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VICTIMS OF CRIME IN SERBIA: ACCESS TO JUSTICE, PROTECTION AND SUPPORT

Belgrade, 2025

Milica Kolaković-Bojović, PhD

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Belgrade, May 2025

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Victims of crime in Serbia: access to justice, protection and support
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Abbreviations

ADA	Austrian Development Agency
AP 2023-2025	Action Plan for the implementation of the National Strategy on the Rights of Victims and Witnesses of Crime in the Republic of Serbia 2020-2025 for 2023-2025 period
AV	Audio-visual
BAS	Bar Association of Serbia
BC	Basic Court
CC	Criminal Code
Ch.23	Chapter 23
CoE	Council of Europe
CPC	Criminal Procedure Code
CSO	Civil Society Organisation
CSW	Centre for Social Work
EC	European Commission
EU	European Union
ECtHR	European Court of Human Rights
HC	Higher Court
IBM	Interim Benchmark
ICSR	Institute of Criminological and Sociological Research
Law on Juveniles	Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles
MoI	Ministry of Interior
MoJ	Ministry of Justice
NGO	Non-governmental Organisation
NSRVWCRS 2020-2025/ The Strategy	National Strategy for the Enforcement of the Rights of Victims and Witnesses of Crime in the Republic of Serbia 2020-2025
OSCE	Organization for Security and Co-operation in Europe
RISP	Republic Institute for Social Protection
RS	Republic of Serbia
RSO	Republic Statistical Office
SCS	Supreme Court of Serbia
SPPO	Supreme Public Prosecutors Office

Preface

To address the challenges associated to the weak protection mechanisms, challenging access to justice and of limited accessibility to victim support services, the Serbian Government adopted the National Strategy on the Rights of Victims and Witnesses of Crime 2020-2025 (hereinafter: Strategy) and the accompanying implementation actions plans for the periods 2020-2022 and 2023-2025 (hereinafter: AP 2020-2022 and AP 2023-2025), with the aim to fully align its normative framework with relevant international standards, establish a national victim support network, improve the protection of victims and witnesses and raise awareness about victims' and witnesses' rights, but also to address many issues prevail in this area related to institutional, human and financial insufficiencies.

The author of this book actively contributed not just to the development of those policy documents since 2016 (in the capacity of independent expert), but also to their implementation through the drafting necessary legislation, guidelines and training materials.

In the process of drafting the Strategy and the AP 2023-2025 the Ministry of Justice incorporated evidence-based policy making principle[1] in both documents in various ways, starting with conducting a comprehensive *ex-ante* analysis, but also through the connecting development of the future policies in certain areas with the findings of the assessment and monitoring the situation in those areas using scientific methods. Such an approach was used also to deal with very important issue concerning position of especially vulnerable victims in the procedural function of witnesses, incorporating in the AP activities that provide for establishing the sustainable monitoring over the position of this category of witnesses. This assumes developing the methodological toolkit for conducting the monitoring periodically but also conducting the initial analysis to assess comprehensively the current state of play.

[1] Kolaković-Bojović, M. (2022). *Human Rights Protection: From Populism to the Evidence - Based Policy Making*. In: Yearbook. No. 5, Human rights protection: from childhood to the right to a dignified old age: human rights and institutions. Provincial Protector of Citizens – Ombudsman. Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 63-80.

This book resulted from the comprehensive analysis conducted within the project which is a part of the Multi-Partner Contribution "Facility supporting the strengthening of the Rule of Law in the Republic of Serbia", which contributed to the achievement of the obligations stemming from Chapter 23 – Judiciary and Fundamental Rights, in line with the EU acquis. Work Package 6 of this Multi Donor Action, i.e. the project, being cofinanced by the European Union and the Austrian Development Cooperation (ADC) and implemented by the Austrian Development Agency (ADA), to address strengthening capacities for victim support and protection and strengthening of procedural rights (hereinafter: ADA Project). The book was published with the support of the same project.

The Institute of Criminological and Sociological Research (hereinafter: ICSR) was approached by ADA Project Team in order to establish the partnership in implementation of the following three project tasks arising from the activities 2.2.1-2.2.3 of the Action Plan.

In order to support the Ministry of Justice in carrying out AP implementation in a timely manner, the ICSR is tasked with the following activities:

(i) elaborate a review of the existing interviewing practices applied by authorities conducting proceedings and other participants therein with regard to questioning of vulnerable witnesses and make recommendations for improvements.

(ii) elaborate a review of the existing case law with regard to imposing sanction for acts that disrupt the court's normal process, ordering measures of procedural protection of victims and witnesses, cautioning and fining defence attorneys and other participants in the proceedings who insult the witness or the injured party or threaten them or endanger their safety and make recommendations for improvements.

(iii) Both assignments were done together with the development of the methodological toolkit aimed at establishing a uniform methodological approach to sustainable, periodical monitoring of the situation in this area.

Taking into account the ongoing process of harmonizing legislation and practices in the Republic of Serbia with relevant EU standards, the findings of the abovementioned analyses produced within the project support are presented in this book in the context of the relevant strategic and legal framework and its ongoing

and planned reforms to help the readers to better understand the context in which this initial cycle of the monitoring has been done.

This book resulted from the author's wish to put together the main features of the current state of play, namely, the main achievements and the remaining challenges with regards to the access to justice, protection and support for crime victims in Serbia. This is done through presenting them against the relevant (mostly European) standards, and through the nine main topics/issues that determinate the overall position of crime victims, especially those particularly vulnerable. In addition to the findings, it also provides for a comprehensive set of recommendations for improvement. Finally, the full set of the research tools used to gather the findings is included in the book. Presented in a clear and systematic way, those findings and recommendations can be widely used, equally by researchers and practitioners interested in the topic, as well as by the policy makers that are currently in the middle of more than challenging reform processes. The fact that the book is published in the format of a bilingual monograph (in English and Serbian), and as such will be equally accessible to domestic and foreign readers, is a peculiar curiosity.

The moment of publishing this book matches the 10th anniversary of defining the Interim Benchmarks in Chapter 23 of the accession negotiations with the EU that deal with the access to justice for crime victims, but it also coincides in time with the process amending the Criminal Procedure Code and developing a new Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles, as important reform milestones. It could be therefore used as a starting point to closely monitor a reform progress in the upcoming years.

Finally, the author owes a debt of gratitude to the ADA/CLC project team led by Mr. Mario Thurner, Mr. Branislav Stojanović, Assistant Minister of Justice as well as Ms. Ivana Stevanović, PhD the director of the Institute, for their trust, the wholehearted support and fruitful cooperation.

In Belgrade, Milica Kolaković-Bojović, PhD

May 12, 2025

1. Introduction

As explained in the Preface, this book presents the consolidated findings of the initial monitoring of the position of particularly sensitive victims of crime, in relation to the application of procedural support and protection measures, aimed at preventing their re-traumatisation and secondary victimization during interrogation, as a prerequisite for ensuring access to justice.

Although the monitoring was focused on the position of particularly sensitive victims of crimes, the specifics of their position were shown by placing them in a more comprehensive context of support, protection and access to justice, whereby the legal regime and practices of dealing with particularly sensitive categories of victims were presented according to the principle of the need to establish additional, higher standards compared to the general regime, applicable to all victims of crimes. In this way, interested readers are given an insight into both regimes.

The monograph is structured into the five chapters, starting with the introductory remarks, followed by the contextualization of the monitoring, after which the methodological framework and monitoring findings are presented, followed by a list of recommendations for improving the current situation.

In accordance with the aforementioned systematics, in Chapter 2 of the book, the context of Serbian accession negotiations with the EU is clarified as the broadest framework for planning and implementing reforms aimed at harmonization with relevant international standards, and then also the reform directions defined by national public policy documents. In the same chapter, the key problems in terms of protection and support for victims, as well as access to justice, are summarized, including specific challenges related to the need to provide additional protection for particularly vulnerable categories of victims.

The third chapter is dedicated to the presentation of the methodological approach to the monitoring of the position of particularly vulnerable victims in the Republic of Serbia, where possible models are first presented, i.e. three different methodological approaches which, in accordance with the available time, financial

and human resources, can be used for periodic monitoring of the achieved progress, based on the findings of this initial monitoring cycle.

The fourth, the most extensive chapter, is dedicated to the analysis of the current situation in the subject area, whereby each of the nine subchapters that are based on nine key questions determining the position of victims of criminal acts, is structured in an identical way: to identify and preview the relevant international (primarily European standards in that area), the current state of the normative framework and proposed solutions for its changes; then, key problems in practice and finally, recommendations for improvement. Within each subchapter, the specifics of the position of particularly sensitive categories of victims, whose additional vulnerability is recognized under Directive 2012/029/EU, are highlighted.

Chapter Five contains a consolidated list of all recommendations. Their implementation would result in a significant progress in terms of protection, support and access to justice for victims of crime in Serbia, especially for those who are particularly vulnerable.

The monograph includes (in Annexes I-VI) a full set of methodological tools developed for monitoring purposes, such as questionnaires for victims and professionals who work with them, a list of questions for focus groups, but also a standardized structure of monitoring reports that should be used in subsequent monitoring cycles.

2. The policy and legal framework

2.1. Background: On the EU accession negotiations or how the reform frame was built

2.1.1. The process of screening and developing the Chapter 23 Action Plan

Republic of Serbia has opened the accession negotiations with EU in 2016. Anyway, the process of aligning its' legal and institutional framework with EU

acquis and the relevant international standards had started much earlier and became very intensive since 2013 after coming-in screening phase. The Screening of Serbian normative and institutional framework with relevant acquis within chapters 23 and 24 started in September 2013 with explanatory screening (presentation of the relevant acquis and EU standards to the Serbian institutions. This stage has served as starting point for assessment of an alignment level of the Serbian legislative and institutional framework with the acquis and EU standards, during the bilateral screening in December 2013. The screening process resulted in publishing the Screening Report[2] by the European Commission (hereinafter: EC) in 2014 which addresses issues related to the position of victims. Chapter 23 (hereinafter: Ch. 23) deals with the victims' issues through the organization of judiciary as well as through the protection of fundamental rights, the child rights and the prosecution of war crimes. Recommendations provided in the Screening Report obliged Serbian authorities to draft, (in inclusive and transparent process that assumes inclusion of all relevant stakeholders and CSOs) but also to adopt and implement the detailed action plan to serve as a "reform road map" and starting point for adoption and implementation of dedicated strategic documents in various fields relevant for treatment of victims in general as well as those coming from vulnerable groups.[3] The Action Plan for Chapter 23 (hereafter: AP Ch. 23) was adopted in July 2016 to address recommendations from the Screening Report.

2.1.2. Interim Benchmarks

The negotiations in Chapter 23 officially started in July 2016 by the adoption of the Common Negotiation Position for Chapter 23[4]. In addition presenting the breakdown of the reform processes achieved to the moment of its adoption, the Negotiation Position also sets out the comprehensive list of the so called Interim Benchmarks (hereinafter: IBMs), namely the targets to be achieved in order to prove the reform progress made, before issuing the Interim Benchmark

[2] Screening Report for Chapter 23, available at: https://enlargement.ec.europa.eu/screening-report-serbia-chapter-23-judiciary-and-fundamental-rights_en?prefLang=fi, last accessed on April 2nd 2025.

[3] See more in: Kolaković-Bojović, M. (2018). Child Victims in Serbia - Normative Framework, Reform Steps and EU Standards. In: Stevanović, I., *Pravda po meri deteta*. Belgrade: Institute of Criminological and Sociological Research, pp. 171-183. Available at: http://institutecsr.iksi.ac.rs/184/.

[4] Common Negotiation Position for Chapter 23, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/ch_23_eu_common_position.pdf, last accessed on April 2nd 2025.

Assessment Report (hereinafter: IBAR) which should define the list of closing benchmarks for the finalization of the accession negotiations in Ch. 23.[5]

In terms of the reform requirements relevant to the position of victims, the Negotiation Position has brought, among others, three very important IBMs:

"... Serbia amends its legislation (including the Criminal Procedure Code) so as to align it with the EU acquis on procedural rights and on victim's rights." (IBM no. 44) and

"Serbia steps up the respect of rights of the child, with particular attention for socially vulnerable children, children with disabilities and children as victims of crime... Serbia establishes a child friendly justice system, including through amending and implementing the Law on juveniles..." (IBM no. 42), and it also called Serbia to improve *its witness protection and victim support system and ensuring victims' rights and access to justice without discrimination* in the context of prosecution of war crimes. (IBM 18)

The process of fulfilling the requirements defined in such manner was governed by the AP Ch. 23 in the period until 2020 when this document was revised. The reporting on the reform achievements was also based on the (Revised) AP Ch. 23 and the monitoring mechanism established therein. However, in 2023 the EC decided to introduce a new reporting mechanism which should allow it to assess whether, and to what extent has Serbia already fulfilled the IBMs in Ch. 23, including those relevant to the position of victims. The Negotiation Group for Chapter 23 received by mid-2023 the EC request to introduce a reporting based on the assessment of the fulfilment of the requests under IBMs and based on such a request and using the templates developed by EC, the Negotiation Group prepared and submitted the Initial Self-assessment Report by the end of 2023. Upon analysis of the information received, the EC has responded to the Negotiation Group by mid-2024 providing it with a brief assessment as well as with a number of requests for each of IBMs. In addition to this the Negotiation Group submitted the updated Report by the end of 2024. The nature of the EC's requests varies to a great extent. Namely, while some of them refer to providing

[5] For more info. on the evolution of the methodology applicable to the accession negotiations in Ch. 23, see: Matić Bošković, M. and Kolaković-Bojović, M. (2022). *New Approach to the EU Enlargement Process - Whether COVID-19 Affected Chapter 23 Requirements?* International Scientific Conference "The recovery of the EU and strengthening the ability to respond to new challenges – legal and economic aspects" in Osijek, 9-10 June 2022allenges - Legal and Economic Aspects, 6. pp. 330-350.

additional information or improving the quality of the report provided, some refer to improving reform processes, taking additional steps (short/term or long/term) or ensure continuity of the reform processes already initiated/started. Paired with the fact that the APCh.23 has expired, this pluralism and the different nature of the requests have created a sort of challenging situation as for the Ministry of Justice (hereinafter: MoJ) as an institution in charge of coordinating the Ch. 23 reform processes as for the institutions in charge of the reform implementation in terms of the need to classify the requests received and to identify the reform priorities to be implemented in the upcoming period.[6]

2.1.3. The Growth Plan and the Reform Agenda

How highly rated this issue is in the Ch. 23 reform process, it is visible from the fact that is has been recognised also as one of the indicators in the Reform Agenda[7] adopted in October 2024, under the Growth Plan for the period of 2024 – 2027 (adopted on 8 November 2023), where the five Western Balkans governments committed to socio-economic and fundamentals reforms they will undertake to spur growth and convergence with the EU. Based on this the Commission proceeded with signing loan and facility agreements with the beneficiaries.[8] Within this new context the efficiency of the reforms is not anymore just a matter of the proper protection of the victims' rights, but also the precondition to have the implementation of those reforms financially supported by the European Commission. Namely, the Growth Plan is supported by an increase of financial assistance through the new Reform and Growth Facility which entered into force on 25

[6] See more in: Kolaković-Bojović, M., & Marković, M. (2025) EU Accession Negotiations of Serbia as a Framework for Improving the Position of Child Victims, *The International Scientific Conference "Contemporary challenges in the achievement and protection of human rights" Thematic Conference Proceedings*, University of Priština, Faculty of Law in Kosovska Mitrovica, Institute for Criminological and Sociological Research, Institute for Comparative Law, https://doi.org/10.63177/isc.2025.01.

[7] European Commission (2024) COMMISSION STAFF WORKING DOCUMENT, Serbia, Accompanying the document Commission Implementing Decision approving the Reform Agendas and the multiannual work programme under the Reform and Growth Facility for the Western Balkans Brussels, 23.10.2024 SWD(2024) 241 final, available at: https://enlargement.ec.europa.eu/document/download/43922ef8-fb98-4d49-b757-2c579bb17d70_en?filename=SWD_2024_241_1_EN_autre_document_travail_service_part1_v3.pdf, last accessed on April 3, 2025.

[8] The full text of the Agreement concluded with Serbia can be accessed here: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/14_saziv/337-2784_24.pdf, last accessed on April 3, 2025.

May 2024. The Facility will complement the current financial assistance under the Instrument for Pre-accession Assistance (IPA III).[9]

In the Reform Agenda for Serbia, it has been provided that "it will also contribute to the reform of juvenile justice and to the protection of procedural rights of suspects, accused persons and victims." (Reform Agenda, 2024: 10)

By the adoption of the detailed Reform Agenda, Serbia has committed itself, among others:

- To amend the Criminal Procedure Code as planned by the Reform Agenda and to address challenges identified during the implementation of the Code and introduce important provisions of the EU acquis into the national legal framework, such as... ensuring that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.
- To, based on the recommendations received from the European Commission and the work on amendments to the Criminal Code and the Criminal Procedure Code, draft and adopt a completely new Law on Juvenile Offenders and Criminal Protection of Juveniles, which will enable harmonisation with several laws that have been amended in the meantime, but also with international and EU standards, in order to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.
- To amend the Family Law which will include a ban on child marriage and more effective protection against domestic violence by introducing several new types of offences relating to children and persons with disabilities.
- To establish 20 services for supporting victims and witnesses of criminal offences in the Republic of Serbia, systematize support officers through a systematization act in each higher court, and make these services functional in 20 higher courts.[10]

[9] See more at: Commission approves Reform Agendas of Albania, Kosovo, Montenegro, North Macedonia and Serbia, paving way for payments under the Reform and Growth Facility, https://enlargement.ec.europa.eu/news/commission-approves-reform-agendas-albania-kosovo-montenegro-north-macedonia-and-serbia-paving-way-2024-10-23_en , last accessed on April 2025.

[10] Vlada Republike Srbije (2024) Instrument za reformu i rast za Zapadni Balkan: Reformska Agenda Republike Srbije, available at: https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/reformska_agenda_rs_2024_2027.pdf, last accessed on April 3, 2025.

2.2. The national strategic framework

In addition to the activities provided in the Action Plan for Chapter 23, the relevant measures for improving the position of victims are also governed by the national strategic documents.

To respond to the requirements from the Common Negotiation Position, the Ministry of Justice, with the support of the MDTF-JSS project, as well as the OSCE Mission to the Republic of Serbia, in the period 2016-2018. conducted a comprehensive analysis of the compliance of criminal legislation with Directive 2012/029/EU, as well as a comparative analysis of various models of the organization of victim support services in Europe.[11]

2.2.1. National Strategy for the Enforcement of the Rights of Victims and Witnesses of Crimes in the Republic of Serbia in 2020-2025 period

On the basis of these analyses, as well as the pilot project previously carried out by the OSCE Mission in the Republic of Serbia and the Public Prosecutor's Office of the Republic of Serbia, in June 2018 the work of the working group for the development of the National Strategy for the Improvement of the Position of Victims and Witnesses of Crime in the Republic of Serbia began. After two years of work and several rounds of the consultative process and public discussion, the Government of the Republic of Serbia adopted the National Strategy for the Enforcement of the Rights of Victims and Witnesses of Crimes in the Republic of Serbia in 2020-2025 period at the session held on July 30, 2020. with the accompanying Action Plan for the 2020-2022 period (hereinafter: Strategy for victims).[12]

When it comes to the key challenges recognized by the Strategy in this field, it was stated that the legal framework of the Republic of Serbia is harmonized to a

[11] On the challenges that preceded adoption of the Strategy see more in: Kolaković-Bojović, M. (2016) *Victims and Witnesses Support in the Context of the Accession Negotiations with EU.* In: Naučno-stručni skup sa međunarodnim učešćem "Evropske integracije: pravda, sloboda i bezbednost", zbornik radova: Tom 2. Kriminalističko-policijska akademija; Fondacija "Hans Zajdel", Beograd, pp. 355-366

[12] Improvement of the Position of Victims and Witnesses of Crime in the Republic of Serbia 2020–2025, Beograd, 2020, available at: https://www.mpravde.gov.rs/sr/tekst/30567/nacionalna-strategija-za-ostvarivanje-prava-zrtava-i-svedoka-krivicnih-dela-u-republici-srbiji-za-period-2020-2025-godine-19082020.php, pristupljeno 17. 08. 2022, str. 3.

significant extent with international standards on victims' rights, since, in the procedural capacity of the injured party, the victim in the legal order of the Republic of Serbia has for decades been entitled to a whole series of rights, recognized and codified by Directive (2012)029, but also that further, i.e. full harmonization, both criminal and judicial organizational legislation is still needed. It has been recognized also that the most challenging step (both, in terms of the budget and organization), but also the most beneficial one compared to the current situation, would be establishing the network of support services for victims and witnesses on the territory of the entire Republic of Serbia. The strategy stated that currently, the provision of assistance and support to victims and witnesses is mainly based on the activities of services established at certain courts and prosecutor's offices, as well as certain civil society organizations, legal clinics and social care centres. "There is no precise data on the number and structure of providers, as well as the assistance programs they offer, and it is known that their geographical distribution, as well as the variety of services they offer, are extremely uneven. There are no clearly defined criteria for the professional qualifications of providers, nor for the quality of the services they provide. Procedures for assessing needs, referring victims to the services, as well as the provision of support itself are not standardized. The training on victims' rights is not standardized or established as a segment of the initial and continuous training of judicial officers. Information about available types of support is not systematized, nor available within a single database."[13]

The National Strategy indicated that victims of crime who suffer from multiple vulnerability need special protection.

The overall goal of the Strategy is to improve the position of victims and witnesses in the criminal justice system of the Republic of Serbia in accordance with EU standards contained in Directive 2012/29/EU.

In order to achieve the general goal, three special objectives were set:

- Special objective 1: Establishing a sustainable National Network of support services for victims and witnesses of crimes in the Republic of Serbia, while

[13] Improvement of the Position of Victims and Witnesses of Crime in the Republic of Serbia 2020–2025, Beograd, p. 30. See also: Kolaković-Bojović, M. and Grujić, Z. (2020) *Crime Victims and the Right to Human Dignity - Challenges and Attitudes in Serbia*. In: Yearbook. No. 3, Human rights protection: the right to human dignity. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, str. 239-269.

preserving and continuously improving the achieved standards of quality and availability of support services.

- Special objective 2: Improving the availability, quality and efficiency of the implementation of measures for the protection of victims and witnesses of crimes in the Republic of Serbia, with special attention to the protection of particularly sensitive categories of victims and witnesses.

- Special objective 3: Raising the awareness of victims and witnesses of crime about their rights in the legal system of the Republic of Serbia, as well as continuous informing the general public on the subject topic.

The basic idea behind these activities is the adequate preparation of concrete solutions regarding the shortcomings in the penal legislation, identified by the working group that worked on the development of the Strategy and Action Plan. In this sense, the Action Plan envisaged amendments to the Criminal Code, the Code of Criminal Procedure, the Law on Special Measures for the Prevention of Criminal Offenses against Sexual Freedoms committed against Minors, the Law on Enforcement of Criminal Sanctions and the Law on Enforcement of Extra-Community Sanctions and Measures.

In terms of providing additional protection to the especially vulnerable victims, the most relevant planned amendments to the Criminal Code and the Criminal Procedure Code, would be as follows:

- alignment with the definition of victim from Directive 2012/29/EU.
- the right of victims to have a trusted person with them during the performance of evidentiary actions.
- prohibition of cross-examination and suggestive questions during the examination of particularly sensitive victims and witnesses.
- improving the rights of victims to submit relevant documents in criminal proceedings.
- improvement of victims' rights to legal remedies in criminal proceedings.
- scope, availability and procedure of using data from the questionnaire on the assessment of the individual needs of the victim during the criminal proceedings.
- a minor as a witness and the status of a particularly sensitive witness.
- the use of a video link.
- conditions for exclusion of public from the main trial.
- protection of data on particularly sensitive witnesses.
- use of language in criminal proceedings/the right to translation and interpretatio.

- jurisdiction and procedure for notifying the victim about the defendant's release from custody.

In addition to the aforementioned normative assumptions, the national strategy foresees a whole series of steps regarding the creation of institutional and professional prerequisites for providing adequate support to victims of criminal acts.

In 2022, the analysis was prepared, i.e. an assessment of the effects of the implementation of the Action Plan in the period 2020-2022, with the aim of providing the necessary inputs to the working group established by the Ministry of Justice, as an authorized proponent, for the purposes of drafting the Action Plan for the implementation of the Strategy in the period 2023-2025[14]. The Action Plan for the mentioned period was adopted in July 2023.

2.2.2. Other relevant national policy documents

In terms of protection, support and access to justice for victims of war crimes, the National Strategy for the Prosecution of War Crimes for the period from 2021 to 2026[15] was adopted. In addition to this, the Prevention and Protection Against Discrimination Strategy for the period from 2022 to 2030[16] is also important in this area, as well as Strategy for preventing and combating gender-based violence against women and domestic violence for the period 2021-2025[17], as well as the Program for the fight against human trafficking in the Republic of Serbia for the period 2024-2029[18].

[14] See more in: Kolaković-Bojović, M. (2017) *Žrtva krivičnog dela (Poglavlje 23 - norma i praksa u Republici Srbiji).* In: Reformski procesi i Poglavlje 23 (godinu dana posle) - krivičnopravni aspekti; LVII Savetovanje Srpskog udruženja za krivičnopravnu teoriju i praksu; Srpsko udruženje za krivičnopravnu teoriju i praksu; Intermex, Beograd, str. 140-150.

[15] National Strategy for Prosecution of War Crimes 2021-2026. period, "Official Gazette RS", no. 97/2021., available at: https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2021/97/1, last accessed on September 28. 2023.

[16] Prevention and Protection Against Discrimination Strategy 2022- 2030. godine, "Official Gazette RS", no. 12/2022.

[17] Strategy for preventing and combating gender-based violence against women and domestic violence 2021-2025 period, "Official Gazette RS", no. 47/2021.

[18] Program for the fight against human trafficking in the Republic of Serbia 2024–2029, "Official Gazette RS", no. 25/2024.

3. Methodological Approach

As previously mentioned, before the monitoring was conducted, the full set of monitoring tools (the Monitoring Toolkit) had been developed accompanied by the three different monitoring models/scenarios to be used depending on the available time and resources for conducting the monitoring.

3.1. Possible models

Based on the ICSR experience in carrying out similar assignment, the above-described tasks can be implemented in line with one of the following models:

Model 1: Trial monitoring

Implementation timeframe: 15-18 months

The composition of the project team: 6-8 researchers (5 trial monitors and 2-3 senior experts)

Description: This model assumes four step approach where the selection of cases is made to be analysed through the direct trial monitoring i.e. attendance of hearings during the 12 months period. The findings/notes made on each hearing are later used to fill the questionnaire. This process should be repeated for each case. These data were coupled with the additional qualitative research techniques such as interviews and focus groups with legal professionals (judges, prosecutors and lawyers) as well as with social workers and psychologists from victim support services and social care centres. Based on information collected in this way, the monitoring report is made reflecting the main aspects of practices used to protect vulnerable witnesses during their interviewing.

Model 2: Case files analysis

Implementation timeframe: 9-12 months

The composition of the project team: 5-6 researchers (1 research assistant, 2-3 case analysists and 2 senior experts)

Description: This model is based on the analysis of the case files selected based on precise criteria sampling and upon approval of the court presidents to get copies of the main documents from the case files that are later used to fill the questionnaire

for each case. These data were coupled with the additional qualitative research techniques such as interviews and focus groups with legal professionals (judges, prosecutors and lawyers) as well as with social workers and psychologists from victim support services and social care centres. Based on information collected in this way, the monitoring report is made reflecting the main aspects of practices used to protect vulnerable witnesses during their interviewing.

Model 3: Analysis based on the secondary sources

Implementation timeframe: 6-9 months

The composition of the project team: 3-4 researchers (1 research assistant, 1-2 analysists and 1 senior expert)

Description: This approach is based on the collection and analysis and synthesis of data available in various reports, analysis and cases studies already (and recently done) in the field accompanied with the additional qualitative research techniques such as interviews and focus groups with legal professionals (judges, prosecutors and lawyers) as well as with social workers and psychologists from victim support services and social care centres.

3.2. Factors that determine the methodological approach

The choice of the methodology has been determined with the following factors:

a) Implementation timeframe: According to the ADA Project implementation timeframe, this assignment had to be fully implemented within six months, which means that only 3rd model was feasible, since there was no time to attend hearings or to get copies of the case files for the analysis.

b) Budgetary constraints: Taking into account the total budget planned for the implementation of these tasks as well as the tax regime applicable to the project ICSR couldn't involve more than three members of the research team.

c) Weaknesses of the ICT/judicial case management system that prevents researchers from getting statistical information directly from the system instead of collecting them manually based on sampling of cases.

d) The amount of already available data: Taking into account the scope of the analysis and assessments recently done by ICSR in the field (in last five years)

there is a plenty of data already available in the ICSR databases that can be used to develop this study.

Taking into account all the above-mentioned factors, we opted for applying the Monitoring Model 3, while also developing the Monitoring Toolkits for other two models, to ensure that the proper and regular monitoring can be done in various circumstances regarding the four above-mentioned determinants.

3.3. Methodology used for developing this study

Implementation timeframe: This analysis was prepared in the period July 15-December 15, 2024.

The composition of the project team: The ICSR research team was composed of 3 researchers (1 research assistant, junior researcher/analyst and 1 senior expert/ Team Leader).

The scope of the work: The work on this Study was divided in several phases:

Phase 1: Preparatory activities

At this research stage the consultative meetings between ICSR, MoJ and ADA representatives took place to discuss the needs, the timeframe and feasibility of application of different monitoring models in given circumstances. In parallel, the ICSR research team was established and the timeframe defined.

Phase 2: Sampling and finetuning of methodological approach

Following the activities of the AP 2023-2025 as well as the relevant provisions of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (hereinafter: Directive 2012/029/EU).

