A statement of consent made under misconception does not invalidate the statement *ex post*. However, fraud, coercion or threats (undue influence) are not allowed. Consent to a medical intervention given under coercion, threat or fraud is always invalid, because it violates the principle of voluntariness (Deutsch, Spickhoff, 2008: 170).

Voluntariness as a principle is subject to limitations, linked to other universally recognized principles of the CRC – the protection of the best interests of the child and the right to life, survival and development. In the case when there is a serious risk that a child with a mental disorder will harm him/herself or others, and the parents are not immediately available, do not agree to the proposed treatment, or subsequently refuse the treatment, the health institution, in addition to being obliged to contact the center for social

work (LPR, Art. 27, par. 4 & 5), may take an emergency medical intervention even without consent (LPR, Art. 18, par. 3), and if inpatient treatment is required, it may also initiate the procedure for placement without consent *ex officio*. Compulsory placement of a child for psychiatric treatment without consent is carried out in a strictly legally prescribed procedure and involves several mandatory steps: 1) assessment by an authorized doctor (from a health center or emergency room) that there is an immediate danger to the life of the child or other persons; 2) temporary admission and placement of the child in a psychiatric institution, based on the examination and decision of a psychiatrist; 3) urgent examination by a medical advisory board and decision of the health institution's medical advisory board on the need for further detention or dismissal, no later than the next working day from the day of admission; 4) notification to the court on admission without consent, at the latest within 48 hours of admission; 5) implementation of non-litigation court proceedings, in order to make a decision on further detention (LPPMD, Art. 22 – 30).

In a non-litigation procedure, the court makes a decision on further detention, based on the opinion of independent doctors and hearing the child, if possible. The court can order treatment for up to 30 days, with the possibility of extension, but any decision must be based on a new medical assessment.

And although legal solutions regarding placement without consent are mostly aligned with current international legal protection standards, the literature points out that court decisions on forced hospitalization of persons with mental disorders are mostly based on the expert opinions of doctors employed in the hospital that proposed the measure (Voskresenski, 2017: 95). Therefore, no external, independent opinion on the necessity of forced hospitalization is provided.

As a patient, the child has the right to all kinds of information, given in a way that they understands, among other things, about the state of their health, the health service and how they use it, which should also include the right to information about the name and surname and professional status of health workers, i.e. health associates who participate in taking medical interventions and the procedure of their treatment in general (LPR, Article 7, paragraphs 1 and 4). When it comes to the content of the notification that the child needs in order to make a decision to agree or not to agree to the proposed medical intervention, the law specifies *numerus clausus* what the notification for the patient should include (Article 11, paragraph 2 of the LPR). In legal theory, it is rightly pointed out that in that enumeration, it is not prescribed that the patient should be notified about the identity of the doctor who is to carry out the medical intervention on him/her (Radišić, 2011: 48), from which it can be concluded that the patient's consent is valid even without such notification, which is also the case in the legislation of other countries. However, the autonomy of the patient implies that he/she has the possibility to limit his/her consent

to a medical intervention to a certain doctor, who enjoys his/her trust. This may be particularly important in patients with mental disorders. This shortcoming is not so easy to eliminate, because health resources in the field of mental health care for children are quite limited. And the law must be not only based on the highest standards, but also practically enforceable. In Serbia, health services, including services in the area of mental health care, are provided in health care institutions at all three levels of care – primary, secondary and tertiary (Article 61 of the LHC). The protection of mental health belongs, above all, to primary level health activity (Article 65, point 11 of the LHC). Preventive health care for all categories of the population and children's health care (Article 75 of the LHC) is implemented on this new level. According to the Regulation on the Plan of the Network of Health Institutions (2020), there is a well-developed network of health centers (primary level institutions) in all local areas, which also includes home care. However, health experts point out that these capacities are not used to the full extent for providing support to persons with mental disorders and their families, in order to control and prevent the worsening of the underlying disease; that the reason for this lies in the fact that within the majority of health centers there are no specially organized services for the protection of mental health, but only psychiatric or neuropsychiatric outpatient clinics, and that they generally do not deal with prevention. Specialist-consultative examinations and hospital treatment of persons with mental disorders are performed, as a rule, in stationary health institutions of secondary and tertiary level,[5] and the largest number of patients with mental disorders are treated either in special psychiatric hospitals, with huge accommodation capacities (over 3,500 beds) or in psychiatric wards of general hospitals.