Based on this, the focus of the Study was on the following categories of especially vulnerable victims:

- Child victims
- Women, victims of gender based and/or family violence
- Victims of trafficking in human beings
- Victims of war crimes

- Victims of hate crime[19]

The same approach was applied to the selection of the rights and/or protective measures to be analysed where the provisions of the Criminal Procedure Code (hereinafter: CPC) and the Directive 2012/029/EU[20] were used as a starting point, namely:

- The right of crime victims to take part/to be heard in the proceeding
- The status of an especially sensitive victims: Individual assessment
- The right to legal aid/legal representation
- Presence of a trusted person
- Limitation of a multiple interrogation
- Forbidden or inappropriate interrogation technics
- Disciplinary measures against intimidation and reprisals against sensitive victims
- Use of a video link
- The court infrastructure and the protection of sensitive victims
- Protection of the victim's privacy and media coverage of trials
- The compensation claims and the protection of victims

A very important issue was also to define the period covered by this analysis. In this regard, the starting point was actually the Chapter 23 context where the main target in the field is to fulfil interim benchmarks (hereinafter: IBMs) as soon as possible in order to receive the Interim Benchmark Assessment Report (IBAR) and the closing benchmarks. Considering this, the decision was made to focus on a period after receiving the IBMs, therefore from 2017, where, of course, quantitative data are mostly available closing with 2022/2023, but qualitative data

[19] It is important to mention that Directive 2012/02/029 also explicitly mentions victims of terrorism, which is clearly inspired by the serious terrorism acts across the world, including EU and proceeded adoption of the Directive. However, in Serbian context, it has no sense to focus on this category of victims since this crime rarely (almost never) appears in practice of Serbian authorities.

[20] Even the most important one as it set out the minimum standards in the subject one, this Directive is not the only one taken into account in this process, but also the other relevant EU legislation such as: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, but also a several Council of Europe and United Nations instruments relevant for the rights of the selected categories of victims.

also covers 2024. This is also closely connected to the sources of data used to develop this analysis.

Phase 3: Data collection

In this research phase the ICSR Research Team has identified and collected the numerous sources of relevant quantitative and qualitative data available through the documentary analysis, namely: monitoring reports, impact assessments, qualitative and quantitative studies, annual reports of the Supreme Prosecutor Office and the Supreme Court as well as of the Republic Statistical Office, scientific papers, articles, books, thematic monographs, newspaper articles, social media posts and discussions.[21]

While selecting these sources, it is very important to take into account the credibility of sources as well as the quality of the methodology used to produce them in order to avoid transfer of potential mistakes, incorrect data or wrong data interpretations.

The most important source of data was monitoring reports prepared by ICSR, ASTRA, HLC, etc. in the previous years, having in mind that they have been produced through the analyses of a few thousand of case files and/or decisions in the criminal proceedings involving especially vulnerable categories of victims.[22]

! A very important source of information for this initial study was document prepared by the Working group for developing amendments to CPC which presents the detailed overview of the amendments and supplements to the CPC, having in mind that the position of especially sensitive witnesses in criminal proceedings depends primarily on the CPC provisions and secondarily of the manner in which they are being applied by the police, prosecutors, judges and lawyers.

It is expected that the next cycle of the monitoring shed some light on the possible challenges regarding implementation of the newly adopted provisions of CPC in practice, but also that the third and each upcoming monitoring cycle after the second one, will pay a much more attention to the implementation practices and the challenges associated with them.

[21] For full list of sources see Annex 1.
[22] See more at: http://institutecsr.iksi.ac.rs/; https://astra.rs/en/astras-publications/ and http://www.hlc-rdc.org/?cat=268.

In addition to the analysis of the secondary sources at, this stage, the ICSR Research Team has developed and distributed a specialised questionnaire for Bar Association of Serbia (hereinafter: BAS) in order to collect data on the actions taken by BAS in cases when the court order disciplinary measures against the lawyers whose behaviour and acts affect a dignity of the court, procedural discipline or safety and/or peace and integrity of victims/witnesses.

Phase 4: Data analysis, data crossing and identification of the issues to be further explored through the qualitative analysis.

This phase included crossing and analysis of data and information available in the collected sources. This resulted in the identification of the most burning issues to be in depth explored using qualitative methods.

Phase 5: Qualitative analysis using interviews and a focus group with legal professionals (judges, prosecutors and lawyers representing especially sensitive victims) as well as with social workers and psychologists from victim support services. The discussion was held in early November 2024 with support of OSCE Mission to Serbia. At this stage the case studies were also developed for the selected cases.

Phase 6: Developing the draft Study and Presentation of the initial findings.

Phase 7: Developing the final Study.

3.4. The content and the structure of this report

The data collected using the previously presented methodology are presented in the Chapter 4 of the Book based on the main elements/issues that determines the position of the especially sensitive victims in the procedural status/function of witnesses in the criminal proceedings before Serbian courts and the overall preconditions for their access to justice.

Therefore, the Report is organised based on the following issues/topics:

1) The right to take part/to be heard in the proceeding
2) The status of an especially sensitive victim: Individual assessment
3) The right to legal aid/legal representation
4) Presence of a psychologist and/or a trusted person

5) Multiple interrogation
6) Forbidden or inappropriate interrogation technics and application of disciplinary measures to protect victims as witnesses from such practices
7) Protection of victims' privacy and media coverage of trials
8) Use of a video link, the court infrastructure and the protection of sensitive victims
9) Compensation claims and the protection of sensitive victims

For each of those issues the findings were presented from the following points of view:

i. The relevant international standards[23]
ii. Currently applicable legislation, the gaps therein and ongoing legislative amendments
iii. The present challenges in practice
iv. Recommendations for improvement

Also, each issue was reflected through the lens of the specific needs and challenges of various especially vulnerable categories of victims, namely:

- Child victims
- Women, victims of gender based and/or family violence
- Victims of trafficking in human beings
- Victims of war crimes
- Victims of hate crime

Rec. 1 Continuously use the standardized structure of the monitoring report to allow Serbian authorities to closely follow the developments and challenges occurred in each segment covered by the monitoring between to reporting cycles, and to develop correctional measures accordingly.

[23] It is important to mention that in presentation of the relevant international standards the main focus was on applicable EU directives and/or CoE instruments having in mind the limited size and the purpose of this document.

4. The findings

4.1. The right to take part/to be heard in the proceeding

Access to this essential victims' right in criminal proceedings is directly preconditioned by the role assigned to victims in the national legal system. Accordingly, this also applies to the right to actively participate and to be heard in criminal proceedings in the capacity of the victim as a witness.

With this in mind, it is important to mention that Serbian criminal legislation has a long tradition of granting crime victims a wide spectre of rights, including the right to be heard through the interviewing of witnesses in criminal proceedings.

A very important point in this regard is a way of defining the notion of a victim in the Criminal Procedure Code (hereinafter: CPC) to ensure that indirect victims are not left behind.

4.1.1. The relevant international standards

Directive 2012/029/EU in par. 20 recognizes a diversity of roles that a victim can have in the criminal proceeding in various national legal systems, underlining that this position is "determined by one or more of the following criteria: whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings. Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system."

When it comes to the definition of a victim/determination who can be considered as a crime victim, Directive 2012/029/EU in art. 2 provides that, "victim" means:

(i) Natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence.

(ii) Family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

(a) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependent on the victim.
(b) 'child' means aby person below 18 years of age.

Pursuant art. 10 of the Directive 2012/029/EU, victims right to be heard means that:

Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

In addition to the right to be heard in the criminal proceeding, the right to participate in criminal proceeding is granted through the set of rights provided in arts. 4-11 of the Directive, namely, through the right to receive information from the first contact with a competent authority, to be informed on the status of his/her case /complain, the right to interpretation and translation, the right to access victim support services and the rights in the event of a decision not to prosecute.

4.1.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

As mentioned before, one of the priorities in the context of implementation of the Strategy and accompanying Action Plan as well as in terms of fulfilling IBM 44 is to fully align provisions of CPC with the relevant standards in the field of procedural guarantees. In order to ensure this, the working group established by MoJ has developed comprehensive amendments to CPC in mid-2024. The amendments have been subject to public debate. The public debate was still

ongoing at the moment of conducting monitoring and the amendments haven't been adopted at time of drafting this book.

These amendments, among others, tackled the definition of victim traditionally provided in article 2 of CPC as a definition of "injured party", but also significantly broadened the scope of victim's rights, including the right to be heard and the mechanisms to protect especially vulnerable victims in the context of exercising this right in criminal proceedings.

Before amendments, art. 2 of CPC in par. 11) defined "injured party" is a person who's personal or property rights have been violated or threatened by a criminal act.

According to art. 2 of draft amendments to CPC "injured party" shall be a person whose personal or property right has been violated or jeopardised by a criminal offence; as well as the spouse of the person whose death occurred due to the criminal offence, the person with whom the injured party lived in common-law marriage or any other permanent personal association, children, parents, adopted child, adopted parent, brother, sister and the legal representative of such a person.

The proposed amendments are a significant step forward in terms of aligning the definition of victim in CPC with article 2 of the Directive 2012/029/EU. Namely, a new definition given in CPC itself is fully aligned with article 2 of the Directive (2012)029. The only difference still appears to be the notion "injured party" used instead of "victim" which is associated with the Serbian legal tradition where the notion of victim is narrower than the notion of injured party and traditionally used to mark just a person who directly suffered a harm from a crime.

Therefore, this new definition of victim guarantees that all the rights[24] are assigned to all persons recognized by the Directive 2012/029/EU just a term "injured party" is used instead of "victim".

[24] When it comes to the rights assigned to victims/injured party, according to art. 50 of the draft amended CPC, the injured party shall be entitled to: 1) Translator or interpreter in accordance with provisions of this Code; 2) free and confidential access to assistance and support services; 3) submit a motion and evidence for realizing a restitution claim and a motion for interim measures for securing; 4) present facts and propose evidence of importance for proving the subject of assessing evidence; 5) engage a proxy from the ranks of attorneys; 6) be notified about the type and manner of receiving medical, psychological and other technical assistance, support and protection in accordance with the law; 7) at personal request, to be accompanied by a person of trust when undertaking actions in which he/she participates, except where this jeopardises the interests of the proceedings; 8) examine the files and objects serving as evidence; 9) be advised about the dismissal of the criminal report or the fact that the public prosecutor is dismissing criminal prosecution; 10) be advised about the possibility of assuming criminal prosecution and representing the prosecution; 11) file a complaint against the decision by the public prosecutor not to undertake or to dismiss criminal prosecution, except in the

4.1.3. The present challenges in practice

The above-mentioned amendments have a huge practical value through the narrowing the discretion of the authorities in assessing whether someone could be considered as a victim and assigned with other rights, including the right to be heard in criminal proceedings.

It is expected that this will prevent in future the situations identified in some fields of monitoring, e.g. when it comes to the cases of women, victims of gender based and/or family violence, the recent monitoring results showed that some of the family members of women victims of murder were not granted with all the necessary rights (e.g. their children were not granted the status of injured person in the criminal procedure differently from their parents; family members were not provided with legal aid/representation, so they were forced to pay legal aid on its own, etc.[25])

4.1.4. Recommendations for improvement

Rec. 2 Judges and prosecutors, as well as the lawyers who act in the capacity of legal representative/proxy of victims need to be provided with the adequate training to better understand the newly adopted concept of a victim in Serbian criminal procedure especially in the context of protecting their rights that have been recently incorporated in CPC.

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case from Art. 283, paragraph 3, and Art. 284a of this Code; 12) be notified about the stage of the proceedings, actions and measures taken with respect to the criminal report that he/she has filed, or the motion for criminal prosecution, except if this would harm the interests of the proceedings; 13) be notified without delay, at personal request, about termination of detention or the escape of the defendant from detention, and measures undertaken for his/her protection, if so necessary; 14) attend the main hearing and participate in presentation of evidence; 15) be heard as witness without unnecessary delays, the minimum number of times and only if this is necessary for conducting the proceedings; 16) be notified about the outcome of the proceedings and be served the final judgement, unless he/she expressly in writing states that he/she is weaving this right. The waiver does not refer to information which must be provided to the injured party to ensure active participation in the criminal proceedings; 17) file an appeal against the decision on the costs of the criminal proceedings and the adjudicated property-legal claim; 18) free legal aid in accordance with the law; 19) to undertake other actions when provided so by this Code or another law. The injured party may be denied the right to examine the case file and objects until he/she is questioned as a witness. The authority of the proceedings shall also inform the injured party of the rights referred to in in paragraph 1 of this Art. in written form.

[25] Ignjatović, T., & Macanović, V. (2018) *Unapređeno zakonodavstvo – neuspešna zaštita: nezavisni izveštaj o primeni Konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja prema ženama i nasilja u* porodici. Autonomni ženski centar, Beograd.

4.2. Victims and the status of especially sensitive witnesses in criminal proceedings

Once the CPC guarantees the status of a victim to the properly comprehensive list of persons affected by the crime, the next step to ensure proper treatment of especially vulnerable victims is to assign them with the status of especially sensitive witness followed by a list of protective measures aimed at preventing/reducing their further traumatization, stigmatization and secondary victimization.

The step which precedes assignment of these protective measures is to assess, in each individual case, the risks and needs of the victim.

4.2.1. The relevant international standards

The obligation of conducting timely individual assessment of a victim before making decision on the concrete protective measures its status related to particular vulnerability has been incorporated in the main EU legislation in the field, including Directive 2011/036/EU (art. 12) and Directive 2012/029/EU (par. 58 and art. 22)[26] which brings a list of criteria to be taken into account when conducting an individual assessment:[27]

a) the personal characteristics of the victim,
b) the type or nature of the crime, and
c) the circumstances of the crime.

[26] 58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.

[27] Art. 22, paras. 3-4: In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them especially vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

Child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures, child victims shall be subject to an individual assessment.

The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Art. 23 of the same Directive also provides for the obligation to take measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence. The requirement is also included in Art. 12 of Directive 2011/036.

4.2.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

The Criminal Procedure Code provides for a two-layer protection of victims who appears as witnesses in criminal proceedings. While the first layer of protection is granted to all victims/injured parties in the capacity of witnesses from insult, threats and any other attack and provides for a possibility of a warn and the fines to those who are breaching these rules (art. 102 of CPC)[28], the second layer of protection is

[28] In addition to this, upon receipt of the notice from the police or the court or at its own knowledge of the existence of violence or serious threats to the injured party or witness the public prosecutor will

reserved for especially sensitive witnesses (art.103 of CPC) which has been subject to amendments and supplements of the CPC.

According to this draft amended provision of CPC, "for the witness who is, due to his/her age, life experience, life style, sex, personal characteristics, health status, the type and nature of the criminal offence and the circumstances under which the criminal offence was committed, the consequences of the committed criminal offence, or other circumstances an especially sensitive witness, the public prosecutor or the court may issue a justified ruling at the request of the parties, the witness himself/herself, or ex officio granting the status of an especially sensitive witness."

Prior to granting the status of an especially sensitive witness, the authority conducting the proceedings may acquire the opinion of the service for assistance and support or an expert person, which is basically individual assessment of a victim. This is the main novelty brought by those amendments that may address the present challenges.

In addition to this, the same provision provides for the right to appeal the ruling on awarding this status to the witness.

However, there are at least three concerns that may be raised in connection to the proposed novelties:

! From the given provision it is not clear whether the legislator refers to the victim support service as a generic term or this individual assessment must be done only by the victim support services established within the higher courts; or either within those victims support services, or victim support services established within NGOs, but joined to the National Network of Victim Support Services. This question is of the particular importance having in mind that the notion of victim support service is not defined in the art. 2 of CPC. Even more, the full clarity of this provision is important in this transitional period when the process of establishing the victim support services within the higher courts is still

take criminal prosecution or inform the competent public prosecutor. The Public Prosecutor or Court may require the police to take measures to protect the injured party or witness in accordance with the law.

ongoing and the joining of the victim support services within NGOs to the National Network hasn't started yet.

! Similar concerns exists when it comes to the notion of "expert person" who can also does an individual assessment. Namely, neither this term is defined in the art. 2 of CPC, but it has been used several times by the legislator, mostly to describe the status of various non-legal professionals who are taking part in the criminal proceeding to support application of special investigation techniques such as audio and video surveillance or DNA sampling. However, this notion hasn't been used by legislator as specific, but rather generic notion while describing interviewing techniques for sensitive witnesses when the CPC says: "by psychologist, social worker or other expert person". Therefore, it is not clear why the legislator didn't decide to repeat the same syntagma hear, since it is obvious that the court psychologist (where he/she exists in the court) will be the first address for the court to get the results of the individual assessment, while the second address will be the competent social care centre. Basically, the main concern here is that the lack of clarity can mean that the judges will hesitate to request such an assessment before taking the decision on the status.

! It is not clear why the decision on awarding the status of especially vulnerable witness should be subject to the appeal since it does not affect the status of accused in any way. It exclusively deals with providing additional protection to the vulnerable categories of witnesses.

In addition to art. 103 of CPC which deals directly with awarding the status of especially sensitive witness, art. 150-154 of the Law on Juveniles should be considered. Namely, arts. 150-151 of this law introduces the mandatory specialisation of judges, prosecutors and police officers in cases concerning minor

victims of the serious crimes listed in this provision,[29] while art. 152 limits the number of interrogations of such a victim to, not more than two.[30]

If, in view of specific characteristics of the offence and personal characteristics of the minor, the court finds it necessary, the judge shall order that the minor is questioned with the use of technical devices transmitting image and sound and the questioning is conducted without presence of parties and other participants in the proceedings, in the room in which the witness is situated, so that the parties and other entitled persons, may ask questions through the judge, psychologist, pedagogue, social worker or other professional. If a minor is questioned as a witness, who, due to the nature of the crime, consequences or other circumstances, is especially vulnerable, or that is, is in especially difficult psychological state, in contrast to solutions prescribed by CPC, it is forbidden to conduct the confrontation between such witness and the defendant (Article 153), but there is still the question of assessing these circumstances. An underage person as a victim must have a lawyer from the first questioning of the defendant.[31]

! The decision on assigning a victim the status of especially sensitive witness is the main precondition for the application of the full range of protective measures. However, an absence of such a decision does not mean that a victim should not be protected and treated respectfully during the questioning, in a manner that preserve his/her dignity and

[29] Aggravated murder (Article 114); Guidance of suicide and assisting in suicide (Article 119); Serious bodily injury (Article 121); Abduction (Article 134); Rape (Article 178); Sexual intercourse with the helpless person (Article 179); Sexual intercourse with a child (Article 180); Sexual intercourse by abuse of position (Article 181); Unauthorized sexual actions (Article 182); Submission of and enabling the exercise of the sexual intercourse (Article 183); Mediation in the prostitution (Article 184); Displaying pornographic material and exploitation of children for pornography (Article 185); An extramarital community with a minor (Article 190); Confiscation of a minor (Article 191); Changing the family situation (Article 192); Neglect and abuse of a minor (Article 193); Domestic violence (Article 194); Non-providing support (Article 195); Incest (Article 197); Robber theft (Article 205); Robbery (Article 206); Extortion (Article 214); Enabling the enjoyment of narcotics (Article 247); War crimes against civilian population (Article 372); Human trafficking (Article 388); Trafficking in children for adoption (Article 389); Slavery and transport of persons in the slavery status (Article 390).

[30] The questioning may be conducted two times at most and exceptionally more times if it is necessary for achieving the purpose of criminal proceedings. Inconsistent implementation of these provisions in practice leads to situations in which minors are questioned several times.

[31] ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: https://drive.google.com/file/d/1l6aCZGbtc2VDg3V1hcJbtuQ40lARmufE/view.

privacy and prevents traumatisation, stigmatisation and secondary victimisation.

! Even more, if carefully analyse arts. 150-154 of the Law on Juveniles, especially from the perspective of the mandatory specialization/training of the professionals who participate in the proceedings, as well as with respect to the various protective measures to be applied (such as limited number of testimonies, remote interviews, careful dealing with a juvenile during the interview) there is a legitimate question: Whether we should consider those provisions as an implicit way to grant the status of the especially sensitive witness to those minors without applying art. 103 of CPC?

Finally, at the time of drafting this report, the Ministry of Interior (hereinafter: MOI) established the intersectoral working group in charge of developing a draft Law on the suppression of human trafficking and protecting victims of trafficking. Of the ideas circulating around during the initial meetings of the working group was to use this law as a *lex specialis* tool to grant *ex lege* status of the especially vulnerable witnesses to the victims of human trafficking. However, since there is no, at least initial draft law publicly available yet, those ideas should not be further elaborated or discussed in this analysis. Anyway, it is of great importance to include the provisions of the future law on the scope of the analysis under the future monitoring cycles.

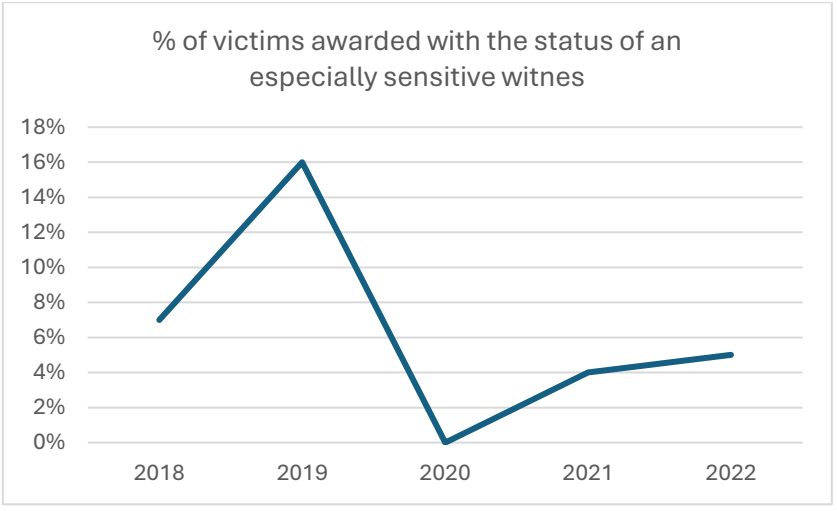
4.2.3. The present challenges in practice

The current state of play of the applicable legislation, namely, the wide discretionary powers of the court to (not) award the status of the especially sensitive witness without grounding such a decision on the individual needs assessment, as well as the lack of human resources (victim support services and court psychologists) resulted in the law share of victims belonging to the groups of especial vulnerability who have been awarded this status.

E.g. the findings of the monitoring of the position of juvenile victims in criminal proceedings in Serbia in 2020[32] showed that in only in three of 58 cases (out of 70 victims)[33] the victim/injured party was awarded the status of a particularly sensitive witness, of which in two cases by a decision of the public prosecutor. In these cases, the status was granted to victims of trafficking (one injured party) and intercourse with a child (two injured parties).

Even if such a low share can be explained through the indirect awarding of the status through the application of arts. 150-154 of the Law on Juveniles, it would be extremely difficult to find an explanation for the statistics on the share of the victims of human trafficking who had been awarded this status in previous years.

Chart 1: Victims of human trafficking awarded the status of especially sensitive witnesses[34]



[32] See more in: Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

[33] Rape in Article 178, Paras 3 and 4; Sexual Intercourse with a Helpless Person in Article 179, Paras 2 and 3; Sexual Intercourse with a Child in Article 180; Sexual Intercourse through Abuse of Position in Article 181; Pimping and Procuring in Article 183; Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3; Coercion into Marriage in Article 187a; Cohabiting with a Minor in Article 190; Neglecting and Abusing a Minor in Article 193, Para 2; Trafficking in human beings Article 388 and Trafficking of minors for the purpose of false adoption Article 389.

[34] This chart was developed based on the statistical data presented in the annual reports on the position of victims of human trafficking. See more at: https://astra.rs/en/astras-publications/, last accessed on October 31st, 2024.

Namely, between 0% and 16% gave their testimonies in this status, where the issue of additional concern is frequency of the multiple vulnerability among them- e.g. approx. 30% of victims of trafficking in human beings are minors.[35] Therefore, the majority of the human trafficking victims meet one or more requirements provided by law for this status (age, way of life, gender, health status, nature, manner, or consequences of the crime, and other circumstances of the case).

4.2.4. Recommendations for improvement

Rec. 3	Adopt the proposed amendments to arts. 103 including possibility to define more precisely competent authorities in charge of conducting individual assessment of victims to precede the court decision on awarding the status of especially sensitive witness, and to exclude the right of accused to appeal the decision of awarding the status of especially vulnerable witness.
Rec. 4	Ensure prompt finalisation of establishing the victim support services within all higher courts.
Rec. 5	Ensure joining and financing victim support services established within NGOs to the National Victims Support Network.
Rec. 6	Increase number of psychologists employed by higher courts.

[35] ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2021. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: https://drive.google.com/file/d/1hb79RIhUuWAyaOve929J1SeOgRVjBYsJ/view.

4.3. Legal aid

Whilst the defendant's right to legal aid/the right to lawyer seems to be the issue of high clarity as in the law as in terms of its implementation, the situation is bit different when it comes to the victims' right to legal aid/proxy. Particularisation of the relevant legal framework, coupled with the lack of accessible information for victims on the available mechanisms of free legal aid as well as legal limitations in terms of the categories of victims awarded with this right makes it hardly accessible for many vulnerable victims. This puts victims non-accompanied by proxy in the challenging situation, including, but not limited to giving their testimonies.

4.3.1. The relevant international standards

The above-described importance of ensuring that especially sensitive victims are provided with legal aid is widely recognised by the main universal and regional human rights instruments, including Directive 2012/029 which stipulates that Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law (art. 13).

In addition to this minimal standard applicable to all victims that have a status of party in the proceeding, the similar guarantees are included in the legal instruments that protect a various categories of especially vulnerable victims, including art. 20 of Directive 2011/093 which provides for obligation to ensure access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

4.3.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

We have already elaborated in the previous section, art. 103 provides for the conditions to be fulfilled for a victim to get the status of an especially sensitive witness. However, this status itself does not guarantee *per se* access to free legal aid/proxy. Namely, the same provision set out additional conditions to be fulfilled by victim and assessed by the prosecutor or the court, so the CPC uses the syntagma "should it deem necessary for the purpose of protecting the interests of an

especially vulnerable witness", the authority conducting proceedings shall issue a ruling appointing a proxy for the witness, and the public prosecutor or the president of the court shall appoint a proxy according to the order on the roster of attorneys submitted to the court by the bar association competent for designating *ex officio* defence counsels (Article 76 of CPC).

Therefore, this provision governs the right to proxy for especially sensitive witnesses. However, as we previously explained, most victims are giving their testimonies out of this status, therefore, they are directed either to the mechanism of the Law on Juveniles (if underaged) or to the mechanism set out in the Law on Free Legal Aid.

The Law on Juvenile Offenders and Criminal Protection of Juveniles, provides that a juvenile as an injured party must have a lawyer from the first hearing of the accused and, in case that the juvenile does not have the lawyer, the president of the court shall appoint one from the list of lawyers who have acquired specialized knowledge in the area of the rights of the child and criminal protection of minors, whereby the costs of such representation shall be paid from the court's budget (Article 154).

The Law on Free Legal Aid recognizes as possible users a very narrow list of crime victims (victims of domestic violence, victims of trafficking, and victims of torture, inhuman or degrading treatment) (Art. 4) and defines modalities of the free legal aid: providing legal advice, drafting legal submissions, representation and defence (Art. 6). The same Law defines also the list of the free legal aid providers: lawyers and free legal aid services in the local self-government units, CSOs are entitled to provide free legal aid only in line with the legislation on asylum and antidiscrimination and they are doing so in the full legal aid capacity exclusively in cooperation with lawyers. However, some forms of legal aid by CSOs and legal aid services in local self-government units can be provided by graduated lawyers, in line with the procedural legislation. CSOs can also provide legal support through the provision of general legal information and filing the forms.

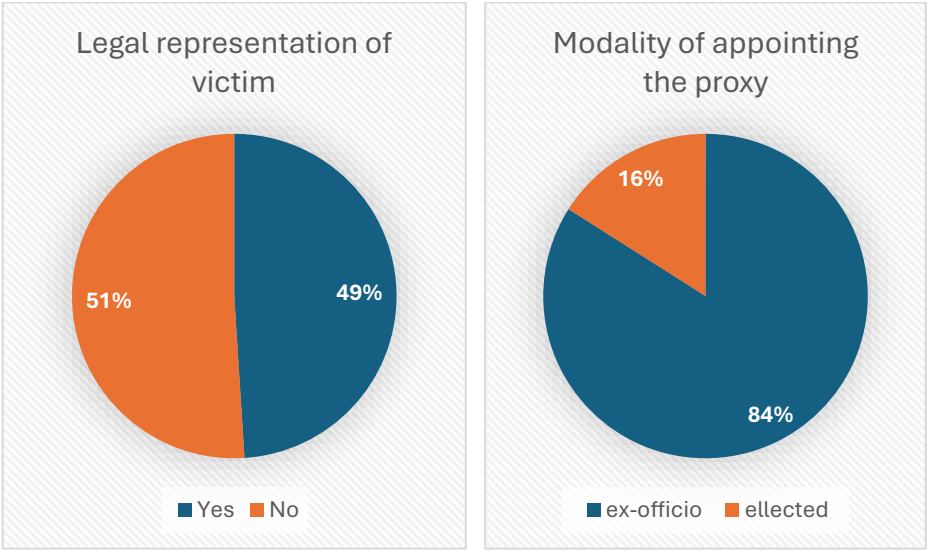
! The ongoing amendment to the CPC introduces a direct reference to the Law on Free Legal Aid in its art. 50. Although looking promising this provision does not bring anything new for victims in terms of exercising this right since it has been fully governed by the Law on Free Legal Aid with all above-described limitations.

4.3.3. The present challenges in practice

The practical repercussions of the above/described weaknesses of the presently applicable legal framework are easily visible from the results of the recently conducted monitoring for some of the categories of vulnerable victims.

E.g. the findings of the monitoring of the position of juvenile victims[36] in criminal proceedings in Serbia in 2020[37] showed that out of 70 victims, almost an equal number of minor victims had a proxy in the procedure.

Chart 2: Victims accompanied by proxy



Within the total number of juvenile victims who had a proxy, 16% of them were represented by an elected attorney, while 84% of them were represented by a proxy

[36] Victims of the following offenses were subject to monitoring: Rape in Article 178, Paras 3 and 4; Sexual Intercourse with a Helpless Person in Article 179, Paras 2 and 3; Sexual Intercourse with a Child in Article 180; Sexual Intercourse through Abuse of Position in Article 181; Pimping and Procuring in Article 183; Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3; Coercion into Marriage in Article 187a; Cohabiting with a Minor in Article 190; Neglecting and Abusing a Minor in Article 193, Para 2; Trafficking in human beings Article 388 and Trafficking of minors for the purpose of false adoption Article 389.

[37] See more in: Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

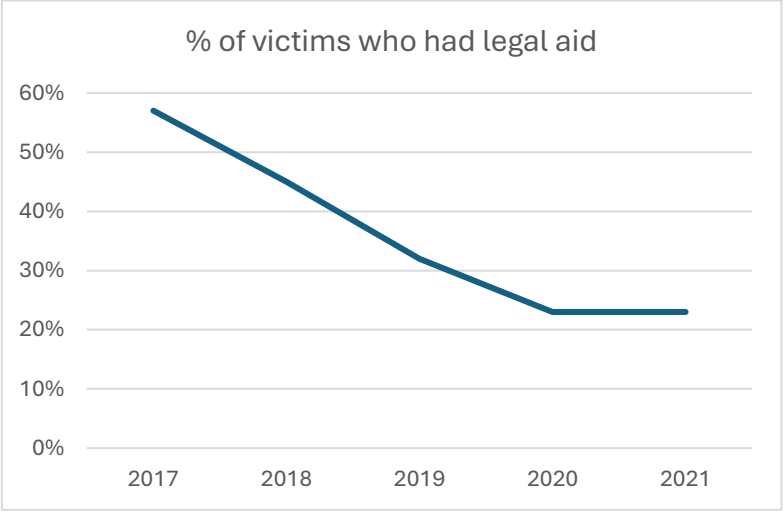
appointed ex officio. Those findings are worrying taking into account the obligation arising from art. 154 of CPC.

The main reason for this could be found in the crime structure concerned where over 50% of proceedings were conducted for the crime of Cohabiting with a Minor under Article 190 of the Criminal Code, followed by the most common crime of Neglecting and abusing of a minor under Article 193 of the Criminal Code, with 25% share.

Having in mind the previously mentioned structure of criminal offenses represented in the observed sample, it is important to note that in a large number of cases (48%) the main trial was not held. In cases in which the main trial was not held, a hearing for the imposition of a criminal sanction or a hearing under a plea agreement was held.

Similarly, the trends arising from the results of the annual monitoring of the position of human trafficking victims shows dramatical decline of share of those who had a legal aid (from 57% in 2017 to 23% in 2021).

Chart 3: Victims who had legal aid



Obviously, such data are in the close connection with the same trend in terms of awarding the human rights trafficking victims with the status of especially sensitive witnesses. As we previously mentioned, approx. 30% of victims of human trafficking fulfilling at least one condition to be granted this status. At the same time

art. 103 of CPC provides that the authority of the proceedings may, should they consider it necessary to protect the interests of a particularly vulnerable witness, decide to appoint an attorney to the witness (Article 103, Paragraph 3 of the CPC). This trend also seems to be associated to the lack of accessible data on the conditions and the procedures set out in the Law on Free Legal Aid.

! Namely, there is a not so good practice to develop and implement awareness raising campaigns only in the periods immediately after adoption such important new legislation. However, there is an obvious need not to stop working on the promotion of such mechanisms even at the later stages. It is not realistic that (especially) vulnerable victims can find out on and efficiently use the Register of the free legal aid providers, with a high clarity on from whom and what they can get, especially in term of the differentiation between legal aid and legal support.

The second reason for such a situation is related to the abovementioned limitations for CSOs in terms of providing a legal aid in the full capacity only in cooperation or through the services of lawyers.

Namely, in some findings of monitoring the proceedings for the crime of femicide, it was concluded that all organizations continuously provide free legal aid and support, although funding is not always provided for these services. This type of support is based on cooperation with lawyers, who have their terms when they come to the headquarters of the organization and meet with women who need support. Some of those organisations have signed agreements with lawyers who work *pro bono*. Therefore, if the woman they represent in court lose the case, they remain without a fee.

Organizations usually have certain terms and conditions under which legal assistance and support are provided, as it is based on cooperation with people who do it *pro bono*, but there are organizations that manage to provide funds to pay lawyers. Finally, there are also cases where CSOs have lawyers working full-time for them.[38]

[38] Petrušić, N., Žunić, N., & Vilić, V. (2019) *Društveni i institucionalni odgovor na femicid u Srbiji II.* Udruženje građanki FemPlatz, Pančevo, p. 81.

- ! The limitations in terms of the CSOs competences set out in the Law on Free Legal Aid coupled with the abovementioned pluralism of the existing modalities of cooperation between CSOs and lawyers brings a lack of clarity for victims regarding what they can expect and/or get through this
- ! The above-described practices vary to the great extent depending on the type of victims in focus of those CSOs but also based on unequal geographical distribution of CSOs that provide free legal aid to victims, where is still extremely challenging for victims in rural areas to get information on the available services, but also to access them.
- ! Instability of financing of such services that are frequently based on the project support rather than on the Law on Free Legal Aid contributes to this instability in terms of the available services.

Finally, the issue of the quality of the provided support is of the great importance. Namely, most of the lawyers are not familiar with the challenges arising from the work with and for especially vulnerable victims.

- ! A lack of adequate skills on a side of lawyers has a double effect: on one side, it prevents/demotivate lawyers to accept those cases, but on other side, it affects the quality of provided legal aid by those lawyers who are not skilled enough. Sometimes, the consequences of such representation before the court can be even harmful and result in re-traumatisation of victims.

4.3.4. Recommendations for improvement

- **Rec. 7** Amend the Law on Free Legal Aid in order to broaden its scope in terms of ensuring access to free legal aid for (especially vulnerable) victims.
- **Rec. 8** Increase accessibility of information on the available free legal aid solutions for victims.
- **Rec. 9** Develop sustainable training programs for lawyers to ensure they recognise the specific needs of especially vulnerable victims.

4.4. Presence of psychologist and/or a trusted person

Empowerment of victims to take part in the proceeding and to give his/her testimony can be done in a various way. However, presence of a psychologist, other specialist or just a trusted person can significantly contribute victims' resilience.

Even under very frightening circumstances and without proper identity protection, the victim can come out of the trial stronger and empowered if she had someone by her side during the trial, who supported her, and if the judge and the prosecutor treated her well.[39]

However, the court and/or prosecutor should always assess potential conflict of interests between victim and present person, especially when it comes to child victims. In addition to the presence of a professional (mostly from the victim support service) it is of the vital importance for the especially vulnerable victims to be questioned *via* especially trained professionals.

4.4.1. The relevant international standards

Considering the abovementioned importance of such a possibility, the victims' right to be accompanied by a person of his/her choice has been incorporated in the corpus of basic rights prescribed by the Directive 2012/029/EU. Namely, Victims' Directive provides that unless contrary to the interests of the victim or unless the course of proceedings is prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

In addition to this, let's call it basic right, Article 23 of the Directive also recognizes the obligation of the State to ensure that interviews with the victim being carried out by or through professionals trained for that purpose in cases when a victim belongs to the group of especially sensitive victims.

The same concept is contained in the Directive 2011/036/EU which provides that child victim may be accompanied by a representative or, where appropriate, an

[39] Lindgren, M., & Nikolić-Ristanović, V. (2011) *Žrtve kriminaliteta: međunarodni kontekst i situacija u Srbiji*. Organizacija za evropsku bezbednost i saradnju, Misija u Srbiji, Beograd, p. 126.

adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

Similarly, Directive 2011/093 concerning child victims of sexual abuse provides in art. 20 that the states should ensure that the child victim may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person. It also recognizes the need to conduct questioning via professional.

4.4.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

The relevant legislative framework on this issue consists of the provisions of the CPC and the Law on Juveniles. Namely, the ongoing amendments to the CPC provide for two very important novelties contained in the amended art. 50 (points 2 and 7). While point 7 directly provides for the victim's right to "at personal request, to be accompanied by a person of trust when undertaking actions in which he/she participates, except where this jeopardises the interests of the proceedings", point 2 guarantees "free and confidential access to assistance and support services". These amendments can be assessed as an important step forward towards better protection of sensitive witnesses during their testimony. However, there are still a several concerns regarding this provision.

Namely, point 2 does not provide directly for the presence of the professionals from the victim support services accompanying a victim in a hearing, but if we read these two provisions together, it becomes obvious that the professionals from the point 2 are included in the point 7.

Also, it very important to make distinction between this right and the right from the art. 104 of the CPC which provides that "an especially sensitive witness can be asked questions only through the authorities (judge), who will treat him with special care, trying to avoid possible harmful consequences of the criminal procedure for the personality, physical and mental state of the witness. The examination can be carried out with the help of a psychologist, social worker or other expert, which is decided by the competent authority." Even both solutions aimed at protection and strengthening of a witness, the role of those professionals. Namely, the role of a person recognised in the article 50 (points 2 and 7) is more passive, they are present

just to accompany/support/strengthen a victim/witness. Differently, a professional from article 104 is invited to take part in the proceedings actively, and to transmit in professional and protective manner the questions of the parties. Similarly, according to the Law on Juveniles, minor victims shall be questioned with assistance of a psychologist, pedagogue or other professional (Article 152).

Furthermore, a special attention should be paid to the syntagma "except where this jeopardises the interests of the proceedings" which appears to be a bit vague since it does not refer to interests of a victim but of the proceedings. It is clear that the legislator wanted to cover a wider scope of potential risks. However, without incorporating a specific reference to the conflict of interests between presence of a certain person and a victim it seems that there is a bit too wide discretion space for the court while making this assessment.

! It is of the paramount importance to ensure that the presence of a person chosen by a victim actually strengthen him/her and there is no conflict of their interest which can further hurts a victim. In practice, this should be especially taken into account while dealing with child victims, since there is a widespread practice of allowing parents to be present during the questioning which prevents a child victim of open and honest testimony since he/she hesitates to speak freely in the presence of parent either due to the some kind of involvement/contribution of a parent to what happened, either for being ashamed for what happened to him/her even in a full absence of the parent's contribution.

4.4.3. The present challenges in practice

Findings of the recently done monitoring and analyses show that the previously raised issues concerning normative framework are also of the great importance in terms of the implementation in practice.

E.g. monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020 showed that in 47% of cases, the injured party had professional support at the main trial, in 70% of cases it was the support of psychologists and in 10% of cases the support of a social worker from the Social Care Centres (SCC). In only one case, the injured party was escorted by the victim support service.

In 71.5% of cases at the main trial, the injured party had the support of family members, mostly parents, with equal representation of mothers and fathers as support. In only two cases, the victim's mother and brother had to be removed from the courtroom as they were to be examined as witnesses.[40]

To what extent is important the role of the psychologist during the questioning of the especially vulnerable witnesses could be easily concluded from the following case study:

Case study 1:[41]

Minor A.B. (17 years old) simultaneously appears as an injured party in three separate cases before the juvenile court.

She also appears as an injured party in a prosecutor's investigation against a 64-year-old individual for the criminal offenses of human trafficking and procuring a minor.

In one juvenile case, proceedings are underway against two juvenile girls for human trafficking and procuring.

In two independent cases (handled by different judges), proceedings have been initiated against two minors for rape. These two juvenile girls have previously been involved in other criminal proceedings and have been assigned to judges who are already handling their cases.

The presiding judge in the case involving the two juvenile girls has already included a court psychologist in the preparatory process. By agreement, the court psychologist contacted the parents by phone and offered them the opportunity to come to court for a discussion prior to the hearing, at their convenience and if they wish, to prepare for giving their testimony. The parents readily accepted.

During the conversation, the parents provided information about other cases in which the juvenile girl had been called to testify.

[40] Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

[41] The case study was prepared in cooperation with the Belgrade Higher Court Psychologist Ms. Ljubinka Marković and presented in: Stevanović, I., & Marković, Lj. (2024) *The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next.* In: International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024. Institute of Criminological and Sociological Research, Belgrade, pp. 165-182.

The girl is undergoing treatment at the Counselling Centre for Victims of Human Trafficking (CCVHT).

An interview was also held with CCVHT, which highlighted the girl's vulnerability, and the high risk associated with testifying in all four criminal proceedings.

An examination of all three "juvenile" cases and communication with the competent Social Welfare Centre revealed that there will be highly likely negative consequences if the girl is questioned in all these cases.

The girl is the first of two children. Her parents are very caring and concerned. Due to her reduced mental abilities, the parents have been overly protective. The family environment is favourable. The minor A.B., as a child with special needs, attended a special elementary school for developmentally challenged children. With the introduction of inclusive education, she enrolled in a vocational beauty school.

She was drawn into the chain of prostitution by two school friends (against whom proceedings are being conducted). For several months, her family did not recognize the problem because most of the problematic activities occurred during school hours (from which the minor was absent). Her going out and socializing even pleased her parents, who thought she had finally found friends.

The first signs of trouble emerged when the girl ran away from home for a few days and then had to undergo a gynecological examination and treatment due to a sexually transmitted disease. During that visit, she informed the doctor and her parents that she had been having sexual intercourse with various, mostly unknown men for several months, all of whom were acquainted with her (minor) friends. She often had intercourse with multiple men simultaneously (in an abandoned shack near the school). It hurt, and she didn't like it, but her friends convinced her that she was "grown up now and that's how it should be." They frightened her, saying that if she told her parents, she would no longer be allowed to attend regular school. These friends organized these "gatherings," and she didn't know if or how much money they took from these men.

During her escape from home, she stayed at the house of the 64-year-old man. She had visited him even before, as these "friends" of hers lived there.

Other juvenile judges and the senior public prosecutor leading the investigation against the 64-year-old man were contacted. He had already ordered the expert examination of the girl. Only after the experts' findings are obtained, he plans to appoint a legal representative and make statements.

The court psychologist prepared notes for all four cases and provided notice that it was essential for the girl, as a particularly vulnerable witness, to be interviewed with professional guidance, i.e. the interview should be conducted with the assistance of the Unit for Child Protection in criminal proceedings (which was active at that time)

Despite the written and oral notifications (and warnings), one of the juvenile judges, who was the first to call the minor victim, questioned the girl about all criminal offenses in four proceedings.

The girl was questioned in the presence of her father and a psychiatric expert, without a legal representative. Her statement was confusing, lacking clear details, with no distinction among events; she didn't remember most of the incidents or described them in an identical manner.

Not only was the girl subjected to secondary victimization, but it is evident that the obtained statement is of questionable validity.

This statement, obtained in this way, did not carry the weight of substantiated evidence. The criminal proceedings against the accused man, juvenile girls and the juvenile boy were suspended due to lack of evidence.

Losing the status of a human trafficking victim, the girl was left without the possibility of treatment at the CCVHT counselling centre.

The court psychologist attempted to contact the girl's parents, but they refused to respond.

The girl's father answered one call. He said that everyone felt very bad. The girl is almost under house arrest. She's afraid to go out. She has withdrawn into herself. Mostly, she sleeps and watches TV. She cries frequently. She doesn't attend school. She will take her grade exam to avoid meeting other students. They don't want to seek other protection, and the girl doesn't want to go through everything again. He added that their younger daughter, who is 15 years old, has also withdrawn into herself. She's ashamed and afraid to leave the house. She's struggling in school... He thanked her and requested that no one from the court or prosecutor's office call them anymore, as it greatly upsets them.

This case study shows that even when a court psychologist is involved in the preparation of the testimony and the questioning itself, ignorance on a side of the court can destroy all the progress made to encourage, empower and support a victim for giving a full and accurate testimony.

This is particularly important for juvenile victims who are still not being evidenced in any kind of centralised register. "Although the Court Rules of Procedure[42] provide for a Register of Injured Parties and Witnesses, intended for the Service for Assistance and Support to Injured Parties and Witnesses, this register is not practically implemented (except in the Special Department for War Crimes and the Special Department for Organized Crime and Corruption at the Higher Court in Belgrade). This situation arises from a justified fear that within the system, data about victims could be compromised, as well as the fact that the Services are still not adequately structured. The register itself is meant to be internal, accessible only to representatives of the Service through a password.

Prosecutors' offices also lack a formally designated register of victims/witnesses who are injured parties. Consequently, it is nearly impossible to gain insight into the total number of victims, including juvenile victims, in criminal proceedings and to plan the organization of their protection at the level of the criminal justice system. While records based on the type of criminal offenses can reveal cases where the victim's youth is a qualifying factor or an aggravating circumstance, they do not provide information on the actual number of victims.

The lack of proper records is not only significant for analysis and planning. In some cases, the lack of records further complicates the position of juvenile victims. For instance, in cases involving the criminal offense of producing, acquiring, or possessing pornographic material and exploiting a minor for pornography, multiple suspects are prosecuted, which are sometimes not discovered and prosecuted at the same time, and the same juvenile victim may be interviewed in multiple cases. This situation also occurs in other types of cases, where proceedings are organized based on the defendants."[43]

! A lack of communication and cooperation between the prosecutors, judges and the professionals in charge of accompanying/supporting victims and witnesses in the court proceedings, paired with the lack of victim-centred statistics in judiciary necessary to follow a potential appearance of the same victims in more than one court proceeding

[42] Although the Court Rules of Procedure ("Official Gazette RS", No. 110/09, 70/11, 19/12, 89/13, 96/15, 104/15, 113/15, corr., 39/16, 56/16, 56/16, 77/16, 16/18, 78/18, 43/2019, 93/2019 and 18/22).
[43] Stevanović, I. and Marković, Lj. (2024) *The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next.* In: International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024. Institute of Criminological and Sociological Research, Belgrade, pp. 165-182.

and/or in more than one procedural function can significantly influence the outcome of the proceedings in terms of the quantity and the quality of evidence, but also in terms of the harmful consequences for especially vulnerable victims/witnesses.

There is no doubt that one of the main reasons for not having more encouraging data is closely connected with a very limited number of professionals for psycho-social support employed in Serbian judicial system. E.g. only three of them in higher courts (Belgrade, Novi Sad and Novi Pazar) and also a limited number in the existing victim support services that operate within the judicial system. E.g. in the Service for Information and Support for Victims and Witnesses of the War Crime Prosecutor Office, a certain number of assistant prosecutors, counsellors and public prosecutors, as well as a psychologist, are assigned from among the staff.[44]

Similarly, there is the need to strengthen the capacities of the Service for Assistance and Support to Injured Parties and Witnesses at Belgrade's High Court which provides support/accompanies both- victims of war crimes and organized crimes. The service includes two types of measures - logistical assistance in the Organization of the Road and Emotional Support before, during and immediately after the trial.

Certain professional capacities are also available in the Centre for protection of victims of human trafficking.[45]

Finally, a large number of NGOs working in Serbia are specialized in providing assistance and support for women victims of gender-based violence and domestic violence. A large number of women victims of violence received advice, assistance and emotional support before, in progress and after the end of the procedure. The issue of the presence of NGO representatives is not regulated by the CPC.[46]

[44] 6th Report on implementation of the National Strategy for the Prosecution of War Crimes in 2021-2026 period, available at: https://mpravde.gov.rs/sr/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php, last accessed on December 14th 2024.
[45] See more at: https://centarzztlj.rs/tim-centra/, last accessed on December 14th, 2024.
[46] Serbia report submitted in accordance with Art. 68, paragraph 1 of the Council of Europe Convention on Prevention and Fighting Violence against Women and Domestic Violence, 2018, pp. 81-82.

Therefore, it is difficult to systematically analyse their involvement in the proceedings.

A very important factor that has also shaped the situation in practice in this regard in the previous period was the situation arising from the circumstances associated with the COVID-19 pandemic. A state of emergency was declared in the Republic of Serbia on 15 March 2020 and was lifted on 6 May 2020. The trials were mostly postponed. "After the state of emergency was lifted, trials were conducted with special protective measures applied in accordance with the regulations on special measures and the extraordinary situation caused by the COVID-19 epidemic. However, hearings were repeatedly postponed in that period also, because witnesses failed to appear before the court."[47]

The Humanitarian Law Centre monitoring showed that this situation largely affected victims, particularly those from the region, due to epidemic-related issues (e.g. increased risk of a possible infection with negative consequences in view of poor individual health, or that of household members, or due to their current health condition presenting COVID-19–like symptoms) or the required isolation measures on returning from Serbia. Trials would also be postponed because some of the defendants and their defence counsel claimed having COVID-19-like symptoms or being under mandatory isolation measures. This epidemiological situation has also had a particularly adverse effect on the attendance of victims' family members at war crimes trials. After the state of emergency had been lifted, the number of persons in the public gallery was limited for security reasons, even though many members of victims' families, among whom many elderly and with health issues, had themselves abandoned the idea of travelling, for health reasons. Following the exacerbation of the epidemiological situation in November 2020, war crimes trials were barred to the public. A special court permit was required to follow them either in the courtroom or the press room.[48]

[47] Humanitarian Law Center (HLC) (2021) *War crimes trials in Serbia during 2020*, p. 10, available at: https://hlc-rdc.org/wp-content/uploads/2021/05/Report_on_War_Crimes_Trials_in_Serbia_during_2020.pdf, last accessed on December 14th 2024.
[48] Ibidem.

4.4.4. Recommendations for improvement

Rec. 10	Adopt the proposed amendments to art. 50 of CPC to establish a legal basis for the presence of a trusted person and improve the proposed wording of the draft amendments to CPC concerning the potential conflict of interest between a victim and a trusted person.
Rec. 11	Improve coordination mechanisms within judiciary to better utilize the work done by court psychologists in order to avoid multiple interrogation and questioning of vulnerable victims without proper preparation and/or support of psychologist.
Rec. 12	Regularly conduct an assessment weather there is a conflict of interests regarding the presence of a "trusted person" during the questioning of victims, especially in cases concerning the child victims.
Rec. 13	Continuously work on the development of the National Network of Victim Support Services to ensure adequate professional resources in accompanying victims and witnesses where needed.
Rec. 14	Continuously work on the development of the victim- cantered data bases and statistics in the judiciary to ensure better coordination in cases when the same victim appears in more than one court proceeding and/or in more than one procedural capacity.

4.5. Multiple interrogation

4.5.1. The relevant international standards

The most relevant EU legislation in the field of the rights of crime victims recognizes the need to limit the number of interviews with the especially vulnerable victims. In that regard, Article 20(b) of the Directive 2012/012/EU provides that, without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation.

Similarly, Art. 12, par. 4(a) of Directive 2011/036/EU stipulates that Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, among others, unnecessary repetition of interviews during investigation, prosecution or trial.

Directive 2011/093/EU, Article 20(e) underlines that the number of interviews is as limited as possible, and interviews are carried out only where strictly necessary for the purpose of criminal investigations and proceedings.

4.5.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

When it comes to the currently applicable legislative framework in Serbia, the Criminal Procedure Code does not provide for the limitation (even an instructive one) in terms of the number of interviews/questioning of victims. However, Article 50, point 15 of the draft amendments to the CPC be heard as witness without unnecessary delays, the minimum number of times and only if this is necessary for conducting the proceedings. Therefore, the legislator decided to follow the previously mentioned principle contained in the main EU legislation.

In parallel, it is important to mention that this principle has been incorporated in Serbian legislation since 2005 when the Law on Juveniles has been adopted. Article 152 of this law provides that if a minor who is a victim of crime referred to

in Article 150 of this Law[49] is questioned, the questioning may be conducted two times at most and exceptionally more times if it is necessary for achieving the purpose of criminal proceedings. However, an inconsistent implementation of these provisions in practice leads to situations in which minors are questioned several times.

4.5.3. The present challenges in practice

The monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020[50] showed that 34% of juvenile victims were questioned more than once during the criminal proceeding. Among the respondents, 75% of them were interviewed twice, 8% three times, while 17% of juvenile victims were questioned four or more times.

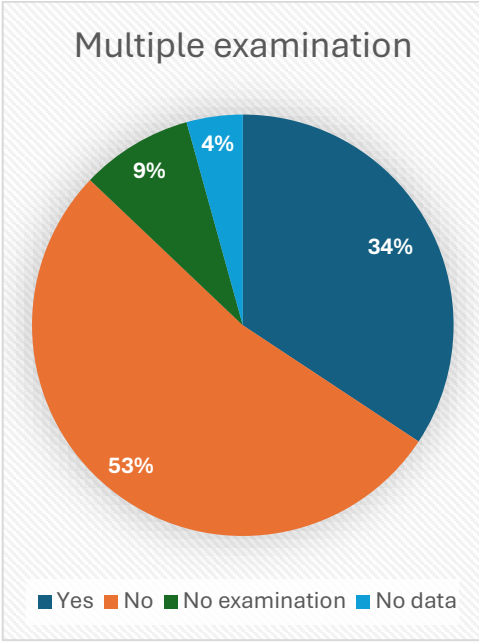
! In addition to the re-traumatisation and the secondary victimisation associated with the multiple interviewing, this practice also affects to great extent the quality of the testimony, and through it, the quality of evidence and possibility of clarifying the circumstances of a crime. This risk is mostly visible through the changes in the victim's statements.

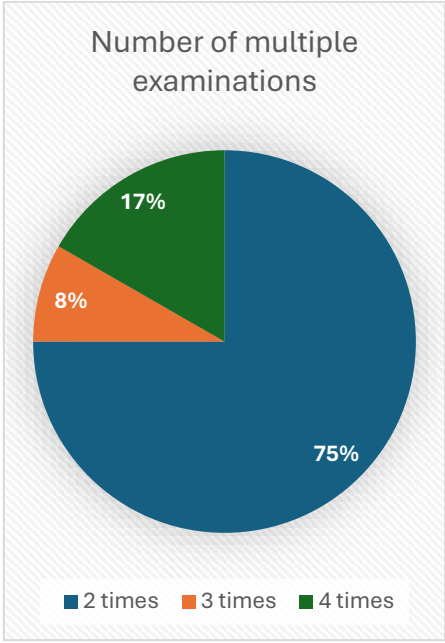
What is especially worrying is that the victims of the most serious crimes of sexual violence were interrogated most times (three or four times) and that they most often repeated their statements to the police inspector, SCC professionals, public prosecutor and then at the main trial.

[49] Victim of the one or more of the following crimes: Aggravated murder (Article 114); Guidance of suicide and assisting in suicide (Article 119); Serious bodily injury (Article 121); Abduction (Article 134); Rape (Article 178); Sexual intercourse with the helpless person (Article 179); Sexual intercourse with a child (Article 180); Sexual intercourse by abuse of position (Article 181); Unauthorized sexual actions (Article 182); Submission of and enabling the exercise of the sexual intercourse (Article 183); Mediation in the prostitution (Article 184); Displaying pornographic material and exploitation of children for pornography (Article 185); An extramarital community with a minor (Article 190); Confiscation of a minor (Article 191); Changing the family situation (Article 192); Neglect and abuse of a minor (Article 193); Domestic violence (Article 194); Non-providing support (Article 195); Incest (Article 197); Robber theft (Article 205); Robbery (Article 206); Extortion (Article 214); Enabling the enjoyment of narcotics (Article 247); War crimes against civilian population (Article 372); Human trafficking (Article 388); Trafficking in children for adoption (Article 389); Slavery and transport of persons in the slavery status (Article 390).

[50] Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

Chart 4: Multiple examination of victims





The results of the same monitoring show that 12.5% of the victims changed their statement during the re-examination, and it is interesting that in no case were they the above-mentioned victims of serious crimes of sexual violence, but as a rule among victims damaged by the crime from Article 190 of the Criminal Code. This further speaks in favour of the futility and harmfulness of multiple interrogations of juvenile victims.

Unfortunately, courts frequently disregard the real reasons for changing the statement, such as fear of intimidation and or revenge, but also the time lapse. This practice could be clearly seen from the case studies presented below developed under the continuous monitoring of cases of human trafficking before Serbian courts.[51]

Case study 2: *Based on the forensic examination of an underage victim (14), the court established that the victim feared for his life and the lives of his closed*

[51] See more in: ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: https://drive.google.com/file/d/1l6aCZGbtc2VDg3V1hcJbtuQ40lARmufE/view, pp. 17-18.

ones and that his fear was of very strong intensity – 8 on the scale to 10. During the questioning at the main hearing, which was conducted in the presence of the defendant, the minor victim changed his statement and withdrew charges against the defendants. In the justification of the first instance judgment, the court only stated that the changed statement was not accepted as truthful because it established the fact that the victim was scared of the defendants. The justification reads as follows: "There is no doubt that the victim, out of fear for himself and his family, being scared of the defendant, in his presence at the main hearing, fully changed his previously made statement, denying everything he had said in the investigation; hence, the court did not accept such a changed statement". Therefore, the minor victim was not granted the status of especially vulnerable witness and was questioned in the presence of the accused.

Case study 3: *A minor victim was questioned two times in the course of investigation and two times at the main hearing (including the hearing in repeated trial). She changed her statement several times not to charge the defendant. Evaluating her statements, in the justification of the first-instance judgment, the court stated that it accepted her first statement and not the others because they were given in fear of the defendant "as she was the victim of his physical and psychological abuse". The minor victim underwent several expert examinations but, in spite of experts' findings, she was not granted the status of especially vulnerable witness. Although a psychologist, a pedagogue or any other professional was not present during her first questioning, as requested under Article 152 of the Law on Juvenile Offenders and Criminal Protection of Juveniles, the court stated that the questioning was done in the presence of a lawyer who had a certificate for participating in the proceedings in which minors appear as injured parties and that, after the statement was made, a psychological examination of the victim was conducted in which a court forensic expert established that she had been capable of testifying at the time of making the statement. The court found that such acting did not constitute the violation of the rules of the proceedings, as the pedagogue, the psychologist or other professionals should have contributed to the avoiding of harmful consequences on personality and development of the minor and in the current case, neither did the psychologist nor the psychiatrist observe any harmful consequences on the victim (although the examination was done after her questioning). These reasons were fully accepted by the court of second instance.*

4.5.4. Recommendations for improvement

Rec. 15	Adopt the proposed amendments to art. 50 of CPC to establish a legal basis to limit a number of interviews with a victim.
Rec. 16	Pay more attention on assessment the real reasons behind changing the testimony by a victim and involve professional support in these cases.