When it comes to human resources, Serbia has approximately 12 psychiatrists per 100,000 inhabitants, which, compared to other countries, is far below most Western European countries, but still above most countries in the region.[6] However, there are very few specialists in child psychiatry (according to the data of the Medical Chamber of Serbia from 2024, there are a total of 53 specialists, of which 26 are child psychiatrists and 27 are specialists in child and adolescent psychiatry), and besides being insufficient, those resources are geographically disproportionately distributed (Program 2019-2026, Section

[5] According to the provisions of Article 6, paragraph 2 of the Regulation on the plan of the network of health institutions, it is possible to organize specialist-consultative activities in the field of psychiatry (mental health protection) in the health center (primary level institution), in order to ensure the availability of those services, if the distance to the nearest general hospital where these services can be obtained, depending on the circumstances, is between 20 and 50 kilometers from the place where the health center is located.

[6] According to the latest published data from EUROSTAT, there are 28.4 per 100,000 inhabitants in Germany, 22.7 in France, 15.1 in Hungary, 10.3 in Bulgaria, 7.3 in Turkey, 17.3 in Slovenia, 10.5 in Montenegro, and 11.7 in Serbia. Source: Healthcare personnel statistics – physicians – Statistics Explained – Eurostat (accessed: August 14, 2025).

2.3.2. point 5). In addition, the largest number of specialists in child and adolescent psychiatry perform their work in psychiatric institutions (secondary and tertiary level institutions), and only 1/5 within regional health centers, clinics and in private practice, which is insufficient for implementing preventive activities. On the other hand, mental health disorders are listed as chronic non-communicable diseases that have been dominating our national pathology for decades (Zdravstveno statistički godišnjak, 2022: 78).

Preventive programs that include psychological support for children and students are provided for in the regulations in the field of education. Thus, the Law on the Fundamentals of the System of Education and Upbringing (LFEUS) recognizes the need for additional health and social support for children and students (Art. 77), the right to health and psychological protection through a reference institution (health examinations for which the student is referred by the school, Art. 79, par. 2 (12) and orders schools to develop support programs, while the secondary legislation, which enables the implementation of that law, further prescribes the protocol of action, content and method of implementing preventive and intervention activities, conditions and methods of risk assessment, and ways of protecting children from violence, abuse and neglect in schools.[7] Interdepartmental commissions and teams for the protection of students from violence, abuse and neglect operate within schools, which can recognize mental health risks and refer children to further assistance (Art. 83, par. 2). However, the number of experts (psychologists, pedagogues, psychiatrists) in schools, as well as in primary level health institutions, is limited and insufficient for the implementation of all planned activities. The education of employees in education and health to work with children with mental disorders is also insufficient and is not fully aligned with the needs of modern mental health care, as well as with the principles of prevention and improvement of mental health (Program 2019-2026, Section 2.3.2, point 11).

The legal framework exists. The Rulebook on Closer Conditions for the Education of Mental Health Centers in the Community (2021) foresees the education of mental health centers in the community, as special organizational units for providing mental health care at: health centers, special hospitals, institutes and clinics for psychiatric diseases (Article 3). In this way, a legal basis was created to achieve a higher quality level of mental health care at existing health institutions, through the provision of services in the field of mental health, promotion of mental health and prevention of mental disorders. The realization of these activities requires human and material resources, which, as we have seen, are quite limited.

[7] These issues are regulated in detail by the Rulebook on the Protocol of Procedures in the Institution in Response to Violence, Abuse and Neglect, the Official Gazette of the RS, no. 11/24.

Therefore, for the provision of support services and protection mental health of children, in the environments where they live, of great importance is finding a way to integrate the services developed in the CEZAM model center, within the Government Working Group project, into the health care system, as a specific set of services, which enable a different type of engagement of experts, with the support of volunteers.

4. Conclusion

Children's right to mental health is not a privilege, but a basic human right. Mental health is "one of the foundations of the quality of life of individuals, families, communities and nations, which enables people to experience life as meaningful, and to be creative and active citizens" (Voskresenski, 2017: 90). Only a healthy child can become a healthy and responsible adult. At a time when every fifth child in Serbia has a psychiatric disorder, it is clear that we are facing a crisis that threatens to shape the entire future generation.

The child's right to mental health in the Republic of Serbia has a solid legal foundation, but it requires further operationalization through concrete policies, strengthening of institutions and education of society. Additional investment in personnel, education and prevention is needed in order for this process to take place in the best interest of the child, in accordance with modern standards of children's rights. Effective legal protection must be accompanied by accessible and quality services, so that children in all parts of the country can exercise their right to psychological well-being. It is necessary to change the normative framework in a way that would enable the establishment of an additional organizational structure (by establishing institutions of a mixed health-social type or in another way) through which the services developed in the CEZAM model center would become available to all children who need them, where they live.

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