4.6. Forbidden or inappropriate interrogation techniques and application of the disciplinary measures to protect victims as witnesses from such practices

4.6.1. The relevant international standards

Article 18 of the Directive 2012/029/EU provides that without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimization, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures should also include procedures established under national law for the physical protection of victims and their family members.

4.6.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

The legal regime which governs the manner in which especially sensitive witnesses should be interviewed, as well as the legal consequences of breaching those rules are provided, in parallel, in CPC and in the Law on Juveniles.

As previously described, the Criminal Procedure Code provides for a two-layer protection of victims who appear as witnesses in criminal proceedings. While the first layer of protection is granted to all victims/injured parties in the capacity of witnesses from insult, threats and any other attack and provides for a possibility of a warn and the fines to those who are breaching these rules (art. 102 of CPC),[52] the second layer of protection is reserved for especially sensitive witnesses (arts.103-104 of CPC) which has been subject to amendments and supplements of the CPC. Namely, while the art. 103 of CPC deals with granting the status of especially

[52] In addition to this, upon receipt of the notice from the police or the court or at its own knowledge of the existence of violence or serious threats to the injured party or witness the public prosecutor will take criminal prosecution or inform the competent public prosecutor. The Public Prosecutor or Court may require the police to take measures to protect the injured party or witness in accordance with the law.

vulnerable witness (see section 3.2) art. 104 deals with the manner in which such witnesses should be interviewed.

After being widely criticised in the previous period, this provision is now affected by the ongoing legislative (CPC) amendments.[53] By these amendments, prohibition of cross examination the missing element in Article 104 has been added since the original provision has already contained other elements prescribed by citied provisions of Directive (2012)029 and Directive (2011)036. Namely, in addition to the prohibition of the confrontation to the defendant, possibility to conduct remote interview (testimony in other premisses and/or via video link), a particularly sensitive witness can be asked questions only through the authority (judge), who will treat him/her with special care, trying to avoid possible harmful consequences of the criminal procedure for the personality, physical and mental state of the witness. The questioning can be carried out with the assistance of a psychologist, social worker or other expert, which is decided by the authority of the procedure.

In addition to this, Serbian legislator should consider incorporating in its legislation (not necessarily in CPC) prohibition of questioning concerning the victim's private life. It is hard to incorporate this in CPC as this is part of judicial assessment of whether certain questions are relevant in the case and should be allowed. Therefore, this could be rather part of some guidelines for questioning sensitive witnesses and of course, part of the training for judges, prosecutors and attorneys.

The provisions of the Law on Juveniles provide for the mandatory specialization of all professionals dealing with juvenile victims (Art. 151) also envisage only a possibility and not an obligation to hear minor victims with the use of technical devices transmitting image and sound and the hearing without the presence of parties and other participants in the proceedings. The authorities in charge of the proceedings for the offences committed against juvenile are obliged to treat the victims taking care of their age, personality, education and living circumstances, especially trying to avoid possible harmful consequences of the proceedings on their personality and development; minor victims shall be questioned with assistance of a psychologist, pedagogue or other professional (Article 152).

[53] The proposed amendments provides for the following: "Article 50: In Article 104, after paragraph 4, a new paragraph 5 shall be added which shall read: „When cross examining an especially sensitive witness or a witness who is a minor during the main hearing, its hall be forbidden to ask leading questions or questions based on the assumption that the witness has stated something which he has not stated." The previous paragraph 5 shall become paragraph 6."

If the juvenile witness, due to the nature of the crime, consequence or other circumstances, is particularly sensitive, i.e. there is in particular severe mental, is forbidden to perform a confrontation between him and the defendant. (Article 153) Therefore, the confrontation is not absolutely forbidden. Paired with the currently applicable legal framework which does not allow to consider all juveniles as particularly sensitive witnesses, this means that a confrontation with the accused is still possible.

In addition to this set of provisions that rule the manner in which interviewing the particularly sensitive witnesses, arts. 370-374 of CPC are also relevant for ensuring a proper conduct of the participants in the proceeding which allows, not only undisturbed hearings, but also an unharmful environment for interviewing sensitive witnesses.

Namely, differently from the art. 102 which allows the court to impose a fine as a consequence of disrespectful treatment of a witness, art. 370 of CPC governs the situations of disruption of order in the main hearings. "If the accused, defence counsel, injured party, legal representative, attorney, witness, expert, expert advisor, translator, interpreter or other person attending the main hearing disrupts order by disobeying the orders of the president of the panel to maintain order or insults the dignity of the court, the president of the panel shall warn, and if the person continues to violate the order, he will be fined up to RSD 150,000." The same provisions also addresses the case of violation of order by the public prosecutor or the person replacing him, when the president of the panel will inform the competent public prosecutor and the State Council of Prosecutors,[54] or interrupt the main hearing and ask the competent public prosecutor to designate another person to represent the indictment in the continuation of the main trial, with the obligation to inform the court about the measures taken. (art. 370, par. 3 of CPC).

The panel will exclude a defence attorney or attorney who continues to violate order after the sentencing (art. 372, par. 1 of CPC). The panel will issue a warning to the defence counsel, injured party, legal representative, attorney, injured party as plaintiff or private prosecutor who undertakes actions clearly aimed at delaying the proceedings. (art. 374, par. 1 of CPC).

[54] An ongoing CPC amendment will also cover changing the names of the competent authorities in line with the new judicial legislation. Therefore, the State Prosecutorial Council will be the High Prosecutorial Council.

The president of the chamber will inform the competent bar association about the penalty/measure imposed to the lawyer for violating order, with the obligation to inform the court about the measures taken. (art. 370 and 374, par. 3 of CPC). This two-fold obligation is of the great importance in terms of achieving a long-term effect in terms of respecting procedural discipline by lawyers.[55]

From the point of achieving the short-term goal (punishing lawyers for non-ethical conduct), but also the long-term effect through the prevention of such conduct, it is not clear why the legislator has decided not to introduce in the art. 102 of CPC the obligation of the court to inform the competent bar chamber on the fine imposed to the lawyer due to the inappropriate acts against a sensitive witness referred in par. 1 of that provision, as well as the obligation of the competent bar chambre to inform back the court on the measures taken against that lawyer upon receiving the notification from the court.

4.6.3. The present challenges in practice

If we try to explore the causes of the present challenges in practice, but also the present challenges themselves, we should take into account the framework of the currently applicable legislation, but also the level of awareness of the professionals involved in the process as well as their skills in interviewing particularly sensitive witnesses. In addition to this, we should take into account the current situation in terms of the application of the disciplinary measures in cases of breaching the rules that govern interviewing these categories of witnesses.

When it comes to the challenges associated with the knowledge and skills of the professionals involved in process, we should take into account a several factors:

a) The knowledge and skills they get in the university.
b) The knowledge and skills they get through the initial and the continuous training in the Judicial Academy.
c) The influence of (non)existence and (non)involvement of the court psychologies in the courts.

a) Some reasons for inadequate treatment of especially sensitive witnesses could also be found in the educational background of judges and prosecutors. The

[55] On the enforcement and the effects of those provisions, see more in Section 3.6.3.

sensibilisation of the professionals should start from the early beginning of their legal education, namely through the classes of the criminal procedural law, the criminalistics and victimology. Therefore, the curricula and books for those courses, as well as the sensibilisation of the law professors on those subjects play an important role in future sensibilisation of legal professionals. Namely, the Criminalistics as the main subject in the law faculties which addresses the methodology of interrogation of different categories of victims and/or witnesses is not mandatory for all law students in different departments. In addition to this, the content of books used by students for decades to study for this exam included some disputable or even harmful, discriminatory or misogynic chapters/paras. E.g. while elaborating on the characteristics of female witnesses the book the authors explained that women are emotional while men are rational; their perceptions are based on the emotions, they are suggestible, less capable for criminal law reasoning, led by passions. Women witnesses were also described as almost "professional layers"! Namely, the book says that "when they decide to give a false statement, they do so skilfully, boldly, and sometimes recklessly."[56] Therefore, the generations of law students were raised to work with such a prejudice.

The situation has been improved to some extent in last few years, so the previously elaborated statements in the same book are now given in the modified form, explaining that in criminal theory, women also stand out as a special category of witnesses, with certain "characteristics that are considered to have special importance, such as increased emotionality, suggestibility, etc., wherein "the psychological structure of women is influenced by menstruation, pregnancy, childbirth, breastfeeding and menopause." The author also concludes that it seems that there are no essential reasons to classify women *a priory* as a special category of witnesses, as in the most of cases it is not possible to make some essential and solid differences in general meaning, and especially non-absolute characteristics, between psychological characteristics according to the criterion of sex. However, the author recognizes the need to have adjusted approach in cases where a woman is the victim of violent crimes and/or crimes against sexual freedom, especially in order to prevent or minimize secondary victimization.[57]

b) When it comes to the role of the initial and continuous training in the Judicial Academy, it is important to mention that only the specialisation for dealing with

[56] Aleksić. Ž., Škulić, M. (2004) *Kriminalistika*. Dosije, Beograd, p. 209.
[57] Škulić, M. (2022) *Kriminalistika*. Pravni fakultet Univerziteta u Beogradu, Beograd, p. 196.

juveniles in criminal proceedings is mandatory according to the Law on Juveniles, while for the other categories of sensitive victims that's not the case, but the training is organized on ad *hoc basis*, mostly supported by various donor-funded projects. However, such a training has no universal coverage within judiciary and frequently doesn't involve lawyers, whose training is in the competence of the Bar Academy. Finally, it should be noticed that the Judicial Academy still isn't in the status of "the single-entry point" for judicial office holders, which means that, in practice, an initial level of their knowledge and skills of judges and prosecutors varies to the great extent.

c) The role of the court psychologist/victim support service should not be disregarded, since their full-time presence contributes a lot not just through the participation in individual cases, but also through the advisory role.

d) It is also important to mention how strong is influence of prejudice on a side of individual judges and/or prosecutors regarding some personal characteristics of victims and witnesses. This especially affects victims of sexual violence, human trafficking and hate crimes. For those categories of victims, the personal position/prejudice of those who conduct interview regarding e.g. sexual orientation or previous sexual life can affect to the significant extent an approach to victim (non)exposing him/her to inappropriate questions.[58]

Shaped by abovementioned factors, it could be said that there is no uniformity in terms of the use of inappropriate approaches to interview especially sensitive witnesses, as across the country, as with regards to the type/group of the sensible victims. However, some positive trends can be noticed, especially in the fields that have been addressed through the comprehensive training of judges and prosecutors, such as prosecution of war crimes.[59]

[58] See more in the case studies prepared by Kolaković-Bojović and Đukanović in: Kolaković-Bojović, M., & Đukanović, A. (2023) *Zločini iz mržnje u Republici Srbiji.* Institut za kriminološka i sociološka istraživanja, Beograd.

[59] See: Humanitarian Law Center (HLC) (2021) *War crimes trials in Serbia during 2020*, p. 145, available at: https://hlc-rdc.org/wp-content/uploads/2021/05/Report_on_War_Crimes_Trials_in_Serbia_during_2020.pdf, last accessed on September 11th 2024.

Similarly, monitoring of the position of juvenile victims in criminal proceedings in Serbia in 2020[60] showed that the analysed sample did not record the attorney's remarks on the manner of asking questions or entering the testimony of the injured party in the minutes, as well as the judge's interventions during the interrogation because he considered some questions irrelevant or inappropriate. The same applies to the judge's warnings to the defendant and / or his lawyer or the prosecutor's intervention because he considered some issues to be irrelevant or inappropriate. This does not mean that there was no basis or need for such interventions or warnings, but in the impossibility of monitoring the trial, i.e. through monitoring case law, as its substitute, this cannot be determined with certainty.

The same analysis also showed that even in 50% of cases the juvenile victim was examined in the presence of the defendant, confrontation was not applied in any of the analysed cases, which is important considering the law number of cases of juvenile victims was granted the status of a particularly sensitive witness.[61]

Although half of the interrogations of the minor victim were attended by an expert (psychologist or social worker of SCC), only 30% of the interrogations were conducted through those experts, while in other situations they only attended the interrogation which was performed directly.

Case study 4: The Case of Miroslav Aleksić

The case background: Miroslav Aleksić (72) is a famous Serbian director, producer, screenwriter, pedagogue and actor who was running the drama studio for kids in Belgrade for several decades. Allegedly, he was abusing his position of a teacher to sexually abuse his minor, female students for a prolonged period of time (between 2012 and 2020), before one of them, young actress Milena Radulović, after receiving necessary psychological support, empower herself enough to report the case, followed by other girls from the same studio. According to the 2021 indictment filed by the Higher Public Prosecutor's Office in Belgrade, Aleksić is accused of repeatedly raping four of his female students, who were minors at the time. Also, according to the indictment, Aleksić is accused of having

[60] See more in: Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.
[61] See more in section 3.1.

performed illicit sexual acts on three girls by abusing his position as a teacher/head of the studio. The 16 victims who filed the case are today 20 to 40 years old. He was arrested in January 2021 and spent 8 months in detention before being released.

The trial: In 2021-2024 period out of a total of 25 main hearings in the case against Aleksić, 15 were held, and 10 were postponed or cancelled. Of the mentioned 10 main hearings that were not held, even 8 were not held due to the defendant's illness, 1 due to a lawyer's strike and only 1 due to obstruction of the court. Main hearings are scheduled once a month, except during vacation periods. Due to Aleksić's frequent postponements of hearings, with the justification that he is seriously ill, exposed to the intensive medical treatment and, generally in poor health condition, the court panel requested that the accused Aleksić's ability to follow and/take part in the proceeding to be determined by a medical examination. In the aforementioned expert's report, it is stated that Aleksić is able to follow the trial except in one situation - when he is receiving treatment for a malignant disease. Both sides, the defence and the victims have publicly expressed their unsatisfaction with such a development of the process, where the defence has kept the position that the medical court experts made mistake in terms of the ability of the accused to take part in the trial, while the victims expressed their concerns that the defence is trying to obstruct the procedure by wrongly presenting the actual health condition of the accused.

Victim protection: Upon the request of victims, the hearings in this case are public, except for interviewing one victim who obtained the status of especially vulnerable witness. Victims were accompanied with their legal counsels, friends and the family members and they were giving their testimonies without protective measures, directly answering the questions of both the prosecutor and the defence, even when the accused decided to interrogate them by himself for a few hours. Both sides have used the same court entrance and the same waiting room, which caused a tension and verbal incidents between them.

The manner of interviewing: The predominant impression on the manner in which the victims were interviewed by the defence (both, the defence counsel and the accused) is that this is being done disrespectfully, where the defence has used a number of forbidden of inappropriate interviewing techniques, including, but not limited to the leading questions, insults, intimidation, misogynistic comments, etc.

Some extracts from the transcripts, published even in the media illustrates abovementioned approaches in interviewing one of the victims, Milena Radulović:

1) Sequence from the victim interviewing by the accused[62]

Aleksić: Did I invite or persuade you to the drama studio?

Milena: No, I came alone.

Aleksić: Did I force you?

Milena: I already answered.

(There, Aleksić loudly repeated the question twice and blushed.)

Aleksić: Did I explain to you that you can leave the studio at any time?

Milena: Yes, before you started raping me. Then you threatened. I knew I would suffer the consequences because you are who you are. Where it is. No one will believe me. I was trapped. What you asked was when you were a beloved lecturer, not a rapist and abuser.

Aleksić: Have you ever complained to me in seven years?

Milena: I begged you not to do that, you watched me wither. That's how you destroyed me. The first six and a half years make a big difference; you can't ask me about a whole period.

Aleksić: Yes, I can ask you. Did you make a remark? (he asked annoyed)

Milena: I answered.

Aleksić: Have I ever threatened you? To you, your family members, your sister?

Milena: You threatened me, that you wouldn't want that to happen to me in my life, if I tell what happened. That no one believes me, that they will come to your defence. You slapped me in front of the whole class, in front of 30 witnesses, as if it was a practice. You have shown me that you can manipulate. To drive me crazy and manipulate me like you still do.

[62] See: https://www.blic.rs/vesti/hronika/napeto-na-sudjenju-miroslavu-miki-aleksicu-samozvani-profesor-glume-prvi-put/vb8rcyg, last accessed on October 22nd 2024.

(At this, Aleksić smiled and asked the judge if he could "replicate", to which the judge told him that he could only ask questions. And then he shouted at the judge Aleksić: "I'm not an acting teacher, don't call me that!".

Aleksić: She avoids answering, is that part of the rehearsal or not?

Milena: That's slapping. You slapped me and whispered: "Can't you see that you better listen to me?"

2) Inappropriate approach was even more used by the defence counsel who, on several occasions, insinuated that the minor victim had provoked sexual attack or contributed to it to happen and/or continue:

One of Aleksić's heinous questions to the injured party was whether she only subsequently decided that she had been raped, after he called her on the phone in 2019.

The questions coming from the defence lawyer were even worse.

Lawyer: Why did you come without tights, to make it easier for him, to rape you more easily?

(The judge dismissed the question.) Or,

Milena: While he was kissing me, I tried to push his head away with my hands, and during penetration they were next to my body. Then I wriggled and pulled myself out on my toes. We were of similar height, but it seemed to me that I was taller then - she emphasized.

Aleksić's defence attorney then asked why she was lifting on her fingers, if the movements were back and forth and up and down.

Milena: I did that because of the pain. And he tested how deep he could go and how many fingers he could fit. I cried. At the end he said to me: "You are good". It disgusts me.

The lawyer representing Aleksić did not hesitate to answer the victims with questions aimed at humiliating them. So, he asked embarrassing questions like: "How did you refuse to put his tongue in your mouth", "Was your head higher or lower than your penis, did you look at him", "Why didn't you close" mouth"...

Procedural discipline/measures taken by the court to protect the victims: In addition to the use of inappropriate questions, both, the defendant and the defence lawyer also on several occasions raised their voice, made inappropriate comments and statements, laughed ironically, and even baptised, but also entered into a discussion with the lawyers of the injured parties, as well as with the judge.

The defence counsel mostly did this in situations where his questions were rejected by the court, so the chamber and the presiding judge were faced with the necessity to use disciplinary measures provided in the CPC. So, in multiple hearings, they warned both, defendant and the defence lawyer for many times. The defence lawyer was also faced with fines.

E.g. at one point, after an inappropriate reaction came from the defence lawyer, Milena asked the judge: "Is he laughing at me?", which he denied and said that he was addressing the audience. The judge then told him that he was "very rude" and fined him 100,000 dinars for contempt of court.

Media coverage: The trial has attracted an enormous media coverage, with active participation of both sides, through giving the media statements and interviews, as well as via social networks.

Around 980 newspaper articles about this case ware published in Serbian prints or media portals between January 2021 and October 2024, which means approx. 40 articles per months![63]

Many of the headlines were the extracts from the most sensitive part of victims' testimonies explaining the details of sexual violence. What differentiates this case from the similar media attitudes is that, in this case, we cannot talk about leak of confidential information from the proceeding since it goes with no protective measures. However, almost as rule, all the media headlines are based on the questions rejected by the chamber/presiding judge which converts the protective measure to the tool for harming victims through their public humiliation.[64]

[63] This info was gathered through the analysis of the electronic archive of Serbian web portal www.naslovi.net which re-publishes the news published by almost all Serbian media. Last accessed on October 22nd 2024.

[64] For more on the relationship between media coverage of hearings, protection of victim's privacy and the secondary victimisation of vulnerable victims see in Section 3.8.

Measures aimed at ensuring procedural discipline and the protection of sensitive witnesses:

As we previously explained, the normative framework applicable to imposing sanctions to those who were breaching the rules on the acceptable/allowed/desirable manner of interviewing especially vulnerable victims and witnesses, this issue cannot be addressed without tackling its practical repercussions.

The question of the practical repercussions of use of the arts. 370-374 of CPC in practice was raised a few years ago in the context of assessing the impact of 2016 Strategy and developing the National Strategy for War Crimes Prosecution in Serbia for the period 2021-2026.

Namely, 2016 Strategy identified the need for more consistent implementation of the measures of procedural protection of injured parties and witnesses in accordance with the provisions of the Criminal Procedure Code, with an emphasis on observing the procedural discipline in terms of protection of injured parties and witnesses and the consequential reaction of the competent prosecutor, State Prosecutors' Council and relevant bar association. "The analysis of data submitted by the State Prosecutors' Council and Serbian Bar Association indicates that, during the Strategy implementation period no piece of information was received from a president of chamber on reprimand under Article 374 of the Criminal Procedure Code, due to untimely or inappropriate action of public prosecutor or person substituting them, causing procrastination of the proceedings, nor has the Serbian Bar Association received any notification of an acting president of chamber to inform the Association of a reprimand pronounced to a lawyer for prolongation of the proceedings under Article 374 Paragraph 3 of the Criminal Procedure Code." This data may indicate that the level of procedural protection was meanwhile improved, so there was no need to activate the mechanism under Article 374 or that the said mechanism is still not applied despite the need for it. The representatives of the institutions interviewed during the process of conducting this Analysis held the position that there were no cases of violating procedural discipline in the observed period.[65]

[65] Kolaković-Bojović, M. (2021) *Ex-Ante Analysis of the Situation in the Field of Prosecution of War Crimes in the Republic of Serbia - for the purposes of drafting the National Strategy for War Crimes Prosecution for the period 2021-2026*. Ministry of Justice, Republic of Serbia, Belgrade, p. 23.

It could be said that the right question was raised in this analysis, so the ICSR Team decided to double-check this data by submitting the request for collecting/sharing data on the implementation of the provisions 370, 372 and 374 of CPC in practice to the BAS accompanied with the questionnaire developed to collect the following data:

Part I: data collection and prevention

1. Does BAS regularly collect data on the application of Arts. 370, 372 and 374 of the CPC by the regional law chambers?

2. If yes, what period are data submitted for?

3. Do the bar chambers in Serbia collect data on the application of these CPC provisions?

4. Is the BAS on the position that there is a need to amend the CPC in order to introduce an obligation to inform the competent lawyer's chamber on the deceased and / or fine in the authority of the bodies of the proceedings referred to in Article 102, paragraph 2?

5. Whether the BAS in 2017-2023 period took some of the preventive measures to improve the treatment of particularly sensitive victims as a witness, as well as strengthening the respect of the procedural discipline, and in the context of application Art. 102, 370, 372 and 374 CPC (e.g. training, providing guidelines, etc)

Part II: Special questions

1. Data on acting the of the competent lawyer chamber in accordance with the obligation referred to in Article 370, paragraph 3 of the CPC:

1.1. Number of notifications received on punishment of lawyers in accordance with Article 370, paragraph 1 and 3 of the CPC in the period 1.1.2017-31.12.2023?

1.2. In how many cases of the total number of notifications received, the lawyer acted as a proxy of damaged, and in how much as a defence counsel?

1.3. In how many cases did the competent law chamber notify the court on the measures taken in accordance with the obligation referred to in Article 370,

paragraph 3 of the CPC? If available, please also provide these data disaggregated based on the territories of the regional bar chambers.

1.4. List data on measures undertaken by the competent bar chambers upon court notification under Article 370, paragraph 1 of the CPC in the period 1.1.2017-31.12.2023.

2. Data on the actions of the competent bar chamber in accordance with the provision of Article 372, paragraph 1 of the CPC:

2.1. Number of received notifications on the exclusion of lawyers from the criminal procedures in accordance with Article 372, paragraph 1 of the CPC in the period 1.1.2017-21.12.2023.

2.2. In how many cases of the total number of notifications received, the lawyer acted as a proxy of damaged, and in how much as a defence counsel?

2.3. List data on measures undertaken by the competent bar chambers upon court notification under Article 372, paragraph 1 of the CPC in the period 1.1.2017-31.12.2023.

3. Data on the actions of the competent lawyer chamber in accordance with the obligation referred to in Article 374, paragraph 3 of the CPC:

3.1. Number of notifications received on the imposed warnings in accordance with Article 374, paragraph 1 and 3 of the CPC in the period 1.1.2017-31.12.2023.

3.2. In how many cases of the total number of notifications received, the lawyer acted as a proxy of damaged, and in how much as a defence counsel?

3.3. In how many cases did the competent law chamber notify the Court on the measures taken in accordance with the obligation referred to in Article 374, paragraph 3 of the CPC? If available, please also provide these data disaggregated based on the territories of the regional bar chambers.

3.4. List data on measures undertaken by the competent bar chambers upon court notification under Article 374, paragraph 1 of the CPC in the period 1.1.2017-31.12.2023.

The BAS officially responded to ICSR, explaining that they have no requested statistical data since "the disciplinary authorities of the bar chambers are

autonomous". The BAS also expressed the position that the obligation to collect statistical data on the measures taken upon the notification of court should not exist. They also provided the ICSR Team with information that BAS continuously takes measures upon court notifications, but without explaining what kind of measures, their number, nature of the number of lawyers affected by those measures.

The judges involved in the discussion organised by ICSR and OSCE within this initial cycle of the monitoring expresses also their concern regarding inconsistency of practice of their colleagues/judges, since not all of them ready to insist on the feedback from the BAS on the measures taken against the lawyers upon the court notification. Some of them were also clear that the conduct of lawyers is frequently highly dependent on the "judge tolerance". Namely, they said that a strong position of judge who insists on the procedural discipline can prevent lawyers from inappropriate conduct towards victims and witnesses.

4.6.4. Recommendations for improvement

Rec.17	Adopt the proposed amendments to arts. 103 and 104 of CPC aimed at explicit prohibition of cross examination of especially vulnerable witnesses.
Rec. 18	Amend art. 102 of CPC in order to introduce obligation of the court to inform the competent bar chamber on the fine imposed to the lawyer due to the inappropriate acts against a sensitive witness referred in par. 1 of that provision, as well as the obligation of the competent bar chambre to inform back the court on the measures taken against that lawyer upon receiving the notification from the court.
Rec. 19	Develop and adopt a new Law on Juveniles that will include detailed provisions on interviewing juvenile victims in the capacity of witnesses.
Rec. 20	Strengthen internal mechanism in the competent bar chambers led by Bar Association of Serbia in order to establish clear and sustainable mechanism of running registries, preparing statistics on, and taking follow up measures upon received court notifications on the imposed disciplinary measures against lawyers in criminal proceedings.

Rec. 21 Strengthen the overall approach to sensibilization of the legal professionals involved in interviewing the especially sensitive witnesses through:

a) Improvement of the law schools' curricula and books.
b) Improvement of the initial and continuous training for judges and public prosecutors in the Judicial Academy, with the focus on the needs of vulnerable victims and witnesses and the skills needed to interview them properly.
c) Improvement of the training for lawyers in the Bar Academy.

4.7. Use of video link and the court infrastructure as mechanisms to protect especially vulnerable victims and witnesses

One of the main protective mechanisms for especially vulnerable victims and witnesses is avoiding situations in which a victim is confronted to the defendant, but also to the other participants in the proceeding. Considering this, a several mechanisms play an important role here:

a) Testimonies using audio and video link from the court premisses other than the courtroom

b) Testimonies using audio and video link for the remote testimonies from home or other premises

c) Testimonies using audio and video link for the remote testimonies in the context of the international (mostly regional cooperation)

d) Separate court entrances for victims and witnesses and the defence

e) Separate waiting rooms for victims and witnesses and the defence

4.7.1. The relevant international standards

Directive 2012/029/EU, art. 23(3)a recognises the measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology together with measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology as an important protective mechanism.

Directive 2011/093/EU in article 20 recognises the possibility for a child victim be heard without being present in the courtroom, in particular through the use of appropriate communication technologies as a one of the most effective protective mechanisms.

4.7.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

The Criminal Procedure Code recognizes the use of video links as one of the effective protective mechanisms to be applied to especially vulnerable witnesses. Namely, Article 104 of CPC provides for the possibility of the authorities interviewing a particularly sensitive witness using technical means for image and sound transmission, where the witness should be in a separate room without the presence of the parties and other participants in the procedure.

The Law on Juvenile Offenders and Criminal Protection of Juveniles sets forth that, in view of the characteristics of the offence and personality of a juvenile, if the court finds it needed, it may order the hearing of the juvenile to be conducted with the use of sound and image transmission technology and without presence of parties and other participants in the proceedings. (Art. 152, par 3).

It is important to mention that, when it comes to the war crimes cases, where the regional cooperation play an important role in ensuring presence and preparedness of victims and witnesses for giving their testimonies, before the authorities of the countries in the region, including organization and conducting testimonies via video link without traveling to other states to be interviewed. Aimed at supporting those processes going smoothly, the judicial authorities (chief prosecutors and the competent court presidents) in the region signed agreements on support to victims of war crimes. The newest agreement has been signed in December 2024 between Sebian War Crime Prosecutor and the Montenegro Supreme State Prosecutor.[66]

4.7.3. The present challenges in practice

When it comes to the testimonies using audio and video link from the court premisses other than the courtroom or the remote testimonies from home or other premises, there is not any doubt that three factors play the key role:

a) Awareness and the readiness of the key actors (mainly court) to use this way of interviewing especially sensitive witnesses.
b) Availability, functionality and interconnectivity of the audio-visual systems for remote testimonies.

[66] See more at: https://sudovi.me/vrdt/sadrzaj/6xoQ, last accessed on December 30th 2024.

c) Adequate knowledge and skills of judicial professionals on how to use the equipment and/or availability of the support by technicians to ensure undisturbed remote testimonies.

The results of the previously conducted research showed that there is an openness on a side of judges and prosecutors to use AV in interviewing especially sensitive victims as witnesses. E.g. results of the Monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020 showed that in both cases where the status of the especially vulnerable witness were granted to the victims in both cases, the examination was performed using video link, both of which passed without technical interference, and one of them was assisted by a technician.[67]

This has been also confirmed through the research conducted by Stevanović and Marković in 2024[68] within which all higher courts in Serbia were contacted. Interviews were conducted with secretaries, judges specializing in juvenile cases, and, in two instances, with court presidents. They reiterate the priorities emphasized by representatives of other institutions within the system police, prosecutor's offices, and social care centres: enhancing their own knowledge, improving the technical equipment of their institutions, and the need to involve appropriate experts in the child's hearing process.

In communication with the representatives of the higher courts lacking the capability for hearing through the video conference connection installed in the AV room, it is clear that they recognize the need for special protection for minors as victims and witnesses. They state that they strive to find appropriate approaches in each individual case. Some utilize technical equipment for audio-visual transmission from the prosecutor's office if available within their building. Many uses other (hand-held) technical devices for audio-visual transmission and/or recording and install the connection *ad hoc*. Courts that have AV rooms, at the request of other (primary) courts or prosecutor's offices, and in accordance with their schedule, approve the use of this room (and the corresponding courtroom).

[67] See more in: Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

[68] Stevanović, I., & Marković, Lj. (2024) *The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next.* In: International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024. Institute of Criminological and Sociological Research, Belgrade, pp. 165-182.

In cases where it was not possible for a minor to be heard via video-conference link, as some court representatives have stated, the hearing was conducted in such a way that the accused was relocated to the back of the courtroom, and the child was directed by security personnel or parents not to turn around and to communicate only with the judge. Certainly, this model, if there are no technical means, is protective, but it still carries a high risk of secondary victimization. The child is positioned between the defendant and their defence attorney, unable to control the situation even with his/her glance; he/she can hear their comments and questions (including those that the judicial panel will reject because they do not serve to establish facts but rather to destabilize witnesses), resulting in a high level of negative distress for the child throughout the hearing. In addition to secondary victimization, the validity of the obtained statement is also questioned.[69]

When it comes to the testimonies using audio and video link for the remote testimonies in the context of the international (mostly regional cooperation) in Serbian judicial system they are mostly used in the war crime proceedings which is logical considering the regional character of the conflicts occurred in 1990s, but also the fact that the WCPO and the Higher Court in Belgrade were among the first institutions equipped with the necessary technical solutions, but also accompanied with the victim support services. In the period from 2016 to 2020, the Service for Assistance and Support to Witnesses participated directly in organization of 256 video conference calls, and 313 witnesses who testified upon letters rogatory received support. For the needs of courts and state attorney offices in the Republic of Croatia, support was provided to 156 witnesses, 142 witnesses testified upon letters rogatory from courts and prosecutors 'offices of Bosnia and Herzegovina and 15 witnesses upon letters rogatory of state authorities of Montenegro.[70]

However, even the existence of the technical conditions for conducting interrogation of witnesses via video link does not necessarily guarantee that the testimony given in this way will be given in a propriate manner. E.g. in the Sanski Most–Lušci Palanka Case the hearing was held in 2021 before the Special War crime chamber of the Higher Court in Belgrade. In this case, main hearings were held in a courtroom that is not technically equipped with headphones for the

[69] Ibidem.

[70] Kolaković-Bojović, M. (2021) *Ex-Ante Analysis of the Situation in the Field of Prosecution of War Crimes in the Republic of Serbia - for the purposes of drafting the National Strategy for War Crimes Prosecution for the period 2021-2026.* Ministry of Justice, Republic of Serbia, Belgrade, p. 26.

public. This made it very difficult for the audience to follow witness testimonies provided via video conferencing, as the sound quality was extremely poor. Only the Trial Chamber and the parties were provided headphones to follow the proceedings.[71] Namely, the witness premises at 29 Ustanička Street were furbished back in 2006 and they need adaptation and refurbishing, especially given the number of persons who used the facilities of the Service in the capacity of witnesses or injured parties, both from war crimes cases and organized crime. The video conference equipment is outdated and was installed 20 years ago, which creates difficulties in witness examination, in form of frequent interruptions and considerably longer time of witness examination than necessary, as well as interruptions of the train of thought of witnesses and injured parties during their testimonies.[72]

One of the initiatives that, unfortunately, hasn't succeed in ensuring sustainability, but what is worthy to be mentioned is establishing the mobile teams for interviewing minors out of court premisses, mostly directly from their homes. This has been done through four new regional units, in the cites where the courts of appeal are seated, with a mandate to cover the areas of the courts' jurisdiction. Each of the four Child victim support units was equipped with mobile recording equipment and vehicles with the purpose of conducting child-friendly hearings outside of the courts as much as possible. Professionals for this new service were recruited from the psychologists employed at public institutions within the social system, with extensive previous experience of dealing with children. According to the UNICEF data, from the period of the launching of the new service offered by the Units (from March 2015 to January 2016), until September 2017, the Units conducted 158 interviews with children in criminal proceedings. During the interviews, no standardized monitoring sheets for the Units were prepared to record data cases in which they have provided assistance. Consequently, there is no detailed data on victims and cases. Unfortunately, after the project expired, since there was no

[71] See: Humanitarian Law Center (HLC) (2022) *War crimes trials in Serbia during 2021*, p. 137, available at: https://www.hlc-rdc.org/wp-content/uploads/2022/05/Godisnji_izvestaj_2022-en.pdf, last accessed on September 11th 2024.

[72] Kolaković-Bojović, M. (2021) *Ex-Ante Analysis of the Situation in the Field of Prosecution of War Crimes in the Republic of Serbia: for the purposes of drafting the National Strategy for War Crimes Prosecution for the period 2021-2026.* Ministry of Justice, Republic of Serbia, Belgrade, available at: http://institutecsr.iksi.ac.rs/345/1/War%20crimes%20ex-ante%20analysis.pdf, last accessed on September 10th 2024.

solution to incorporate the teams into the institutional system (nether judicial or social care), this possibility of giving the testimony is not available anymore.[73]

Audio-visual equipment and infrastructural conditions other than AV equipment: the Current Status

Even a procurement of the audio-visual equipment in Serbian judiciary has started on the *ad hoc* basis approx. 20 years ago, the systematic approach to this issue has been introduced in 2020 through the Victim Strategy which recognized a need to procure equipment for all higher courts and/or prosecutors' offices and set out clear indicators in that regard in its 2023-2025 Action Plan.

When it comes to the current status of the technical equipment[74] through a project and donation from the OSCE (IPA 2016 Project) in partnership with the Ministry of Justice of the Republic of Serbia, the process of procuring equipment was fostered, together with renovation/adaption of the special premises for victims and witnesses.

The four additional courts have been equipped with AV rooms during the period from 2021 to 2023: the Higher Court in Kragujevac, the Higher Court in Kruševac, the Higher Court in Novi Pazar, and the Higher Court in Šabac. In addition to these four higher courts, an AV room has been reinstalled at the Higher Court in Belgrade because the previously existing technical equipment was incompatible with the new electronic system after the renovation of the Court building, i.e., the Palace of Justice. The electronic system server used in these video conference connections at the courts has been installed at the Judicial Academy. In addition to this, through the same project, it was reported that the project plans to equip an additional five courts with special rooms for taking statements from children and particularly vulnerable witnesses during 2024 (equipped with video conference links for audio-visual transmission to courtrooms, commonly known as "AV rooms") and other courts will be equipped in the coming years as well. The Ministry of Justice determines the priority list based on the number of cases involving juvenile victims.

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[73] Kolaković-Bojović, M. (2018) *Child Victims in Serbia - Normative Framework, Reform Steps and EU Standards.* In: Pravda po meri deteta - međunarodni naučni tematski skup, 6-7. jun 2018, Palić. Institut za kriminološka i sociološka istraživanja, Beograd, pp. 171-183.

[74] Stevanović, I., & Marković, Lj. (2024) *The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next.* In: International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024. Institute of Criminological and Sociological Research, Belgrade, pp. 165-182.

The following table presents data on the technical capabilities of higher courts to conduct hearings via video conferencing with children or minors as victims or witnesses outside the courtroom:

Table 1: Higher Courts in Serbia - Technical Equipment for Implementing Article 152 of the Law on Juveniles, April 2024

	Higher courts	A special room for taking statements from children/ particularly sensitive witnesses	Installed audio-visual equipment
1	**Belgrade**	**Yes**	**Yes**
2	**Valjevo**	**Yes**	**Yes** (the equipment is outdated and without the possibility of connecting to premises outside the court)
3	**Vranje**	**Yes**	**Yes**
4	Zaječar	No	No
5	Zrenjanin	No	No
6	Jagodina	No	No
7	**Kragujevac**	**Yes**	**Yes**
8	Kraljevo	No	No
9	**Kruševac**	**Yes**	**Yes**
10	Leskovac	No	No
11	Negotin	No	No
12	**Niš**	**Yes**	**Yes**
13	**Novi Pazar**	**Yes**	**Yes**
14	**Novi Sad**	**Yes**	**Yes**
15	Pančevo	No	No
16	Pirot	No	No
17	Požarevac	No	No
18	Prokuplje	No	No
19	Smederevo	No	No
20	Sombor	No	No
21	Sremska Mitrovica	No	No
22	Subotica	No	No

23	Užice	No	No
24	Čačak	No	No
25	**Šabac**	**Yes**	**Yes**
	Total	9 have an AV room. 16 do not have an AV room.	**9 have installed AV equipment.** Of the 16 courts that do not have AV technology, the majority use some form of assistive technology or the AV technology of the higher public prosecutor's office (shared buildings)

When it comes to infrastructural conditions other than AV equipment, in some courts, it is technically challenging to avoid the possibility of victims and witnesses encountering the accused, due to space constraints and overcrowding in buildings shared with prosecutor's offices and other courts.

The interviewed professionals confirmed that until the hearing, victims wait in an AV room or a designated office for representatives of the Service for Assistance and Support to Victims and Witnesses. However, the problem of overcrowded court buildings exists in almost all courts. Most interviewees from courts without AV rooms highlighted the difficulty of finding suitable space for AV room installation within the court. Another challenge is finding suitable rooms for housing the Service for Assistance and Support to Victims and Witnesses. Representatives of this service often share office space with other judicial assistants.[75] (where they exist).

In the most of newly built or comprehensively renovated court buildings there are technical possibilities to split entrances. However, even this issue has been recognised as a necessity, still there is not a catalogue of the infrastructural requirements aimed at ensuring access to justice in line with the relevant international standards for victims. This should be also recognised as reason that even in some comprehensive (re)construction intervention in judicial infrastructure, the opportunity to adapt special premisses for victims has been missed.

[75] Ibidem.

4.7.4. Recommendations for improvement

Rec.22 Develop a catalogue of the infrastructural requirements aimed at ensuring access to justice in line with the relevant international standards for victims.

Rec.23 Continue the ongoing process of procuring audio and video equipment for courts and prosecutors' offices to achieve targets for universal coverage set out in the NSRVWCRS 2020-2025.

Rec.24 Organise training for legal professionals in courts and prosecutors' offices to ensure proper use of the newly procured equipment.

Rec.25 Ensure that all ongoing and planned renovation/(re)construction initiatives result in adaptation of the premisses adjusted to the victim's needs.

4.8. Protection of the victim's privacy and media coverage of trials

In the era of the growing influence of the media, as well as the expansion of their new and hybrid formats such as social networks, podcasts, blogs, vlogs, etc., there is a shorter period between events in real life and the availability of information about them in media. This consequently increases the size of harmful consequences if information on (vulnerable) victims has been disclosed in media. The seriousness of such practices is the most visible when it comes to child victims.

With this in mind, there is an undeniable need not only for national legislation to recognise the highest international standards in the field of child-friendly justice and victims' rights, but also for professionals in contact with children and victims to be adequately trained to apply them. Finally, perhaps the key step lies in the necessity of continuous cooperation and exchange of experiences between professionals in the institutions of justice, social protection, health care and education, on the one hand, and media representatives on the other.[76]

Taking into account the scope of this analysis, in this chapter we will not address all aspects of the media treatment of victims, but rather those that are closely connected to the protection of privacy in the process of interviewing of victims through the (non)public hearings and the media reporting on those proceedings.

4.8.1. The relevant international standards

Article 21 of the Directive 2012/029/EU provides for obligation to ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim. In order to protect the privacy, personal integrity and personal data of victims, Member States shall,

[76] Kolaković-Bojović, M. (2022) *Child victims and media: Manual and curriculum for the training of professionals in contact with child victims of criminal offences*. Child Rights in Serbia (CRIS), Belgrade.

with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

Protecting the privacy and identity of victims of trafficking, prescribed by Article 6 of the Palermo Protocol and Article 11 of the Council of Europe Convention on Action against Trafficking in Human Beings is one of the basic requirements for the protection of human trafficking victims in court proceedings.
Directive 2011/093/EU, Article 20 provides for obligation of the Member States shall take the necessary measures to ensure the hearing take place without the presence of the public; the child victim be heard in the courtroom without being present, in particular using appropriate communication technologies. Member States shall take the necessary measures, where in the interest of child victims and considering other overriding interests, to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification.

4.8.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

The relevant legislative framework on this issue is very complex and involve, not only the Constitution and the CPC, but also rules of the procedure in court and public prosecution as well as media legislation:

Article 32 of the Constitution of the Republic of Serbia[77] provides for an exception to the principle of publicity of the proceedings, stipulating that the public may be excluded during the entire proceedings before the court or in part of the proceedings, only to protect the interests of national security, public order and morals in a democratic society, and to protect the interests of minors or privacy participants in the procedure, all in accordance with the law.

The currently applicable provisions of the CPC provide this possibility, for it is stipulated (Article 363) that the panel may, *ex officio* or at the request of the parties or defence, exclude the public from the entire main hearing or a part of it, if deemed necessary for the purpose of public order and morals, the best interests of a minor, or the privacy of the participants in the proceedings. In such a case, however, the panel may allow the presence of an expert public and, at the request

[77] Constitution of the Republic of Serbia ("Official Gazette of RS", No. 98/2006 and 115/2021).

of the defendant, the presence of their spouse or other close relatives, who are obliged to keep everything they heard at the hearing as secret (Article 364). Furthermore, the provisions of this law on particularly vulnerable witnesses (Article 104) provide for the possibility of questioning the witness without the presence of parties or other participants in the proceeding in the room where the witness is being questioned, if the testimony is conducted with the use of sound and image transmission technology.[78]

The importance of communication of courts with the media, has long been recognised, is shown by the provisions of the Court Rules of Procedure,[79] which in Article 57, in order to ensure an objective, timely and accurate information to the public about the work of the court and court proceedings, obliges the president of the court, judges and court staff to provide the necessary conditions, as well as appropriate access to the media in terms of current information and proceedings conducted in court, taking into account the interests of the proceedings, privacy, as well as security of participants in the proceedings. "Information on final proceedings before the court shall be made public when provided for by law, or by a special regulation, as well as in cases in which the public is particularly interested. The information and data provided to the public must be accurate and complete. Data which, according to special regulations, constitute secret and protected data whose disclosure is excluded or restricted by law shall not be disclosed. "

Thus, by prescribing this obligation, it is specified that its scope is conditioned, among other things, by the need to protect the safety and privacy of the participants in the procedure. In addition, the court rules of procedure shall specify the methods of execution of this obligation, providing that:

- The time, place and subject of the trial shall be published daily in a prominent place in front of the room where the trial will be held, in electronic form or another convenient manner.

- For a trial for which there is a greater public interest, the court administration will provide a room that can accommodate a larger number

[78] See more in: ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: https://drive.google.com/file/d/1l6aCZGbtc2VDg3V1hcJbtuQ40lARmufE/view.

[79] Court Rules of Procedure ("Official Gazette of RS", No. 110/09, 70/11, 19/12, 89/13, 96/15, 104/15, 113/15 - corr., 39/16, 56/16, 77/16, 16/18, 78/18, 43/19, 93/19 and 18/22).

of persons. By order of the President, the court council is obliged to hold a trial in a larger room that is secured.[80]

In Article 58, the Rules of the Procedure specifically deal with the issue of communication with the media in relation to individual cases and entrust the power to do so to:

- to the President of the Court
- to the person in charge of public information (spokesperson)
- to the special public information service

In addition to this, Article 58 of the court rules stipulates that when contacting the public and the media, courts use modern means of communication in accordance with the material and technical capabilities of the court (press conference room - media centre, reporting via websites, etc.).

The court rules specifically regulate the conditions under which photographing and audio/video recording may be authorised in the court building (Art. 59-60)[81]. When granting permission for photography and filming, the interest of the public, the interest of the procedure, and the privacy and security of the participants in the procedure will be taken into account.

Of the great importance for this issue is also content of the Rulebook on Administration in Public Prosecutors' Offices (Ordinance),[82] which in Art. 66-71 regulate public information, i.e. access to information of public importance.

[80] In addition to the above, the court shall, at least once a year, and no later than February 1 of the current year for the previous year, prepare a bulletin with basic data on work, which is prescribed by a special law and the Rules of Procedure, and are important for the exercise of citizens' rights and the presentation of the court's work to the public. The bulletin contains: the name and headquarters of the court; the annual schedule of tasks; contact information (telephone, fax, website and e-mail address), names of the heads of the court administration, data on the working hours of the court and its services, names and contacts of persons authorized to receive, inform the parties and act on complaints, names and contacts of persons authorized to issue certificates and certify signatures; names and contacts of persons authorized to enable viewing, transcribing and copying of files. The bulletin referred to in paragraph 1 of this Article, collections of decisions and legal positions, may be published by the court in printed or electronic form. (Article 61 Court Rules of Procedure).

[81] Photography, audio and video recording in the court building may be carried out only with the prior written approval of the President, in accordance with a particular law. Photography, audio and video recording at hearings for the purpose of a public broadcast of the recording shall be carried out with the approval of the President, with the prior consent of the President of the Council, the judge and the written consent of the parties and participants in the recorded action. Photography, audio and video recording in the courtroom, after obtaining the approval, will be performed under the supervision of a judge, in a manner that ensures the smooth flow of the trial and order in the courtroom.

[82] Rulebook on Administration in Public Prosecutors' Offices ("Official Gazette of RS", No. 110/09, 87/10, 5/12, 54/17, 14/18 and 57/19).

Interestingly, this Rulebook recognises three categories of issues on which it informs the public in the mentioned articles:

- the state of criminality and "other phenomena observed in the work"
- the work of the public prosecutor's office (if does not harm the interests of the procedure or endanger the privacy of the participants in the procedure)
- matters within the "competence of the Public Prosecutor's Office"

Although it recognises the need to protect the privacy of the participants in the procedure, it is clear at first glance that the provisions of the Rulebook are general, imprecise and, in a sense, archaic, or old-timely, and non-adapted to the contemporary needs of a democratic society.

In the same manner, the provisions of Article 67 of the Rulebook, which regulate the manner of informing the public, were written. Nevertheless, in this segment, the Rulebook recognises the need for additional protection of the interests of the child and provides that the public prosecutor informs the public in a way that will not lead to the disclosure of secret information, taking into account the interests of morality, public order, national security, protection of minors, private life and national feelings.[83]

The powers to inform the public are regulated in a similar manner to the courts, so that the public is informed by the public prosecutor or the appointed deputy public prosecutor, or by the spokesperson of the public prosecutor's office. Nevertheless, as regards the specificity of the manner in which authorised persons inform the public, oral or written communications and statements are envisaged as notification modalities[84] or through public bulletins or other appropriate means, about the initiation of proceedings in cases in which the general public is interested, taking into account the interests of the proper conduct of the proceedings and justified protection of data subjects.

The Rulebook on Administration in Public Prosecutions Offices does not explicitly provide for the obligation (or possibility) of the public prosecutor's office to organise press conferences but unilaterally inform the public through statements and announcements.

[83] Similar wording is contained in Chapter 4. of the Prosecution Communication Strategy.

[84] Written statements or announcements shall be made in at least two copies, one of which shall be kept in the public prosecutor's office. An official note will be made on oral statements or announcements, stating when and to whom the statement or announcement was made, as well as their content. (Article 69 of the Rulebook).

The Rulebook envisages the obligation to provide access through public newsletters to the public prosecutor, the deputy public prosecutor in charge of informing the public or the spokesperson of the public prosecutor's office, but does not envisage what this means in practice, i.e. whether this access is achieved by personal contact, telephone or email. Also, the Rulebook obliges persons authorised to contact the media, if they are unable to make a statement, to communicate the reasons or to communicate the time, place and manner of making a statement or an announcement.[85]

The Guide for Communication of the Public Prosecutor's Office the Media and the Public,[86] adopted by the State Council of Prosecutors on 26 January 2015, in order to facilitate the implementation of the Communication Strategy of the Prosecutor's Office in practice, devotes barely half a page to the communication of data on minors in criminal proceedings, limited only to the citation of legal text, without a single note on the importance and reasons for protecting the privacy of minors, especially children victims in criminal proceedings.

It is important to underline that the work on drafting the new bylaws- both The Rulebook on Administration in Public Prosecutors' Offices and the Court Rules of the Procedure is ongoing for a prolonged period of time (since the adoption of new Law on Public Prosecution and the Law on organisation of courts).[87] In this process, a due attention should be paid to improvement of the above elaborated provisions concerning transparency of criminal proceedings and communication with media.

In parallel, a great impact on avoiding secondary victimisation and the protection of especially vulnerable victims have a Law on Public Information and the Media (LPIM) (hereinafter: the Law) are relevant for this issue.[88]

[85] The public prosecutor, the deputy public prosecutor and staff, when speaking or writing in public newspapers on legal, social or certain issues of public prosecutorial and judicial practice, are obliged to explain that they do not come forward on behalf of the public prosecutor's office (Article 70 of the Rulebook).

[86] Guide for communication of the Public Prosecutor's Office, the media and the public, available at: http://rjt.gov.rs/upload/Document/File__ci/2016-03/Vodic_Za_Komunikaciju.pdf, accessed on January 4th 2022.

[87] This is the reason why we are focusing on the provisions of the old rulebooks that use the old names on the institutions and functions used before the Constitutional amendments.

[88] Law on Public Information and Media (Official Gazette of RS", No. 92/2023).

The Law provides in Article 85 that information from an ongoing criminal proceeding may be published if it was presented at the main hearing or if it was obtained or if it could have been obtained from public authorities on the basis of the law governing access to information of public importance. In addition, Article 88 stipulates that, in order to protect the free development of a minor-s personality, special care must be taken that the content of the media and the manner of distribution of the media do not harm the moral, intellectual, emotional or social development of the minor. The Law insists on the protection of the dignity of the person to whom the information relates, defining the dignity of the person as honour, reputation, or piety. The Law stipulates that the dignity of a victim of violence must not be violated by presenting or describing a scene of violence in the media or media content (Article 90 of the Law). The Law also regulates in detail the issue of protection of information from private life and personal records, making their publication conditional on the consent of the persons to whom they relate, i.e. other persons, prescribing and reading through situations when publication is possible without consent, of which, in terms of victims' rights, the most important are those related to the situation in which the person intended the information or record to the public, i.e. provided it to the media for publication or if the person did not object to obtaining information, that is, making a record, even though that person knew it was done for publication.

The same law also regulates the mechanisms related to the right of a person whose right has been violated to request correctional measures and/or compensation.

Bearing in mind the level of concretisation of the provisions, the key importance for the adequate implementation of the provisions of the LPIM and appropriate media treatment of victims are the provisions of the Code of Journalists of Serbia (hereinafter: the Code)[89] as the basis for the establishment of self-regulatory mechanisms of the print media in Serbia, starting in 2009, (the Press Council and its Complaints Commission).

Although the Code proclaims the right of the public, i.e. the duty of the media to place public interest in the information given in an accurate, timely and objective manner above all other interests as a basic principle, specifying that, in the context of this Code, the public interest implies publishing all important information to the reader / listener / viewer to help form one's own judgement / opinion on

[89] Serbian Journalists' Code of Ethics, available at: https://savetzastampu.rs/lat/wp-content/uploads/2020/11/Kodeks-novinara-Srbije.pdf, accessed June 16th 2020.

happenings and events, it also contains numerous provisions that form the framework and limits of this right and duty, in the context of protecting the interests of certain categories of citizens.

The Code also establishes a clear chain of responsibility, which implies that journalists and editors are professionally accountable to the public (readers / viewers / listeners) and not to the publisher / owner (state and stakeholders) and their private, economic, political and other interests.

The Code specifies the provisions on privacy, dignity and integrity of persons to whom the published information relates, providing specific guidelines for reporting accidents and crimes, while not allowing the publication of names and photographs of victims and perpetrators that clearly identify them. Also, it is forbidden to publish any data that could indirectly reveal the identity of either the victim or the perpetrator, before the competent authority officially announces it. "A journalist must be aware of the power of the media, i.e. of the possible consequences for the victim or the perpetrator if their identity is revealed. In particular, the journalist must take into account the severity of the possible consequences in the event of a possible error / misconception in the reporting. Even if the competent state authorities publish data that fall within the domain of privacy of the perpetrator or victim, the media may not transmit this information. The mistake of the state authorities does not imply "permission" to violate the ethical principles of the profession.[90] The Code draws attention to the specificity of the situation preceded by victimization, stating that, in reporting on events involving personal pain and shock, the journalist is obliged to adjust his questions to reflect the spirit of compassion and discretion, while photographers and cameramen are obliged to treat considerations and compassion when photographing victims of accidents and crimes.

The Code contains a special note regarding the obligation of journalists to ensure that a child is not endangered or exposed to risk due to the publication of their name, photograph or video with their face, house, community in which he or she lives or recognizable environment. The Code here recognizes the problem of lack of knowledge about the influence of the media from the representatives of state and public institutions dealing with the protection of children, who are sometimes unaware of the influence of the media and the way media works. "Therefore, the

[90] Ibidem.

information they provide to journalists often means revealing the identity of minors. Journalist must not abuse their goodwill or ignorance. Information obtained from doctors, social workers, educators, and so on, which directly or indirectly indicates the identity of a minor, may not be published."[91]

As the development of information technologies shed completely new light on the position of victims in the media, the Press Council adopted Guidelines for the implementation of the Serbian Journalists' Code of Ethics (hereinafter: the Guidelines) in electronic media,[92] noting that, although the Code is equally applicable to all media, regardless of the manner of their placement, it is necessary to provide appropriate interpretation and guidance for successful and correct application of professional standards in the online environment. This document is primarily intended for journalists and media that are available online, but it is also applicable to other forms of expression on the Internet, where editorially formatted media content is placed on various platforms. In that sense, the provisions of the Guidelines concerning the moderation of content created by the users themselves (comments on the news) are of special importance, both through the instructions to the users and through the previous and *ex post* moderation of comments whose content is contrary to the principles of the Code. The Council correctly recognised the need for the content of the Guidelines to respond to the dynamics of the online environment, and in December 2021, five years after the original ones, it published new Guidelines. In Serbia, there are more than a thousand online media, and the guidelines are of utmost importance for them, but they are also important for those parts of newsrooms that are in charge of social networks, as well as for all those who gather specific audiences and publish content through social networks (influencers). The provisions of the Guidelines are in fact recommendations on how to apply certain provisions of the Code.

4.8.3. The present challenges in practice

When the comes to the problems occurring in practice, we should look at three groups of issues:

- Exclusion of public from hearings

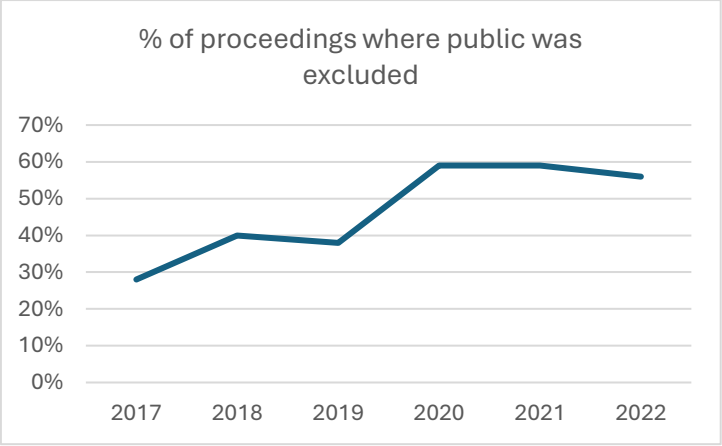
[91] Ibidem.

[92] Guidelines for the application of the Serbian Journalists' Code of Ethics in the online environment, available at: https://savetzastampu.rs/wp-content/uploads/2020/11/smernice-za-primenu-kodeksa-novinara-srbije-u-onlajn-okruzenju.pdf, accessed June 16th 2020.

- Communication of the authorities with media regarding the case content and the information leakage
- Media treatment of information on the case content

When it comes to the exclusion of public, data from the recently conducted monitoring shows that, in the criminal proceedings concerning child victims the main hearings were mostly (80%) public, and the court accepted all requests for exclusion of the public made by the public prosecutor. All public hearings were held without the presence of the media, and in only one case did the court find that media representatives tried to attend the hearing but were not allowed to do so because the main trial was not public.[93]

Chart 5: (Non)public hearings



Monitoring of the position of victims in human trafficking proceedings before courts in the Republic of Serbia shows inviting trends regarding the exclusion of the public during the interrogation of victims.

In addition to disclosure of information concerning victims privacy through the public hearings, there are harmful practices where a public was excluded from the hearings, however, due to the negligence of the authorities, some of the information on the victims were disclosed through the by exhibiting certain evidence during the proceedings and entering them in the judgments, such as forensic expertise of the

[93] Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

victims by psychologists or psychiatrists, or a forensic experts' committee. Psychological and psychiatric expertise of the victims, performed in the proceedings chiefly to determine the credibility of the victims' testimony, although necessary evidence concerning the ability of the witness to testify, or to determine the elements of the crime, are often too detailed and can compromise the privacy of the victim. The Criminal Procedure Code (Article 131, paragraph 2) stipulates that psychiatric assessment of the victim is ordered if suspicion arises about the capacity of a witness to convey their knowledge or observations in connection with the subject matter of the testimony and the expert witness will establish whether the witness is mentally disturbed and issue an opinion whether the witness is capable of testifying (Article 132, paragraph 3). Violation of victim's privacy can be stated in this way in a certain number of judgments in which findings of forensic experts are quoted. Thus, data which are often unnecessary are quoted, such as detailed family and personal situation of the victims, addiction diseases, psychiatric illnesses and other data on victims' health.[94]

When it comes to the communication between the courts and media, despite the well-developed, previously elaborated provisions of the Court Rules of the Procedure on the communication channels between courts and media, the same provision stipulates that courts on the republic level, courts of appeals and courts with special departments or a larger number of judges designate a person in charge of public information (spokesperson), this in practice leads to the fact that not all courts have spokespersons, and those spokespersons perform this task in parallel with their regular duties. When this is added to the need for each communication to be approved by the President of the Court, in practice the problem of a "too slow response" of the spokesperson arises, measured according to modern reporting standards that require the response of the institution in a very short period of time. As a further consequence, this has the practice of finding "alternative sources", most often in persons who are employed by the institution but not authorised to provide information, and in their absence, even to the faking "sources close to the police and the prosecutor's office".

In addition to the shortcomings in terms of human resources, inadequate infrastructure capacities are an additional constraint. Namely, Article 58 of the

[94] See more in: ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: https://drive.google.com/file/d/1l6aCZGbtc2VDg3V1hcJbtuQ40lARmufE/view.

court rules stipulates that when contacting the public and the media, courts use modern means of communication in accordance with the material and technical capabilities of the court (press conference room - media centre, reporting via websites, etc.). Since the majority of courts do not have adequate spaces for press conferences and the scope of work does not allow spokespersons to respond to individual inquiries from journalists, the most common form of reporting is through statements, as a modality of unilateral communication that carries with it the danger of misinterpretation of the communicated (in the absence of the possibility of clarification), as well as disabling media representatives to ask additional questions (even if their outcome is the answer that communication of this type of information is not permitted by law).

Despite the above-mentioned weaknesses of the court system, it is important to note that the problems in practice are even more visible at the stage of preliminary investigation and investigation managed by the public prosecutor, and an important role is played by the police.

When it comes to the media coverage of criminal proceedings concerning vulnerable victims, there is a widespread practice of publication of data on criminal offences, details of criminal proceedings or the child victim and his/her close relatives, which opens the way to secondary victimisation but also greatly complicates the rehabilitation and reintegration of the victim and obstructs the victim's right to be forgotten.

Journalists and media service providers (MSPs) in Serbia often, knowingly or not, deviate from media regulations governing the categorisation of media content, as well as the conditions and manner of showing minors in media content, and broadcast controversial content that violates the dignity and privacy of victims and members of their families. One of the major problems is the way of obtaining information from institutions, the victims themselves and persons close to them.

Some of the frequently used tactics and practices that harms victims' privacy relates to reporting which formally avoids disclosure of the victim identity while the identity of the family members, friends, neighbours, address or other descriptors are disclosed and therefore, indirectly, the identity of victim.

In addition to this, the victims themselves or the family members are sometimes approached by journalists who convince them to disclose the details and/or the content of the criminal proceeding or personal information explaining that media coverage can help them with getting a more favourable court decision.

A huge leak of information is present on the side of almost all subjects of criminal proceedings, in courts, public prosecution, police, social care and health care sector, followed by a lack of accountability of those responsible for this, including not only professionals, but also the administrative/supporting staff. An absence of penalties or their disproportionality to the consequences is visible on both sides: in institutions from which information leaks and in the media, where the self-regulatory bodies do not establish competence over all media and do not duly monitor and punish practices that breach the media legislation and the Code of Conduct for journalists.

Bearing all of the above in mind, adequate media treatment of victims in the media space in Serbia requires the fulfilment of several prerequisites:

- adequate provisions of criminal, judicially-organizational, as well as that legislation governing the functioning of the police and the social protection sector, which regulate the actions of (primarily) the police, the judiciary and the lawyers, but also other actors of criminal proceedings, such as court experts, experts from social work centres and administrative staff in criminal proceedings - thus ensuring the confidentiality of the procedure, i.e. selection/filtering of information that the media receive from the institutions/professionals in contact with the child victim.

- Improving the functioning of self-regulatory mechanisms, i.e. the normative and institutional framework that regulates and monitors the implementation of regulations governing the work of media employees - thus influencing the content of published news, i.e. ensuring the protection of the privacy and dignity of the victim in the media space. Ideally, these mechanisms serve as a secondary filter if the described control mechanisms within the institutions/actors of the procedure fail. At the same time, they are also the primary filter of information that the media receive from other sources (from victims, their families, acquaintances, etc.)

- Effective functioning of the accountability mechanisms of both groups of actors in the event of violations of the provisions governing the confidentiality of proceedings and the activity of media agents.

4.8.4. Recommendations for improvement

Rec. 26	Organise joint training sessions for journalists, judges, prosecutors, police officers and lawyers on the protection of victims in media reporting on criminal proceedings.
Rec. 27	Strengthen self-regulatory mechanisms for media to increase responsibility in cases of harmful reporting on victims.
Rec. 28	Strengthen internal disciplinary mechanisms in the judiciary to ensure accountability in cases of harmful conduct against (especially vulnerable) victims.

4.9. Compensation claims and the protection of victims

Numerous analyses conducted in recent years indicate the need for more significant intervention in terms of improving the practice of realizing compensation claims. Even probably not so visible at the first glance, there is a strong connection between the position of especially sensitive victims in the capacity of witnesses and their right to access the compensation.[95] Namely, their testimonies are one of the main mechanisms to get information and collect evidence necessary to make decision on the compensation claim in the criminal proceedings without referring victims to the civil proceedings.

4.9.1. The relevant international standards[96]

The right to compensation for crime victims, as a general standard applicable for all crime victims, has been recognised and granted through the number of universal and regional human rights instrument starting from the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[97] which provides for obligation of offenders or third parties responsible for their behaviour to, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. (par. 8)

The same obligation is contained in the art. 16 of Directive 2012/029/EU which requires the Member States to ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a

[95] On this occasion we are not going into the differentiation between the concepts/notions of compensation and reparation but rather focus solely on compensation. For more about this see: Kolaković-Bojović, M., & Džumhur, J. (2025) Enforced Disappearances and the Right to Reparation in Western Balkans, In: Baranowska, G., & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Kolaković-Bojović, M. (2023) *Víctimas de desaparición forzada y derecho a la reparación.* In: *Desaparición forzada: Colección en temas de derechos humanos*, Tomo I. Centro Internacional para la Promoción de los Derechos Humanos bajo los auspicios de UNESCO (CIPDH), Buenos Aires, pp. 196-226.

[96] The main findings from this chapter have been accepted on May 1st 2025 to be presented in the 5th International Scientific Conference of the Association for International Criminal Law, in Palić from June 13 to 16, 2025, under the tittle "Crime victims and the right to compensation: International standards and challenges in Serbia" and the scientific journal Crimen no. 1 for 2025.

[97] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on 29 November 1985 by General Assembly resolution 40/34.

reasonable time, except where national law provides for such a decision to be made in other legal proceedings. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

The 2004/80/EU Directive requires Member States to ensure that "their national rules provide for the existence of a scheme on compensation to the specific victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims[98]" (article 12).

Directive 2011/036/EU, Article 17, also requires the Member States to ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

Directive (2011)093 tackles this right to the right to legal representation of child victims of sexual exploitation recognising in art. 20 importance of legal aid in exercising the right to compensation.

The most comprehensive legal framework on compensation could be found in legal instruments that address rights of victims of war crimes and crimes against humanity. Namely, references to compensation can be traced to article 3 of the 1907 IV Hague Convention, wording which is repeated in article 91 of the Additional Protocol I to the 1949 Geneva Convention[99]. The article states that "A party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces". Under Article 75 of the Rome Statute, the ICC may award reparations to victims against a convicted person. These reparations may include restitution, compensation and rehabilitation. As such, the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of,

[98] In 2016 the Grand Chamber of the CJEU[9] interpreted the provisions of the 2004 Directive as for each Member State to provide a scheme on compensation for victims of violent intentional crimes without limiting "*the scope of the compensation scheme for victims to only certain violent intentional crimes*" [...] *but guaranteeing compensation for victims of any violent intentional crime on its territory*". In 2020, the CJEU[9] clarified the interpretation of the Directive providing that a "*fixed rate of compensation*" cannot constitute a "*fair and appropriate compensation*" for victims of violent crimes "*if it is fixed without taking into account the seriousness of the consequences of the crime for the victims".* The Court emphasises that the compensation has to be an *"appropriate contribution to the reparation of the material and non-material harm suffered".*

[99] Protocol additional to the Geneva Convention of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 art 91. See also Gillard, C. (2003) *Reparation for Violations of International Humanitarian Law*. International Review of the Red Cross, 85(851), pp. 529-553.

victims, including restitution, compensation and rehabilitation (75 (2)) and where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79 (75(3)).

The 2006 International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)[100] which entries into the force in 2010 provided a comprehensive and explicit definition of reparations in a legally binding instrument. Article 24(4) established that: "Each State Party shall ensure, in its legal system, that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation. The right to obtain reparation [...] covers material and moral damages and, where appropriate, other forms of reparation, such as: (a) restitution, (b) rehabilitation, (c) satisfaction, including restoration of dignity and reputation; (d) guarantees of non-repetition." However, the most detailed instrument in this field are UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law[101].

As obvious from the above elaborated provisions, those instruments provide for the right of a victim to be compensated by the offender or a state when there is responsibility of a state. However, there are a few instruments that go beyond this scope recognizing the importance of ensuring compensation to the most vulnerable victims regardless of the possibility of being compensated by an offender. This initiative has its roots in arts. 12-13 of the UN Basic principles that provide the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

[100] International Convention for the Protection of all Persons from Enforced Disappearance, adopted on 20 December 2006 during the sixty-first session of the General Assembly in resolution A/RES/61/177.

[101] UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Preamble, adopted by the UN Commission on Human Rights in 2005, UN Doc. E/CN.4/RES/2005/35 and adopted by the General Assembly on 16 December 2005, UN Doc. A/RES/60/147.

Council of Europe Convention on the Compensation for Victims of Violent Crimes (1983)[102] (Article 2) specifies that when compensation is not fully available from other sources the State shall contribute to compensate: a) those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence; b) the dependants of persons who have died as a result of such crime. Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished. It also specifies what kind of lost and or damage it should cover.[103]

Article 30 of the Istanbul Convention[104] which addresses the rights of victims of gender based and family violence enforces compensation to provide obligations for the State to set up measures to ensure the victim's right to compensation - within reasonable time - against the perpetrator and from the State when the damages are not covered by other sources. This is a key instrument regarding reparation for victims of domestic violence.

4.9.2. Currently applicable legislation, the gaps therein and ongoing legislative amendments

The Criminal Procedure Code (Article 252-260) provides for the obligation of the court and prosecutor's office to collect evidence needed to decide on the compensation claim before the claim itself has been filed. The court is obliged to decide on a compensation claim in criminal proceedings unless it significantly prolongs the proceeding.

[102] Council of Europe, European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24 November 1983.

[103] Article 4: Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance. Article 5: The compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be granted. Article 6: The compensation scheme may specify a period within which any application for compensation must be made. Article 7: Compensation may be reduced or refused on account of the applicant's financial situation. Article 9: With a view to avoiding double compensation, the State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of the injury or death, from the offender, social security or insurance, or coming from any other source.

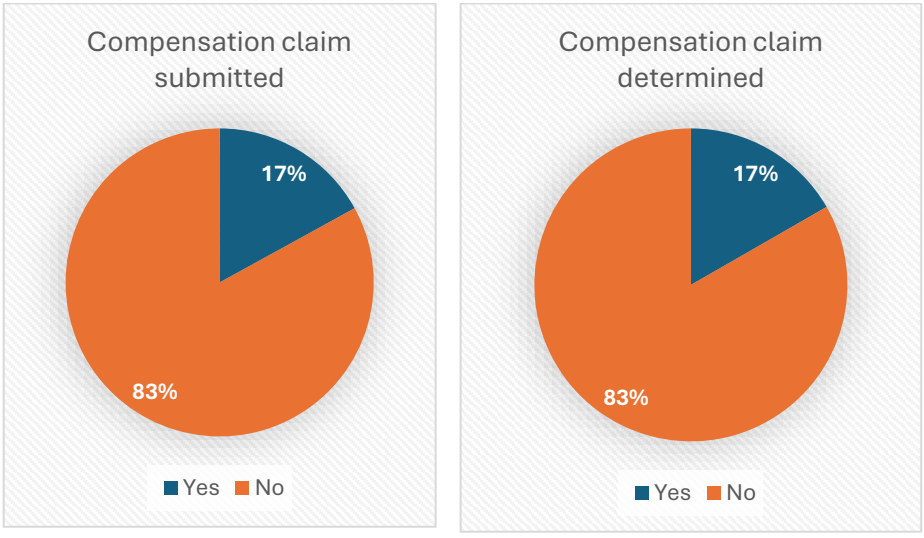
[104] Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011.

4.9.3. The present challenges in practice

The court should be mindful of those CPC provisions, both, from the point of view of avoiding multiple interrogation of a victim in the criminal proceeding, but also in terms of the potential future position of that victim in the civil proceeding which is initiated in the absence of the decision on the compensation claim in the criminal proceeding. Namely, in such civil proceedings a victim is not granted any protective measures during his/her testimony. Therefore, it should be imperative for the criminal court to collect as much evidence as needed, using all protective measures available in criminal proceedings.

The monitoring of the position of juvenile victims in criminal proceedings in Serbia in 2020[105] showed that only 17% of the injured parties pointed out the compensation claim. Within those 17% who decided on this step, again only 17% of them determined their property claim.

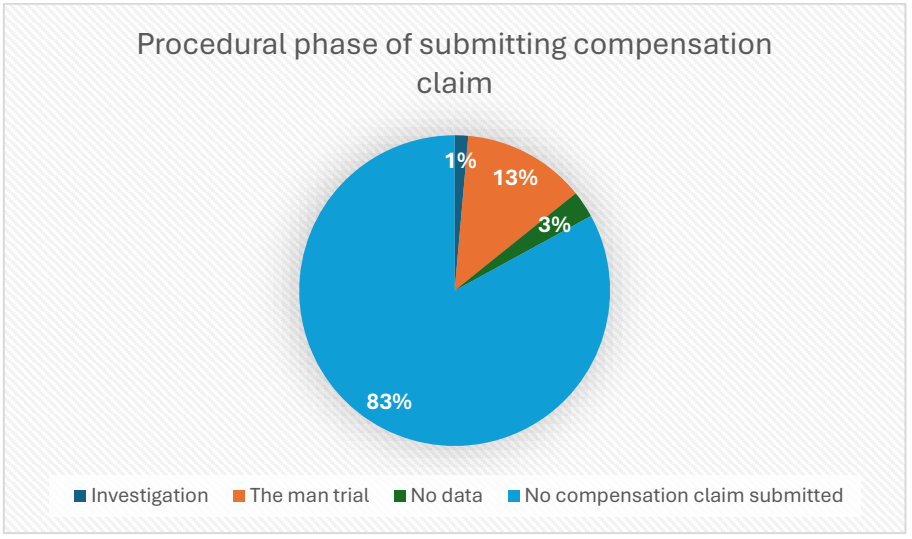
Chart 6: Compensation claim



When it comes to the procedural phase of emphasizing the property claim, the injured parties who pointed out the claim in general mostly did so only at the main trial.

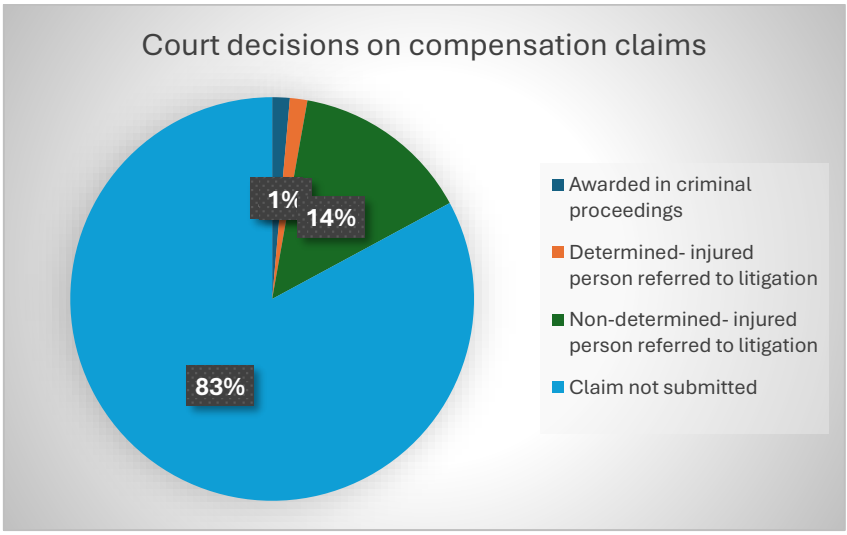
[105] Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

Chart 7: Procedural phase of submitting compensation claim



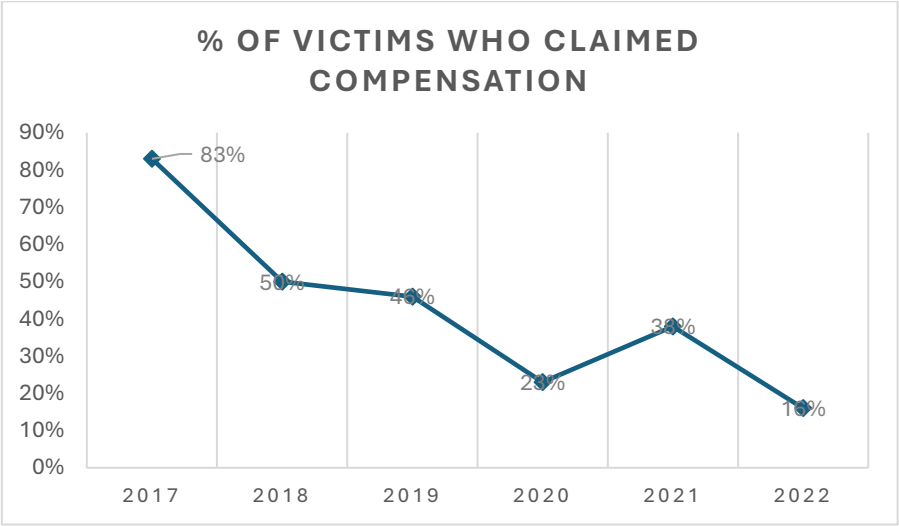
Regarding the court's decisions on the property claim, only one of the 70 injured parties was awarded a property claim in criminal proceedings. The key reason for that is certainly the fact that only 17% of them pointed out, and only two determined the request, which does not change the overall picture of the complete ineffectiveness of the mechanism prescribed by Art. 252-260. CPC.

Chart 8: Court decisions on compensation claims



Similar trends can be seen in criminal proceedings concerning human trafficking. Namely, the NGO ASTRA has established annual monitoring of those cases which includes, among others, the access to compensation for victims based on the data from ASTRA annual reports.[106]

Chart 9: Compensation claims: victims of human trafficking

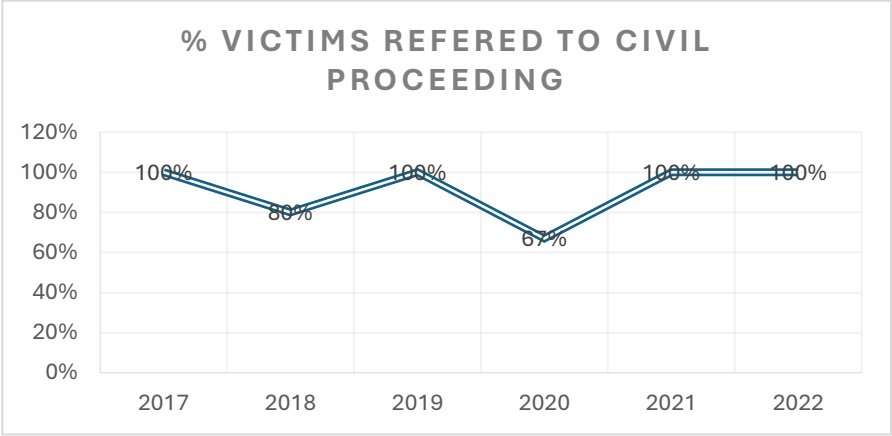


From the data presented in the chart 9 it is obvious that there is a negative trend in the five years period where the percentage of the victims of human trafficking who submitted a compensation claim has been decreased from 83% in 2017 to 10% in 2022.

The reasons for such a trend can be found in data presented in the Chart 10 showing that the court has almost never (with the exception of 2018 and 2020) decided on the compensation claim in criminal proceeding.

[106] See more at: https://astra.rs/en/astras-publications/, last accessed on October 28th 2024. The charts and 10 have been prepared based on the analysis of the annual reports on monitoring in 2017-2022 period.

Chart 10: Court decisions on compensation claims referring victims to the civil proceedings



Despite these disappointing trends there are some positive examples based on the individual engagement/enthusiasm of the judges/court panels.

Case study 5: The injured party, which was awarded compensation, had been an injured party in a case of trafficking in human beings. In the decision based on a plea agreement, it is stated that in line with art. 358 CPC, the injured party was awarded compensation, and that the perpetrator was obliged, as a compensation for material and immaterial damage, to pay 1,117,000 RSD (approx. 9,400EUR) within 8 days of the day that the judgement becomes final, in line with the agreement on the manner of payment of the property claim to the injured party, where the funds on the perpetrator's accounts were blocked by means of a temporary measure by the Higher Court. The injured party had a proxy.

In addition, she underwent three forensic examinations in the course of the trial and was subsequently directed to claim compensation in civil proceedings.[107]

Case study 6: It is also worth mentioning a very recent positive example of the case of sexual violence against two girls committed by their father, where in

[107] See: ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2020. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, page 27.

September 2024 the Higher Court in Novi Sad decided on the compensation claim in the criminal proceeding. The Judicial Chamber condemned the accused for the rape against one daughter, the incitement of the child to attend sexual actions to the detriment of that child (against other daughter), as well as three crimes of family violence against his daughters and the spouse. The two girls were assigned compensation of 1,100,000 dinars (approx. 9,400EUR) and 150,000 dinars (1,200EUR), while their mother was referred to submit the compensation claim in the civil proceeding.

In addition to the above-described examples of good practice, it is also important to mention that at the state level some initiatives have been taken to address these serious challenges. The Supreme Court of Cassation[108] adopted the Guidelines for improving the case law regarding procedures for compensation of damage to victims of serious crimes in criminal proceedings[109] (valid as of August 2019). The Supreme Court in cooperation with the Judicial Academy and supported by OSCE Mission to Serbia has organized a multiple training sessions for judges of higher courts and public prosecutors, aimed at fostering implementation of the Guidelines.

However, a system to continuously monitor exercising this right in practice hasn't been established yet. However, the predominant impression arising from the above presented statistics as well as from the qualitative analysis is that there are still a very few enthusiasts individuals who are trying to change the existing bad practice, but also that there is a significant difference between practices of the courts across the country, with no actions taken by the Supreme Court aimed at identifying causes of such differences and/or removing them.

During the COVID-19 pandemic, there were some efforts to develop a single form/template for submitting a compensation claim. The main idea behind this was to use such a template to enable victims to specify the compensation claims as in terms of the type of harm suffered, as with regards to the amount of compensation claimed. In this process, a victim can be supported by the professional in the victim support service or by his/her lawyer. In parallel, this would make it easier for the prosecutors and judges to plan and conduct actions

[108] he Supreme Court.

[109] Guidelines for improving the case law with regard to procedure for compensation of damage to victims of serious crimes in criminal proceedings., available at: https://www.podrskazrtvama.rs/en//posts/presentation-of-guidelines-for-damage-compensation-87.php, last accessed on July 30th 2020.

aimed at collecting evidence necessary to decide on a compensation claim.

However, predominant feedback received from the professionals during the qualitative stage of the analysis, showed that they don't perceive such a form as a useful tool. Basically, they are explaining such a position through the importance of the awareness and a readiness of individual judges (and prosecutors) to deal with the compensation claim with or without uniform template existing and (non)being used.

Additional problems in practice occur in relation to the two facts:

- Passive and/or non-ethical behaviour of lawyers.
- The lack of legal and institutional mechanisms to ensure compensation in cases when a victim cannot be compensated by an offender.

The role of the legal representative/proxy in the process of submitting a compensation claim and deciding on it is extremely important. Namely, despite the obligation of the competent authorities to inform a victim on his/her to submit compensation claim, the role of his/proxy is to explain all the relevant details of the procedure and the conditions to get compensation.

However, there is a widespread practice among lawyers to demotivate victims to push for getting compensation in criminal proceeding for purely lucrative reasons. Namely, instead of helping victims to specify their compensation claim, they instruct them just to submit to compensation claim without specifying it, in order to represent the same victim in the civil proceeding after the criminal court refer him/her to submit compensation claim in a civil proceeding.

Finally, even there is a decision of the criminal court on the compensation claim, there is a great chance in practice that this victim cannot be compensated by an offender since he/she is not owning any property, employment, etc. or even if he/she has died or cannot be prosecuted and/or punished for other reasons. In those cases, as previously reflected in the analysis of the relevant international standards, the state should ensure that a victim can be compensated from a state fund, while the state will further proceed with its efforts to reimburse itself from an offender, if possible, at the latter stage. An additional purpose of such funds is to ensure a prompt material support to victims in a situation of need even before the court decision, which is of the great importance for especially vulnerable victims who need to pay for medical treatments, repairing various sorts of damage.

Discouraged by the practice of regular referral to the civil proceedings, paired with a lack of legal aid in the process of claiming compensation or even discouraged by lawyers who represent them, victims are not skilled, empowered and/or supported enough to submit a compensation claim in criminal proceeding and pass this process secured by a various protective measures that belongs to victims in criminal proceedings and especially those that are especially vulnerable.

Neither legal nor institutional set up allows for compensation from a state fund in cases when there is no possibility for a victim to be compensated from an offender from various reasons (offender died, has no resources/property). The same goes for situations where offender is unknown and therefore criminal proceedings cannot be conducted.

4.9.4. Recommendations for improvement

Rec. 29	Amend the Civil Procedure Code in a way to ensure that especially vulnerable victims are protected in civil proceeding conducted upon their compensation claims based on the decision of the criminal court to refer them to litigation.
Rec. 30	Intensively and continuously work on dissemination, training for and the monitoring of the implementation of the Guidelines for improving the case law with regard to procedures for compensation of damage to victims of serious crimes in criminal proceedings.
Rec. 31	Finalise, adopt and start using the uniform template for submitting a compensation claim, and ensure support of the victim support services to the victims who need an aid in filling this form.
Rec. 32	Regularly analyse and publish (good) practice of the criminal courts regarding their decisions on compensation claims.

5. List of Recommendations

Rec. 1	Continuously use the standardized structure of the monitoring report to allow Serbian authorities to closely follow the developments and challenges occurred in each segment covered by the monitoring between to reporting cycles, and to develop correctional measures accordingly.
Rec. 2	Judges and prosecutors, as well as the lawyers who act in the capacity of legal representative/proxy of victims need to be provided with the adequate training to better understand the newly adopted concept of a victim in Serbian criminal procedure especially in the context of protecting their rights that have been recently incorporated in CPC.
Rec. 3	Adopt the proposed amendments to arts. 103 including possibility to define more precisely competent authorities in charge of conducting individual assessment of victims to precede the court decision on awarding the status of especially sensitive witness, and to exclude the right of accused to appeal the decision of awarding the status of especially vulnerable witness.
Rec. 4	Ensure prompt finalisation of establishing the victim support services within all higher courts.
Rec. 5	Ensure joining and financing victim support services established within NGOs to the National Victims Support Network.
Rec. 6	Increase number of psychologists employed by higher courts.
Rec. 7	Amend the Law on Free Legal Aid in order to broaden its scope in terms of ensuring access to free legal aid for (especially vulnerable) victims.
Rec. 8	Increase accessibility of information on the available free legal aid solutions for victims.
Rec. 9	Develop sustainable training programs for lawyers to ensure they recognise the specific needs of especially vulnerable victims.

Rec. 10	Adopt the proposed amendments to art. 50 of CPC to establish a legal basis for the presence of a trusted person and improve the proposed wording of the draft amendments to CPC concerning the potential conflict of interest between a victim and a trusted person.
Rec. 11	Improve coordination mechanisms within judiciary to better utilize the work done by court psychologists in order to avoid multiple interrogation and questioning of vulnerable victims without proper preparation and/or support of psychologist.
Rec. 12	Regularly conduct an assessment weather there is a conflict of interests regarding the presence of a "trusted person" during the questioning of victims, especially in cases concerning the child victims.
Rec. 13	Continuously work on the development of the National Network of Victim Support Services to ensure adequate professional resources in accompanying victims and witnesses where needed.
Rec. 14	Continuously work on the development of the victim- cantered data bases and statistics in judiciary to ensure better coordination in cases when the same victim appears in more than one court proceeding and/or in more than one procedural capacity.
Rec. 15	Adopt the proposed amendments to art. 50 of CPC to establish a legal basis to limit a number of interviews with a victim.
Rec. 16	Pay more attention on assessment the real reasons behind changing the testimony by a victim and involve professional support in these cases.
Rec. 17	Adopt the proposed amendments to arts. 103 and 104 of CPC aimed at explicit prohibition of cross examination of especially vulnerable witnesses.
Rec. 18	Amend art. 102 of CPC in order to introduce obligation of the court to inform the competent bar chamber on the fine imposed to the lawyer due to the inappropriate acts against a sensitive witness referred in par. 1 of that provision, as well as the obligation of the competent bar chambre to inform back the court on the measures taken against that lawyer upon receiving the notification from the court.

Rec. 19	Develop and adopt a new Law on Juveniles that will include detailed provisions on interviewing juvenile victims in the capacity of witnesses.
Rec. 20	Strengthen internal mechanism in the competent bar chambers led by Bar Association of Serbia in order to establish clear and sustainable mechanism of running registries, preparing statistics on, and taking follow up measures upon received court notifications on the imposed disciplinary measures against lawyers in criminal proceedings.
Rec. 21	Strengthen the overall approach to sensibilization of the legal professionals involved in interviewing the especially sensitive witnesses through: a) Improvement of the law schools' curricula and books. b) Improvement of the initial and continuous training for judges and public prosecutors in the Judicial Academy, with the focus on the needs of vulnerable victims and witnesses and the skills needed to interview them properly. c) Improvement of the training for lawyers in the Bar Academy.
Rec. 22	Develop a catalogue of the infrastructural requirements aimed at ensuring access to justice in line with the relevant international standards for victims.
Rec. 23	Continue the ongoing process of procuring audio and video equipment for courts and prosecutors' offices to achieve targets for universal coverage set out in the NSRVWCRS 2020-2025.
Rec. 24	Organise training for legal professionals in courts and prosecutors' offices to ensure proper use of the newly procured equipment.
Rec. 25	Ensure that all ongoing and planned renovation/(re)construction initiatives result in adaptation of the premisses adjusted to the victim's needs.
Rec. 26	Organise joint training sessions for journalists, judges, prosecutors, police officers and lawyers on the protection of victims in media reporting on criminal proceedings.

Rec. 27	Strengthen self-regulatory mechanisms for media to increase responsibility in cases of harmful reporting on victims.
Rec. 28	Strengthen internal disciplinary mechanisms in the judiciary to ensure accountability in cases of harmful conduct against (especially vulnerable) victims.
Rec. 29	Amend the Civil Procedure Code in a way to ensure that especially vulnerable victims are protected in civil proceeding conducted upon their compensation claims based on the decision of the criminal court to refer them to litigation.
Rec. 30	Intensively and continuously work on dissemination, training for and the monitoring of the implementation of the Guidelines for improving the case law with regard to procedures for compensation of damage to victims of serious crimes in criminal proceedings.
Rec. 31	Finalise, adopt and start using the uniform template for submitting a compensation claim, and ensure support of the victim support services to the victims who need an aid in filling this form.
Rec. 32	Regularly analyse and publish (good) practice of the criminal courts regarding their decisions on compensation claims.

Annex I: Questionnaire for the purpose of collecting data on case law/criminal proceedings

Note: In cases involving more than one defendant and / or more injured parties, it is necessary to answer all questions from the questionnaire for each defendant or injured party by copying a block of table rows in each chapter of the questionnaire as many times as there are defendants or injured parties.

QUESTIONNAIRE FOR ANALYSIS OF CASE LAW	
Name, surname and affiliation of the researcher:	
1. CASE INFORMATION	
Town	
Court	
The crime (according to indictment)	
Duration of the first instance proceeding	a) Up to 3 months b) 3-6 months c) 6-12 months d) 1-2 years e) 2-3 years f) Over 3 years
2. INFORMATION ABOUT THE DEFENDANT	
Were there more defendants in the proceedings?	a) yes b) no (If YES, specify number)
The gender of the defendant	a) M b) F
The age of the accused at the time of the commission of the crime	a) 14-18 b) 18-21 c) 21-65 d) Over 65
Previous convictions	a) yes b) no

	Multiple recidivism - YES / NO
	The same type of crime YES/NO
Relationship with the victim	a) yes b) no Type:
Number of identified victims in the procedure	
Other comments:	
3. INFORMATION ABOUT THE INJURED PARTY(VICTIM)	
Sex	a) M b) F
The age of the injured party at the time of the commission of the crime:	e) Below 14 f) 14-18 g) 18-21 h) 21-65 i) Over 65
Residence	a) urban b) rural
Previous victimisation	a) yes b) no c) no data If yes, explain:
Has the victim been granted the status of a particularly sensitive witness? If so, on whose proposal and by whose decision was this status determined?	a) yes b) no If so, at whose proposal? By whose decision?
4. **LEGAL REPRESENTATION**	
Did the injured party have a proxy?	a) yes b) no c) no data If yes, is the proxy: a) Elected b) Appointed ex officio

Presence of legal representative / guardian of the minor injured party (parent, guardian, SCC representative)	a) yes b) no c) Type / status of representative:
Other comments:	
5. SUPPORT TO THE VICTIMS	
Does the injured party have an escort / support from a psychologist, social worker or other professional?	a) yes b) no If yes, what:
Does the injured party have an escort / support from a victim support service?	a) yes b) no If so, what type of service is it? a) Service established by the prosecution or the court b) Service of the Centre for the Protection of Victims of Trafficking in Human Beings c) Service established by NGOs
Did the injured party have the support / accompaniment of family and / or friends or other trusted person(s) at the main trial?	a) yes b) no Whose?
Other comments:	
6. INFORMATION PROVIDED TO THE INJURED PARTY	
Is the injured party informed about the rights that belong to him in criminal proceedings in accordance with the provisions of the CPC / Law on Juveniles?	a) yes b) no When: By whom:
Other comments:	
7. SECURITY OF VICTIMS	
Have special measures been taken to protect the injured party? If so, which ones? Who made the request? What was the court's decision?	a) yes b) no At whose request? What measures?

Did the injured party express fear or concern for his safety at the trial and - if so, what was the court's reaction?	a) yes b) no If YES- court reaction?
Has the defendant been remanded in custody?	a) yes b) no If Yes, at what stage of the procedure: How much time did he spend in detention and at what stage of the procedure was his detention terminated:
Other comments:	
8. INTERROGATION OF THE INJURED PERSON	
Has the injured party been previously questioned in the same case - if so, how many times and before which body of procedure?	a) yes b) no If YES, how many times? Public prosecutor / court:
Has the injured party changed his/her statement in relation to the previously given statement?	a) yes b) no
Was the previously given statement of the injured party read instead of re-examination?	a) yes b) no
Was the injured party questioned in the presence of the defendant (s)?	a) yes b) no c) no data
Was there a confrontation between the injured party and the accused / witness?	a) yes b) no c) no data If yes, specify with whom:
Was the examination conducted with the support of psychologist, social worker or other professional?	a) yes b) no c) no data

	If YES, by whom?
9. INAPROPRIATE OF FORBIDEN INTERROGATION TECHNIQUES	
Was the injured party as a witness asked leading questions?	a) yes b) no c) no data If yes, specify what and by with whom:
Was the injured party as a witness asked inappropriate and/or irrelevant questions about private/sexual life?	a) yes b) no c) no data If yes, specify what and by with whom:
Was the injured party as a witness asked questions or received comments suggesting that he/she provoked the victmisation?	a) yes b) no c) no data If yes, specify what and by with whom:
Whether the victim was exposed to threats, intimidation and/or insults?	a) yes b) no c) no data If yes, specify what and by with whom:
10. USE OF VIDEO LINK, THE COURT INFRASTRUCTURE AND PROTECTION OF VICTIMS	
Was the examination performed using technical means for the transmission of images and sound - if so, where was the injured party (another court room, apartment, SCC, victim support service)	a) yes b) no c) no data If YES, where did the injured party stay during the interrogation? YES/ NO
Did the technician attend the examination using technical means for image and sound transmission?	a) yes b) no c) no data
Were there any technical disturbances during the interrogation?	a) yes b) no c) no data

11. APPLICATION OF DISCIPLINARY MEASURES TO PROTECT VICTIMS DURING THE INTERROGATION	
Did the injured party or the injured party's attorney have any objections to the manner of asking questions or entering the injured party's testimony in the minutes?	a) yes b) no Comment:
Did the presiding judge decided to allow some of the questions?	a) No b) Yes If yes, whether this occur just once during the interrogation or multiple times? If yes, whose question was prevented? a) Defendant b) Defendants lawyer c) Other
Did the judge intervene during the hearing because he considered a way of posing some questions inappropriate? If so, describe what happened.	Judge intervention: Description:
Did the judge enter a warning to the defendant and his lawyer in the record?	a) yes b) no
Did the prosecutor intervene during the hearing because he considered some issues to be irrelevant or inappropriate. If so, describe what happened.	Judge intervention: Description:
What happened after the warning?	a) The approach to interrogation was change b) Inappropriate treatment was continued without reaction c) Inappropriate treatment was continued but a person who applied it was punished by fine Describe:

Other comments:	
12. PROTECTION OF PRIVACY	
Were there any requests that the trial be held in part or in full without the presence of the public?	a) yes b) no If so, who submitted the request and for what reasons and which parts were not open to the public? Explanation:
Has the court granted the request for exclusion of the public? If not, for what reasons?	a) yes b) no c) Reasons:
Did the court/prosecutor's office issue a media statement on the proceeding?	c) yes d) no e) no data
Did the media attend the main trial? If not, explain.	a) yes b) no c) no data If so, were they allowed to be present throughout the trial? YES/ NO Explanation:
Did the media published some news about the proceeding?	a) yes b) no c) no data If yes, whether the news included inappropriate elements such disclosure of the victim privacy, details of the crime, questions that were not allowed by the presiding judge, etc? d) yes e) no f) no data Explanation:
Other comments:	
13. COMPENSATION CLAIM	
Did the injured party log the compensation claim?	c) yes d) no

At what stage of the procedure was the property claim raised?	
Did the injured party specified his/her request?	a) yes b) no
What was the subject of the compensation claim?	a) Compensation _____ (claimed amount) b) Return of items c) Cancellation of legal transaction
What was the court's decision on the request?	a) Fully adopted b) Partially adopted (explain)
Other comments:	
14. ADDITIONAL REMARKS:	

Annex II: Questionnaire for interviewing professionals

QUESTIONNAIRE FOR INTERVIEWS WITH PROFESSIONALS	
Name, surname and affiliation of the researcher:	
PERSONAL INFORMATION OF THE PROFESSIONAL	
Name and Surname	
Affiliation	
Education	
Town	
Years of experience in the filed	a) less than 3 years b) 3-5 years c) 5-10 years d) over 10 years
Topic 1: The status of especially sensitive witness (experience, normative gaps, challenges in practice, suggested remedies)	
Answers:	
Topic 2: Legal representation (experience, normative gaps, challenges in practice, suggested remedies)	
Answers:	
Topic 3: Presence of a psychologist and/or trusted person (experience, normative gaps, challenges in practice, suggested remedies)	
Answers:	
Topic 4: Multiple interrogation (experience, normative gaps, challenges in practice, suggested remedies)	
Answers:	
Topic 5: Forbidden or inappropriate interrogation techniques (experience, normative gaps, challenges in practice, suggested remedies)	

Answers:
Topic 6: Disciplinary measures aimed at protecting victims in the capacity of witnesses (experience, normative gaps, challenges in practice, suggested remedies)
Answers:
Topic 7: Use of video link, the court infrastructure and protection of victims (experience, normative gaps, challenges in practice, suggested remedies)
Answers:
Topic 8: Protection of privacy (experience, normative gaps, challenges in practice, suggested remedies)
Answers:
Topic 9: Compensation claim and the protection of victims as witnesses (experience, normative gaps, challenges in practice, suggested remedies)
Answers:

Annex III: The focus group with professionals

Size of the focus group: up to 15 participants

Composition of the focus group: Criminal judges (including those who act in misdemeanour cases), public prosecutors, attorneys (both- who represent defendants and victims), court psychologists, court experts (psychologists, psychiatrists, etc), professionals from victim support services (both- established in the courts and/or NGOs), professionals from social care centres, journalist who report on the court proceedings and crime, NGOs activists who monitor trials in criminal cases involving especially vulnerable victims as witnesses.

Duration of the meeting: 90-180 minutes

Modalities of the work: case studies, discussion, defining recommendations

Topics to be discussed:

Topic 1: The status of especially sensitive witness (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions: **Recommendations:**
Topic 2: Legal representation (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions: **Recommendations:**
Topic 3: Presence of a psychologist and/or trusted person (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions: **Recommendations:**
Topic 4: Multiple interrogation (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions:

Recommendations:
Topic *5*: Forbidden or inappropriate interrogation techniques (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions: Recommendations:
Topic 6: Disciplinary measures aimed at protecting victims in the capacity of witnesses (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions: Recommendations:
Topic 7: Use of video link, the court infrastructure and protection of victims (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions: Recommendations:
Topic 8: Protection of privacy (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions: Recommendations:
Topic 9: Compensation claim and the protection of victims as witnesses (experience, normative gaps, challenges in practice, suggested remedies)
Remarks/Conclusions: Recommendations:

Questions for fostering the debate:

1) Can you explain your role/previous experience in the field. If your experience is based on the multiple roles, can you elaborate on the differences of the perception of same issues?

2) Do you think that the current gaps and challenges in the practice are associated with the relevant normative framework? Do you have suggestions for its amendments?

3) Do you think that the current gaps and challenges in the practice are associated with the quality of education/training on the issue? How do you assess the quality of professional education in the field: both, in the universities and for the professionals, through the continuous training?

4) Do consider there are adequate disciplinary mechanisms to held responsible those professionals who abuse their professional position/function in the criminal proceeding to breach the rights of a victim/witness?

5) How do you perceive the role of media in protecting vulnerable victims/witnesses? How do you assess relationship between judiciary and media in that regard?

6) How do you assess the practical, including digital skills of the professionals in the context of the application of the protective measures associated to those technologies?

7) Where do you see the biggest challenges and the greatest successes in terms of improving the court infrastructure to protect victims and witnesses? What could be done as a next priority step?

Annex IV: Questionnaire for interviewing victims

QUESTIONNAIRE FOR INTERVIEWING A VICTIM	
Name, surname and affiliation of the researcher:	
1. CASE INFORMATION	
Town	
Court	
The crime (according to indictment)	
Duration of the first instance proceeding	g) Up to 3 months h) 3-6 months i) 6-12 months j) 1-2 years k) 2-3 years l) Over 3 years m) Victim is not sure, but he/she thinks it is/was progressing well n) Victim is not sure, but he/she thinks it isn't /wasn't progressing well
2. INFORMATION ABOUT THE DEFENDANT	
Were there more defendants in the proceedings?	c) Yes (If YES, specify number) _____ d) no
The gender of the defendant	e) M f) F
The age of the accused at the time of the commission of the crime	j) 14-18 k) 18-21 l) 21-65 m) Over 65 n) I don't know
Previous convictions	c) yes d) no

	e) I don't know
	Multiple recidivism - YES / NO
	The same type of crime YES/NO
Relationship with the victim, do they know each other?	c) yes d) no **Add explanation:**
3. INFORMATION ABOUT THE INJURED PARTY(VICTIM)	
Sex	c) M d) F
If the victim perceives his/her gender differently from the sex, add remark in this regard.	**Add explanation:**
The age of the injured party at the time of the commission of the crime:	o) Below 14 p) 14-18 q) 18-21 r) 21-65 s) Over 65
Residence	c) urban d) rural
Previous victimisation	d) yes e) no f) I don't know
Allow the victim to explain his/her personal perception of previous victimisation(s) regardless existence and the outcome of the institutional reaction.	**Add explanation:**
Has the victim been granted the status of a particularly sensitive witness? If so, on whose proposal and by whose decision was this status determined?	d) yes e) no If so, at whose proposal? By whose decision?

Allow the victim to explain whether he/she was properly informed what does this status mean? Did he/she understand this information? Did he/she felt free to ask for clarification and if not, why? Did he/she felt better/much safe and secure for having such a status?	**Add explanation:**
4. **LEGAL REPRESENTATION**	
Did the injured party have a proxy?	d) yes e) no f) no data If yes, is the proxy: a) Elected b) Appointed ex officio
Allow the victim to explain whether he/she was properly informed on the right to legal representation and on the modalities to get it. Did he/she understand this information? Did he/she felt free to ask for clarification and if not, why? Whether the victim find this right sufficiently accessible?	**Add explanation:**
Presence of legal representative / guardian of the minor injured party (parent, guardian, SCC representative)	c) yes d) no f) Type / status of representative:
Other comments:	
***5.* SUPPORT TO THE VICTIMS**	
Does the injured party have an escort / support from a psychologist, social worker or other professional?	c) yes d) no If yes, what kind of support:
Does the injured party have an escort / support from a victim support service?	c) yes d) no If so, what type of service is it?

	a) Service established by the prosecution or the court b) Service of the Centre for the Protection of Victims of Trafficking in Human Beings c) Service established by NGOs
Allow the victim to explain how did he/she learned about the right to receive the support? How was the first contact with the support service? How he/she felt about being accompanied with a psychologist, social worker or other professional during the hearings and/or in other stages of the procedure?	**Add explanation:**
Did the injured party have the support / accompaniment of family and / or friends or other trusted person(s) at the main trial?	c) yes d) no Whose?
Allow the victim to explain how did he/she learned about the right to be accompanied with a trusted person? How he/she felt about being accompanied with a trusted person, social worker or other professional during the hearings and/or in other stages of the procedure?	**Add explanation:**
Other comments:	
6. INFORMATION PROVIDED TO THE INJURED PARTY	
Is the injured party informed about the rights that belong to him in criminal proceedings in accordance with the provisions of the CPC / Law on Juveniles?	c) yes d) no When: By whom:
Allow the victim to recall hie/experience in that regard. Allow the victim to explain whether he/she was properly informed on his/her	**Add explanation:**

rights to. Did he/she understand this information? Did he/she felt free to ask for clarification and if not, why?	
7. SECURITY OF VICTIMS	
Have special measures been taken to protect the injured party? If so, which ones? Who made the request? What was the court's decision?	c) yes d) no At whose request? What measures?
Did the injured party express fear or concern for his safety at the trial and - if so, what was the court's reaction?	c) yes d) no If YES- court reaction?
Allow victim to explain his/her reasons for fear and how he/she felt about court reaction upon his/her concerns. Did he/she hesitate to express his/her concerns and if yes, why?	**Add explanation:**
Has the defendant been remanded in custody?	c) yes d) no If Yes, at what stage of the procedure: How much time did he spend in detention and at what stage of the procedure was his detention terminated:
Other comments:	
8. INTERROGATION OF THE INJURED PERSON	
Has the injured party been previously questioned in the same case - if so, how many times and before which authority?	c) yes d) no If YES, how many times? Public prosecutor / court:
Allow the victim to explain how his/she felt about the need to repeat his/her statement.	**Add explanation:**

Has the injured party changed his/her statement in relation to the previously given statement?	c) yes d) no
Allow the victim to explain his/her reasons for that. Did it result from the prolonged procedure/ memory deficiency or from the fear that he/she will not be protected by the authorities? Other reasons?	**Add explanation:**
Was the previously given statement of the injured party read instead of re-examination?	c) yes d) no
Was the injured party questioned in the presence of the defendant (s)?	d) yes e) no
Allow the victim to explain how he/she felt about this	**Add explanation:**
Was there a confrontation between the injured party and the accused / witness?	d) yes e) no If yes, specify with whom:
Allow the victim to explain how he/she felt about this	**Add explanation:**
Was the examination conducted with the support of psychologist, social worker or other professional?	d) yes e) no If YES, by whom?
Allow the victim to explain how he/she felt about this	**Add explanation:**
9. INAPROPRIATE OF FORBIDEN INTERROGATION TECHNIQUES	
Was the injured party as a witness asked leading questions?	d) yes e) no f) I don't know If yes, specify what and by with whom:

Allow the victim to explain how he/she felt about this. Whether he/she was aware that the way of interviewing is wrong? Did he/she expected judge to do something in that regard?	**Add explanation:**
Was the injured party as a witness asked inappropriate and/or irrelevant questions about private/sexual life?	d) yes e) no f) I don't know If yes, specify what and by with whom:
Allow the victim to explain how he/she did felt about this. Whether he/she was aware that the way of interviewing is wrong? Did he/she expected judge to do something in that regard?	**Add explanation:**
Was the injured party as a witness asked questions or received comments suggesting that he/she provoked the victimisation?	d) yes e) no f) I don't know If yes, specify what and by with whom:
Allow the victim to explain how he/she felt about this. Whether he/she was aware that the way of interviewing is wrong? Did he/she expected judge to do something in that regard?	**Add explanation:**
Whether the victim was exposed to threats, intimidation and/or insults?	d) yes e) no f) no data If yes, specify what and by with whom:
Allow the victim to explain how he/she felt about this. Whether he/she was aware that the way of interviewing is wrong? Did he/she	**Add explanation:**

expected judge to do something in that regard?	
10. APPLICATION OF DISCIPLINARY MEASURES TO PROTECT VICTIMS DURING THE INTERROGATION	
Did the injured party's attorney have any objections to the manner of asking questions or entering the injured party's testimony in the minutes?	d) yes e) no Comment:
Did the presiding judge decided to allow some of the questions?	c) No d) Yes If yes, whether this occur just once during the interrogation or multiple times? If yes, whose question was prevented? c) Defendant d) Defendants lawyer f) Other
Did the judge intervene during the hearing because he considered some issues irrelevant or inappropriate. If so, describe what happened.	Judge intervention: Description:
Did the judge enter a warning to the defendant and his lawyer in the record?	c) yes d) no
Did the prosecutor intervene during the hearing because he considered some issues to be irrelevant or inappropriate. If so, describe what happened.	Judge intervention: Description:
What happened after the warning?	d) The approach to interrogation was change e) Inappropriate treatment was continued without reaction f) Inappropriate treatment was continued but a person who applied it was punished by fine

	Describe:
Allow the victim to explain whether he/she consider judges reaction as sufficient and/or appropriate? Did this reaction made it feel safe and strong enough to continue testimony?	**Add explanation:**
11. USE OF VIDEO LINK, THE COURT INFRASTRUCTURE AND PROTECTION OF VICTIMS	
Was the examination performed using technical means for the transmission of images and sound - if so, where was the injured party (another court room, apartment, SCC, victim support service)	d) yes e) no If YES, where did the injured party stay during the interrogation? YES/ NO
Did the technician attend the examination using technical means for image and sound transmission?	d) yes e) no f) I don't know
Were there any technical disturbances during the interrogation?	d) yes e) no f) I don't know
Allow victim to explain how he/she felt about this way of interviewing? Whether he/she received proper information about the steps and the procedure? Did he/she understand this information? Did he/she felt free to ask for clarification and if not, why?	**Add explanation:**
12. PROTECTION OF PRIVACY	
Were there any requests that the trial to be held in part or in full without the presence of the public?	d) yes e) no If so, who submitted the request and for what reasons and which parts were not open to the public? Explanation:

Has the court granted the request for exclusion of the public? If not, for what reasons?	f) yes g) no f) Reasons:
Did the court/prosecutor's office issue a media statement on the proceeding?	h) yes i) no j) I don't know
Did the media attend the main trial? If not, explain.	d) yes e) no f) I don't know If so, were they allowed to be present throughout the trial? YES/ NO Explanation:
Did the media published some news about the proceeding?	g) yes h) no i) I don't know
Allow the victim to express his/her position about publicity of the proceeding and the presence of media. In addition to this, if there were media coverage of the proceeding, discuss whether the news included inappropriate elements such disclosure of the victim privacy, details of the crime, questions that were not allowed by the presiding judge, etc? What are the victim expectations in that regard and how he/she feels about it?	**Add explanation:**
13. COMPENSATION CLAIM	
Did the injured party log the compensation claim?	g) yes h) no
At what stage of the procedure was the property claim raised?	

Did the injured party specified his/her request?	c) yes d) no
What was the subject of the compensation claim?	a) Compensation _____ (claimed amount) b) Return of items c) Cancellation of legal transaction
What was the court's decision on the request?	a) Fully adopted b) Partially adopted (explain)
Allow the victim express whether he/she was properly informed on the right to compensation. Whether he/she was able to deal with this issue without professional support? If referred to civil proceeding, how he/she felt about the fact that this requires additional time and resources, but also that there are no protection mechanisms in that procedure? Whether he/she felt strong enough to fight for it?	**Add explanation:**
14. ADDITIONAL REMARKS:	

Annex V: The standardised structure of the Monitoring Report

The data collected using the previously presented methodology should be presented in the report based on the main elements/issues that determines the position of the especially sensitive victims in the procedural status/function of witnesses in the criminal proceedings before Sebian courts.

1) The right to take part/to be heard in the proceeding
2) The status of an especially sensitive victim: Individual assessment
3) The right to legal aid/legal representation
4) Presence of a psychologist and/or a trusted person
5) Multiple interrogation
6) Forbidden or inappropriate interrogation technics and application of disciplinary measures to protect victims as witnesses from such practices
7) Use of a video link, the court infrastructure and the protection of sensitive victims
8) Protection of victims' privacy and media coverage of trials
9) The compensation claims and the protection of sensitive victims

For each of those issues the findings were presented from the following points of view:

v. The relevant international standards
vi. Currently applicable legislation, the gaps therein and ongoing legislative amendments
vii. The present challenges in practice
viii. Recommendations for improvement

Also, each issue was reflected through the lens of the specific needs and challenges of various especially vulnerable categories of victims, namely:

- Child victims
- Women, victims of gender based and/or family violence
- Victims of trafficking in human beings
- Victims of war crimes
- Victims of hate crime

Each report should include a Summary of findings and a Joint list of recommendations to allow for easier dissemination and communication.

Annex VI: Questionnaire for the needs of collecting information on application Arts. 102, 370, 372 and 374 of the CPC

Part I: data collection and prevention

1. Does BAS regularly collect data on the application of Arts. 370, 372 and 374 of the CPC by the regional law chambers?

2. If yes, what period are data submitted for?

3. Do the bar chambers in Serbia collect data on the application of these CPC provisions?

4. Is the BAS on the position that there is a need to amend the CPC in order to introduce an obligation to inform the competent lawyer's chamber on the deceased and / or fine in the authority of the bodies of the proceedings referred to in Article 102, paragraph 2?

5. Whether the BAS in **xx-xx** period[110] took some of the preventive measures to improve the treatment of particularly sensitive victims as a witness, as well as strengthening the respect of the procedural discipline, and in the context of application Art. 102, 370, 372 and 374 CPC (eg training, providing guidelines, etc)

Part II: Special questions

1. Data on acting the of the competent lawyer chamber in accordance with the obligation referred to in Article 370, paragraph 3 of the CPC:

1.1. Number of notifications received on punishment of lawyers in accordance with Article 370, paragraph 1 and 3 of the CPC in the period 1.1.2017-31.12.2023

1.2. In how many cases of the total number of notifications received, the lawyer acted as a proxy of damaged, and in how much as a defense counsel?

[110] Add the reporting period

1.3. In how many cases did the competent law chamber notify the court on the measures taken in accordance with the obligation referred to in Article 370, paragraph 3 of the CPC? If available, please also provide these data disaggregated based on the territories of the regional bar chambers.

1.4. List data on measures undertaken by the competent bar chambers upon court notification under Article 370, paragraph 1 of the CPC in the period 1.1.2017-31.12.2023.

2. Data on the actions of the competent bar chamber in accordance with the provision of Article 372, paragraph 1 of the CPC:

2.1. Number of received notifications on the exclusion of lawyers from the criminal procedures in accordance with Article 372, paragraph 1 of the CPC in the period 1.1.2017-21.12.2023.

2.2. In how many cases of the total number of notifications received, the lawyer acted as a proxy of damaged, and in how much as a defense counsel?

2.3. List data on measures undertaken by the competent bar chambers upon court notification under Article 372, paragraph 1 of the CPC in the period 1.1.2017-31.12.2023.

3. Data on the actions of the competent lawyer chamber in accordance with the obligation referred to in Article 374, paragraph 3 of the CPC:

3.1. Number of notifications received on the imposed warnings in accordance with Article 374, paragraph 1 and 3 of the CPC in the period 1.1.2017-31.12.2023.

3.2. In how many cases of the total number of notifications received, the lawyer acted as a proxy of damaged, and in how much as a defense counsel?

3.3. In how many cases did the competent law chamber notify the Court on the measures taken in accordance with the obligation referred to in Article 374, paragraph 3 of the CPC? If available, please also provide these data disaggregated based on the territories of the regional bar chambers.

3.4. List data on measures undertaken by the competent bar chambers upon court notification under Article 374, paragraph 1 of the CPC in the period 1.1.2017-31.12.2023.

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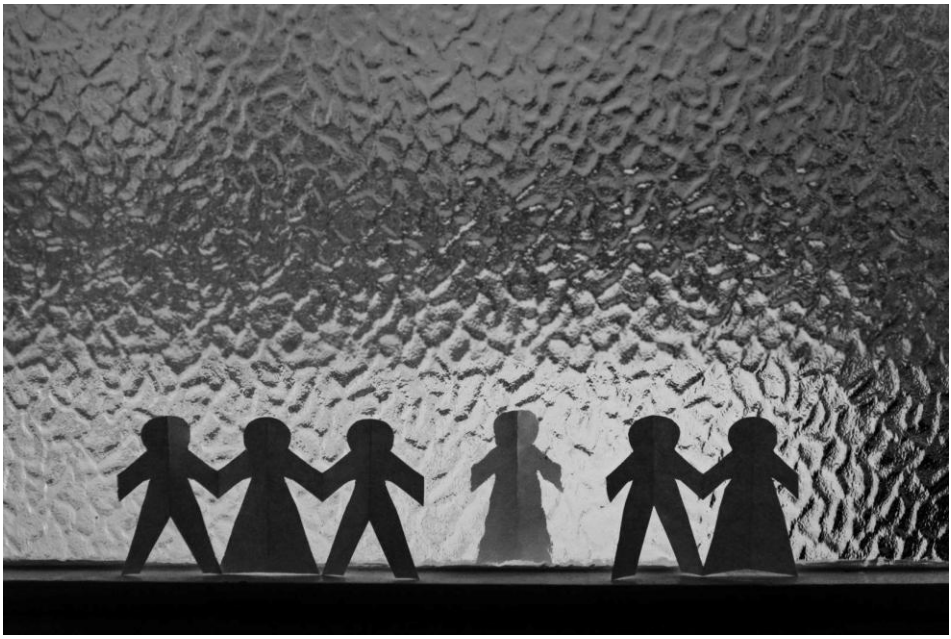
INSTITUT ZA KRIMINOLOŠKA
I SOCIOLOŠKA ISTRAŽIVANJA

Milica Kolaković-Bojović

Žrtve krivičnih dela u Srbiji: pristup pravdi, zaštita i podrška



Beograd, maj 2025.

Skraćenice

ADA	Austrijska razvojna agencija
AP 2023-2025	Akcioni plan za sprovođenje Nacionalne strategije za ostvarivanje prava žrtava i svedoka krivičnih dela u Republici Srbiji 2020-2025. za period 2023-2025
CSR	Centar za socijalni rad
EK	Evropska komisija
EU	Evropska unija
ESLJP	Evropski sud za ljudska prava
IKSI	Institut za kriminološka i sociološka istraživanja
KZ	Krivični zakonik
MP	Ministarstvo pravde
MUP	Ministarstvo unutrašnjih poslova
NS 2020-2025/ Strategija	Nacionalna strategija za ostvarivanje prava žrtava i svedoka krivičnih dela u Republici Srbiji 2020-2025
NVO	Nevladine organizacije
OEBS	Organizacija za evropsku bezbednost i saradnju
OS	Osnovni sud
Pg.23	Poglavlje 23
RZS	Republički zavod za statistiku
RZSZ	Republički zavod za socijalnu zaštitu
RS	Republika Srbija
SE	Savet Evrope
VJT	Vrhovno javno tužilaštvo
VS	Vrhovni sud
VSS	Visoki savet sudstva
VST	Visoki savet tužilaštva
ZKP	Zakonik o krivičnom postupku
ZMUKD	Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica

Predgovor

Prepoznajući postojeće izazove u pogledu pristupa pravdi, zaštite i podrške žrtvama, Vlada Republike Srbije usvojila je u julu 2020. godine Nacionalnu strategiju za ostvarivanje prava žrtava i svedoka krivičnih dela u Republici Srbiji za period 2020-2025. godine (u daljem tekstu: Strategija) sa pratećim Akcionim planom za period 2020-2022. (u daljem tekstu: AP 2020-2022) sa ciljem unapređenja ukupnog položaja žrtava u normativnom i institucionalnom okviru Republike Srbije, uključujući između ostalog, uspostavljanje Nacionalne mreže službi podrške žrtvama, unapređenje zaštite žrtava i svedoka i podizanje svesti o pravima žrtava i svedoka.

Akcioni plan za period 2020-2022. godine definisao je mere i aktivnosti samo za navedeni period, pa je njihovo formulisanje za preostali period primene Strategije učinjeno kroz Akcioni plan za period 2023-2025. (AP 2023-2025) koji je usvojen u julu 2023. godine.

Autorka ove knjige aktivno je doprinela, počev od 2016. godine, ne samo razvoju ovih dokumenata javne politike (u svojstvu nezavisnog eksperta), već i njihovoj implementaciji kroz izradu neophodnih zakona, smernica i materijala za obuku.

U procesu izrade Strategije i Akcionog plana za period 2023-2025. Ministarstvo pravde je primenilo pristup planiranja javnih politika zasnovan na dokazima[111] i to na različite načine, počev od sprovođenja sveobuhvatne *ex-ante* analize, ali i kroz povezivanje budućih reformskih aktivnosti sa nalazima procena i monitoringa u relevantnim oblastima primenom naučnih metoda. Ovakav pristup je odabran i za kreiranje budućih politika u odnosu na postupanje sa posebno osetljivim žrtvama u procesnom svojstvu oštećenog kao svedoka, tako što je Akcionim planom predviđena obaveza uspostavljanja održivog monitoring mehanizma za praćenje položaja te kategorije svedoka. Ovo podrazumeva razvijanje metodoloških alata za

[111] Kolaković-Bojović, M. (2022) Human Rights Protection: From Populism to the Evidence - Based Policy Making. In: Yearbook. No. 5, Human rights protection: from childhood to the right to a dignified old age: human rights and institutions. Provincial Protector of Citizens – Ombudsman. Institute of Criminological and Sociological Research, Novi Sad; Belgrade, pp. 63-80.

periodično sprovođenje monitoringa, ali i sprovođenje inicijalne analize usmerene na procenu trenutnog stanja.

Ova knjiga nastala je i objavljena kao rezultat aktivnosti, i uz podršku projekta koji je deo Višepartnerskog doprinosa „Mehanizam za podršku jačanju vladavine prava u Republici Srbiji“, a koji je doprineo ostvarivanju obaveza koje proizilaze iz Poglavlja 23 – Pravosuđe i osnovna prava, u skladu sa pravnim tekovinama EU. Radni paket 6 ove višedonatorske akcije, tj. projekta, koji sufinansiraju Evropska unija i Austrijska agencija za razvojnu saradnju (ADC), a sprovodi Austrijska agencija za razvoj (ADA), ima za cilj jačanje kapaciteta za podršku i zaštitu žrtava i jačanje procesnih prava (u daljem tekstu: ADA projekat).

Institut za kriminološka i sociološka istraživanja (u daljem tekstu: IKSI) dobio je ponudu za partnerstvo od ADA Projektnog tima u kontekstu sprovođenja tri projektna zadatka koji proističu iz aktivnosti 2.2.1-2.2.4 AP 2023-2025.

Sa ciljem pružanja podrške Ministarstvu pravde u blagovremenom sprovođenju ovih aktivnosti iz Akcionog plana, Institut je dobio zadatak da realizuje sledeće aktivnosti:

(i) izradi procenu postojećih praksi koje organi postupka i drugi učesnici u postupku primenjuju u pogledu ispitivanja posebno osetljivih svedoka, uključujući i preporuke za unapređenje.

(ii) izradi procenu postojećih praksi u pogledu izricanja sankcija zbog akata i radnji koji ugrožavaju normalan tok postupka, izricanja mera procesne zaštite za žrtve i svedoke, kažnjavanje advokata i drugih učesnika u postupku koji vređaju svedoke ili oštećene ili im prete ili ugrožavaju njihovu sigurnost i definiše preporuke za unapređenje.

(iii) Sa ciljem pružanja podrške Ministarstvu pravde u blagovremenom sprovođenju Akcionog plana, IKSI je razvio metodologiju i set metodoloških alata za potrebe praćenja stanja u ovoj oblasti.

Uzimajući u obzir proces usaglašavanja zakonodavstva i praksi u Republici Srbiji sa relevantnim EU standardima, nalazi analiza izrađenih u okviru projektne podrške predstavljeni su u ovoj knjizi u kontekstu relevantnog strateškog i pravnog okvira i njegovih tekućih i planiranih reformi, da bi se čitaocima pomoglo da bolje razumeju kontekst u kojem je sproveden ovaj inicijalni ciklus monitoringa.

Ova knjiga nastala je iz želje autorke da objedini i javnosti predstavi nalaze gore pomenutih analiza, kao i metodološke alate uz pomoć kojih su, ne samo prikupljeni podaci za potrebe ovih, inicijalnih analiza, već isti mogu biti korišćeni za potrebe praćenja stanja u predmetnoj oblasti ubuduće. Nalazi analiza su prezentovani u odnosu na glavne karakteristike trenutnog stanja, odnosno, glavna dostignuća i preostale izazove u vezi sa pristupom pravdi, zaštiti i podršci žrtvama krivičnih dela u Srbiji. To je učinjeno kroz njihovo predstavljanje u odnosu na relevantne (uglavnom evropske) standarde, i kroz devet glavnih tema/pitanja koja određuju ukupni položaj žrtava krivičnih dela, naročito onih posebno ranjivih. Pored nalaza, knjiga takođe pruža sveobuhvatan skup preporuka za unapređenje. Konačno, u formi priloga, u knjigu je uključen i kompletan set istraživačkih alata korišćenih za prikupljanje prezentovanih nalaza. Predstavljeni na jasan i sistematičan način, ovi nalazi i preporuke mogu višestruko koristiti, kako članovima naučne zajednice, tako i praktičarima zainteresovanim za ovu temu. Istovremeno, mogu biti od velike koristi i kreatorima javnih politika koji se trenutno nalaze usred, više nego izazovnih, procesa reformi. Svojevrsni kuriozitet predstavlja i činjenica da je knjiga objavljena u formatu dvojezične monografije, te će kao takva biti podjednako dostupna domaćoj i stranoj čitalačkoj publici.

Naime, trenutak objavljivanja ove knjige poklapa se sa desetogodišnjicom definisanja Prelaznih merila u Poglavlju 23 pristupnih pregovora Republike Srbije sa EU posvećenih pristupu pravdi za žrtve krivičnih dela. Takođe, objavljivanje ove knjige koincidira sa procesom izmena Zakonika o krivičnom postupku i izradom novog Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnika, kao važnim prekretnicama reforme, te bi stoga mogla da se koristi kao polazna tačka za pažljivo praćenje napretka reformi u narednim godinama.

Na kraju, autorka duguje veliku zahvalnost na poverenju, svesrdnoj podršci i plodonosnoj saradnji ADA/CLC projektnom timu na čelu sa gospodinom Mariom Tarnerom, kao i gospodinu Branislavu Stojanoviću, pomoćniku ministra pravde, i dr Ivani Stevanović, direktorki Instituta.

U Beogradu,
12. maja 2025. godine

Dr Milica Kolaković-Bojović

1. Uvod

Kao što je pojašnjeno u Predgovoru, u ovoj knjizi prezentovani su objedinjeni nalazi inicijalnog monitoringa položaja posebno osetljivih žrtava krivičnih dela, u odnosu na primenu mera procesne podrške i zaštite, usmerenih na sprečavanje njihove retraumatizacije i sekundarne viktimizacije tokom ispitivanja, kao preduslova za obezbeđivanje pristupa pravdi.

Iako je monitoring bio usredsređen na položaj posebno osetljivih žrtava krivičnih dela, specifičnosti njihovog položaja prikazane su kroz smeštanje u sveobuhvatniji kontekst podrške, zaštite i pristupa pravdi, pri čemu su pravni režim i prakse postupanja sa posebno osetljivim kategorijama žrtava prikazani po principu potrebe uspostavljanja dodatnih, viših standarda u odnosu na opšti režim primenjiv na sve žrtve krivičnih dela. Na ovaj način, zainteresovanim čitaocima je omogućen uvid u oba režima.

Monografija je struktuirana u pet poglavlja, pri čemu nakon uvodnih napomena sledi kontekstualizacija samog monitoringa, nakon čega su predstavljeni metodološki okvir i nalazi monitoringa, praćeni listom preporuka za unapređenje postojećeg stanja.

U skladu sa navedenom sistematikom, u Poglavlju 2, pojašnjen je kontekst pristupnih pregovora sa EU kao najširi okvir planiranja i sprovođenja reformi usmerenih na usaglašavanje sa relevantnim međunarodnim standardima, a potom i reformski pravci definisani nacionalnim dokumentima javnih politika. U istom poglavlju, sažeto su prikazani ključni problemi u pogledu zaštite i podrške žrtvama, kao i pristupa pravdi, uključujući specifične izazove povezane sa potrebom obezbeđivanja dodatne zaštite za posebno osetljive kategorije žrtava.

Treće poglavlje posvećeno je prikazu metodološkog pristupa praćenju položaja posebno osetljivih žrtava u Republici Srbiji, pri čemu su najpre predstavljeni mogući modeli, odnosno tri različita metodološka pristupa koji, u skladu sa

raspoloživim vremenskim, finansijskim i ljudskim resursima, po potrebi, mogu biti korišćeni za periodično praćenje ostvarenog napretka, a na osnovu nalaza ovog inicijalnog ciklusa monitoringa.

Četvrto, najobimnije poglavlje, posvećeno je analizi postojećeg stanja u predmetnoj oblasti, pri čemu je svaka od devet glava baziranih na devet ključnih pitanja koja određuju položaj žrtava krivičnih dela, struktuirana na identičan način, tako da prikaže relevantne međunarodne (primarno evropske standarde u toj oblasti), trenutno stanje normativnog okvira i predložena rešenja za njegove izmene; potom, ključne probleme u praksi i na kraju, preporuke za unapređenje. U okviru svake glave, posebno su istaknute specifičnosti položaja posebno osetljivih kategorija žrtava, čija je dodatna ranjivost prepoznata u okviru Direktive 2012/029/EU.

U Petom poglavlju sadržana je objedinjena lista svih preporuka čije bi sprovođenje rezultiralo značajnim napretkom u pogledu zaštite, podrške i pristupa pravdi za žrtve krivičnih dela u Srbiji, posebno za one naročito ranjive.

U monografiju je (u Aneksima I-VI) uključen i kompletan set metodoloških alata razvijenih za potrebe monitoringa, poput upitnika za žrtve i profesionalce koji rade sa njima, lista pitanja za fokus grupe, ali i standardizovane strukture izveštaja o monitoringu koja treba da bude korišćena i u narednim ciklusima.

2. Strateški i pravni okvir kojim se uređuje položaj žrtava u Republici Srbiji

2.1. Kontekst: o pristupnim pregovorima sa EU ili kako je izgrađen okvir reformi

2.1.1. Proces skrininga i izrada Akcionog plana za Poglavlje 23

Republika Srbija otvorila je pristupne pregovore sa EU 2016. godine. Ipak, proces usklađivanja svog pravnog i institucionalnog okvira sa pravnim tekovinama EU i relevantnim međunarodnim standardima započela je mnogo ranije, a ovaj proces se naročito intenzivirao od 2013. godine nakon faze skrininga normativnog i institucionalnog okvira sa relevantnim pravnim tekovinama u okviru poglavlja 23 i 24 koji je započeo u septembru 2013. godine eksplanatornim skriningom (prezentacija relevantnih pravnih tekovina i standarda EU institucijama RS). Ova faza je poslužila kao polazna tačka za procenu nivoa usklađenosti zakonodavnog i institucionalnog okvira Srbije sa pravnim tekovinama i standardima EU, tokom bilateralnog skrininga u decembru 2013. godine. Proces skrininga je rezultirao objavljivanjem Izveštaja o skriningu[112] od strane Evropske komisije (u daljem tekstu: EK) 2014. godine. Poglavlje 23 (u daljem tekstu: Pg. 23) bavi se pitanjima žrtava kroz organizaciju pravosuđa, kao i kroz zaštitu osnovnih prava, prava deteta i procesuiranje ratnih zločina. Preporuke date u Izveštaju o skriningu obavezale su institucije Republike Srbije da izrade (u inkluzivnom i transparentnom procesu koji podrazumeva uključivanje svih relevantnih zainteresovanih strana), ali i da usvoje i sprovedu detaljan akcioni plan koji će služiti kao „mapa reformskog puta" i polazna tačka za usvajanje i sprovođenje tematskih strateških dokumenata u različitim oblastima relevantnim za postupanje sa žrtvama uopšte, kao i sa onima koje pripadaju posebno ranjivim grupama[113]. Akcioni plan za Poglavlje 23 (u daljem tekstu: AP 23) usvojen je u aprilu 2016. godine kako bi se odgovorilo na preporuke iz Izveštaja o skriningu.

[112] Screening Report for Chapter 23, available at: https://enlargement.ec.europa.eu/screening-report-serbia-chapter-23-judiciary-and-fundamental-rights_en?prefLang=fi, last accessed on April 2nd 2025.

[113] Vidi više u: Kolaković-Bojović, M. (2018). Child Victims in Serbia - Normative Framework, Reform Steps and EU Standards. In: Stevanović, I., *Pravda po meri deteta*. Belgrade: Institute of Criminological and Sociological Research, pp. 171-183. Available at: http://institutecsr.iksi.ac.rs/184/.

2.1.2. Prelazna merila

Pregovori u Poglavlju 23 zvanično su počeli u julu 2016. godine usvajanjem Zajedničke pregovaračke pozicije za Poglavlje 23[114]. Pored analize procesa reformi postignutih do trenutka usvajanja, Pregovaračka pozicija takođe utvrđuje sveobuhvatnu listu takozvanih Privremenih merila (u daljem tekstu: PM), odnosno ciljeva koje treba postići kako bi se dokazao postignuti napredak u reformama, pre objavljivanja Izveštaja o ispunjenosti prelaznih merila (*Interim Benchmark Assessment Report*: IBAR) koji bi trebalo da definiše listu završnih merila za finalizaciju pregovora o pristupanju u Poglavlju 23.[115]

Što se tiče reformskih zahteva relevantnih za položaj žrtava, Pregovaračka pozicija je, između ostalog, donela tri veoma važna PM:

„... Srbija menja svoje zakonodavstvo (uključujući i Zakonik o krivičnom postupku) kako bi ga uskladila sa pravnim tekovinama EU o procesnim pravima i pravima žrtava." (PM br. 44) i

„Srbija osnažuje poštovanje prava deteta, sa posebnom pažnjom na socijalno ugroženoj deci, deci sa invaliditetom i deci žrtvama krivičnih dela... Srbija uspostavlja pravosudni sistem prilagođen deci, uključujući i izmene i sprovođenje Zakona o maloletnicima..." (PM br. 42), a EK je takođe pozvala Srbiju da poboljša svoj sistem zaštite svedoka i podrške žrtvama i osigura prava žrtava i pristup pravdi bez diskriminacije u kontekstu gonjenja ratnih zločina. (PM br. 18)

Proces ispunjavanja zahteva definisanih na ovaj način tekao je do 2020. u skladu sa AP 23 do 2020. godine kada je ovaj dokument revidiran, a nakon toga na osnovu revidiranog AP23 i monitoring mehanizma uspostavljenog ovim dokumentom. Međutim, EK je 2023. godine odlučila da uvede novi mehanizam izveštavanja koji bi trebalo da joj omogući da proceni da li je, i u kojoj meri Srbija već ispunila prelazna merila u Poglavlju 23, uključujući i ona koja se odnose na položaj žrtava. Pregovaračka grupa za Poglavlje 23 je sredinom 2023. godine primila zahtev EK za

[114]Common Negotiation Position for Chapter 23, available at: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/ch_23_eu_common_position.pdf, last accessed on April 2nd 2025.

[115] Za više informacija o evoluciji pregovora koja se primenjuje na Poglavlje 23 vidi: Matić Bošković, M. and Kolaković-Bojović, M. (2022). *New Approach to the EU Enlargement Process - Whether COVID-19 Affected Chapter 23 Requirements?* International Scientific Conference "The recovery of the EU and strengthening the ability to respond to new challenges – legal and economic aspects" in Osijek, 9-10 June 2022allenges - Legal and Economic Aspects, 6. pp. 330-350.

uvođenjem izveštavanja zasnovanog na proceni ispunjenosti zahteva u okviru prelaznih merila i na osnovu takvog zahteva i koristeći obrasce koje je razvila EK, Pregovaračka grupa je pripremila i podnela Početni izveštaj o samoproceni krajem 2023. godine. Nakon analize primljenih informacija, EK je odgovorila Pregovaračkoj grupi sredinom 2024. godine, pružajući joj, kako sažetu procenu stanja, tako i niz zahteva za svako od prelaznih merila. Pored toga, Pregovaračka grupa je podnela ažurirani izveštaj krajem 2024. godine. Priroda dodatnih zahteva EK varira u velikoj meri. Naime, dok se neki od njih odnose na pružanje dodatnih informacija ili poboljšanje kvaliteta dostavljenog izveštaja, neki se odnose na unapređenje procesa reformi, preduzimanje dodatnih koraka (kratkoročnih ili dugoročnih) ili obezbeđivanje kontinuiteta već započetih reformi. U kombinaciji sa činjenicom da je AP 23 istekao, ovaj pluralizam i različita priroda zahteva stvorili su dodatne izazove.[116]

2.1.3. Plan rasta i Reformska Agenda

Koliko je ovo pitanje položaja žrtava visoko rangirano u procesu reformi u Poglavlju 23, vidljivo je iz činjenice da je prepoznato i kao jedan od indikatora u Reformskoj Agendi usvojenoj u oktobru 2024. godine, u okviru Plana rasta za period 2024-2027, usvojenog 8. novembra 2023. godine, gde se pet vlada Zapadnog Balkana obavezalo na socio-ekonomske i osnovne reforme koje će sprovesti kako bi podstakle rast i povezivanje sa EU.[117] Na osnovu toga, Komisija je nastavila sa potpisivanjem sporazuma o zajmovima i kreditnim aranžmanima sa korisnicima.[118] U ovom novom kontekstu, efikasnost reformi više nije samo pitanje odgovarajuće zaštite žrtava, već i preduslov da Evropska komisija finansijski podrži sprovođenje tih reformi. Naime, Plan rasta je podržan povećanjem finansijske

[116] Vidi više u: Kolaković-Bojović, M., & Marković, M. (2025) EU Accession Negotiations of Serbia as a Framework for Improving the Position of Child Victims, *The International Scientific Conference "Contemporary challenges in the achievement and protection of human rights" Thematic Conference Proceedings*, University of Priština, Faculty of Law in Kosovska Mitrovica, Institute for Criminological and Sociological Research, Institute for Comparative Law, https://doi.org/10.63177/isc.2025.01

[117] European Commission (2024) COMMISSION STAFF WORKING DOCUMENT, Serbia, Accompanying the document Commission Implementing Decision approving the Reform Agendas and the multiannual work programme under the Reform and Growth Facility for the Western Balkans Brussels, 23.10.2024 SWD(2024) 241 final, available at: https://enlargement.ec.europa.eu/document/download/43922ef8-fb98-4d49-b757-2c579bb17d70_en?filename=SWD_2024_241_1_EN_autre_document_travail_service_part1_v3.pdf, last accessed on April 3, 2025.

[118] The full text of the Agreement concluded with Serbia can be accessed here: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/14_saziv/337-2784_24.pdf, last accessed on April 3, 2025.

pomoći kroz novi Instrument za reforme i rast koji je stupio na snagu 25. maja 2024. godine. Instrument dopunjava postojeću finansijsku pomoć u okviru Instrumenta za pretpristupnu pomoć (IPA III).[119]

U Reformskoj Agendi za Srbiju predviđeno je da će „takođe doprineti reformi maloletničkog pravosuđa i zaštiti procesnih prava osumnjičenih, optuženih i žrtava." (Reformska Agenda, 2024: 10)

Usvajanjem detaljne Reformske Agende, Srbija se, između ostalog, obavezala:

- Na izmene Zakonika o krivičnom postupku planirane Reformskom Agendom i adresiranje izazova identifikovanih tokom sprovođenja Zakonika, čime se uvode važne odredbe pravnih tekovina EU u nacionalni pravni okvir, kao što su... osiguravanje da žrtve krivičnih dela dobiju odgovarajuće informacije, podršku i zaštitu i da mogu da učestvuju u krivičnom postupku.

- Da, na osnovu preporuka dobijenih od Evropske komisije i rada na izmenama Krivičnog zakonika i Zakonika o krivičnom postupku, izradi i usvoji potpuno novi Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, koji će omogućiti usklađivanje sa nekoliko zakona koji su u međuvremenu usvojeni, sa međunarodnim i standardima EU, kako bi se osiguralo da žrtve krivičnih dela dobiju odgovarajuće informacije, podršku i zaštitu i da mogu da učestvuju u krivičnom postupku.

- Da izmeni Porodični zakon na način koji će obuhvatiti zabranu dečjih brakova i efikasniju zaštitu od porodičnog nasilja uvođenjem nekoliko novih vrsta krivičnih dela koja se odnose na decu i osobe sa invaliditetom.

- Na uspostavljanje 20 službi za podršku žrtvama i svedocima krivičnih dela u Republici Srbiji, angažovanje službenika za podršku kroz akt o sistematizaciji u svakom višem sudu i čineći ove službe funkcionalnim u 20 viših sudova.

[119] See more at: Commission approves Reform Agendas of Albania, Kosovo, Montenegro, North Macedonia and Serbia, paving way for payments under the Reform and Growth Facility, https://enlargement.ec.europa.eu/news/commission-approves-reform-agendas-albania-kosovo-montenegro-north-macedonia-and-serbia-paving-way-2024-10-23_en , last accessed on April 2025.

2.2. Nacionalni strateški okvir

Pored aktivnosti predviđenih Akcionim planom za poglavlje 23, čije je važenje, kao što je ranije napomenuto, isteklo, relevantne mere za unapređenje položaja žrtava predviđene su i nacionalnim strateškim dokumentima.

U pokušaju da odgovori na zahteve iz Zajedničke pregovaračke pozicije, Ministarstvo pravde je uz podršku MDTF-JSS projekta, kao i Misije OEBS-a u Republici Srbiji, u periodu 2016-2018. godine sprovelo sveobuhvatnu analizu usklađenosti krivičnog zakonodavstva sa Direktivom 2012/029/EU, ali i komparativnu analizu različitih modela organizacije službi podrške žrtvama u Evropi.[120]

2.2.1. Nacionalna strategija za ostvarivanje prava žrtava i svedoka krivičnih dela u Republici Srbiji za period od 2020-2025. godine

Na bazi ovih analiza, kao i pilot projekta ranije sprovedenog od strane Misije OEBS-a u Republici Srbiji i Republičkog javnog tužilaštva, u junu 2018. godine započeo je rad radne grupe za izradu Nacionalne strategije za unapređenje položaja žrtava i svedoka krivičnih dela u Republici Srbiji. Nakon dve godine rada Radne grupe i nekoliko krugova konsultativnog procesa i javne rasprave, Vlada Republike Srbije je na sednici održanoj 30. jula 2020. godine usvojila Nacionalnu strategiju za ostvarivanje prava žrtava i svedoka krivičnih dela u Republici Srbiji za period od 2020-2025. godine sa pratećim Akcionim planom za period 2020-2022. godine (u daljem tekstu: Strategija za žrtve).

Kada je reč o ključnim izazovima prepoznatim Strategijom u ovoj oblasti, konstatovano je da je pravni poredak Republike Srbije u značajnoj meri usaglašen sa međunarodnim standardima u oblasti prava žrtava, budući da, u procesnom svojstvu oštećenog, žrtvi u pravnom poretku Republike Srbije decenijama pripada čitav niz prava, prepoznatih i kodifikovanih Direktivom 2012/029/EU, ali i da je neophodno dalje, odnosno potpuno usklađivanje, kako krivičnog, tako i pravosudnog organizacionog zakonodavstva. Korak koji je u procesu usaglašavanja

[120] O izazovima u ovoj oblasti u periodu koji je prethodio usvajanju Nacionalne strategije, videti više u: Kolaković-Bojović, M. (2016) *Victims and Witnesses Support in the Context of the Accession Negotiations with EU.* In: Naučno-stručni skup sa međunarodnim učešćem "Evropske integracije: pravda, sloboda i bezbednost", zbornik radova: Tom 2. Kriminalističko-policijska akademija; Fondacija "Hans Zajdel", Beograd, str. 355-366.

sa Direktivom prepoznat kao najzahtevniji u organizacionom i finansijskom smislu, ali ujedno treba da donese i najveću kvalitativnu razliku u odnosu na trenutno stanje, jeste uspostavljanje mreže službi za podršku žrtvama i svedocima na teritoriji čitave Republike Srbije. Strategijom je konstatovano da je trenutno, pružanje pomoći i podrške žrtvama i svedocima uglavnom bazirano na aktivnostima službi uspostavljenih pri određenim sudovima i tužilaštvima, kao i pojedinim organizacijama civilnog društva, pravnim klinikama i centrima za socijalni rad. „Ne postoje precizni podaci o broju i strukturi pružalaca, kao ni programima koje nude, a poznato je da su njihova geografska distribucija, kao i raznovrsnost usluga koje nude, izrazito neujednačeni. Nema jasno definisanih kriterijuma za stručne kvalifikacije pružalaca, niti za kvalitet usluga koje pružaju. Procedure procene potreba, upućivanja na službe, kao i samog pružanja podrške nisu standardizovane. Ne postoje formalni mehanizmi povezivanja i saradnje pružalaca podrške, niti je uspostavljen sistem koordinacije i finansiranja pružalaca, kao i nadzora nad njihovim radom. Programi obuke u oblasti prava žrtava nisu standardizovani niti uspostavljeni kao segment početne i stalne obuke nosilaca pravosudnih funkcija. Informacije o raspoloživim vidovima podrške nisu sistematizovane, niti dostupne u okviru jedinstvene baze.“[121]

U Nacionalnoj strategiji se ukazuje da je pripadnicima višestruko ranjivih grupa koji su žrtve krivičnih dela neophodna posebna zaštita.[122]

Kao opšti cilj Strategije definisano je unapređenje položaja žrtava i svedoka u krivičnopravnom sistemu Republike Srbije u skladu sa standardima EU sadržanim u Direktivi 2012/29/EU.

Radi ostvarenja opšteg, postavljena su i tri posebna cilja:

- Poseban cilj 1: Uspostavljanje održive Nacionalne mreže službi podrške žrtvama i svedocima krivičnih dela u Republici Srbiji, uz očuvanje i

[121] Nacionalna strategija za ostvarivanje prava žrtava i svedoka krivičnih dela u Republici Srbiji za period 2020–2025. godine, Beograd, 2020, dostupno na: https://www.mpravde.gov.rs/sr/tekst/30567/nacionalna-strategija-za-ostvarivanje-prava-zrtava-i-svedoka-krivicnih-dela-u-republici-srbiji-za-period-2020-2025-godine-19082020.php, pristupljeno 17. 08. 2022, str. 3.

[122] Nacionalna strategija za ostvarivanje prava žrtava i svedoka krivičnih dela u Republici Srbiji za period 2020–2025. godine, str. 30. Videti i: Kolaković-Bojović, M. and Grujić, Z. (2020) *Crime Victims and the Right to Human Dignity - Challenges and Attitudes in Serbia.* In: Yearbook. No. 3, Human rights protection: the right to human dignity. Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research, Novi Sad; Belgrade, str. 239-269.

kontinuirano unapređenje dostignutih standarda kvaliteta i dostupnosti usluga podrške.

- Poseban cilj 2: Unapređenje dostupnosti, kvaliteta i efikasnosti primene mera zaštite žrtava i svedoka krivičnih dela u Republici Srbiji, sa posebnom pažnjom na zaštiti posebno osetljivih kategorija žrtava i svedoka.
- Poseban cilj 3: Podizanje svesti žrtava i svedoka krivičnih dela o pravima koja im pripadaju u pravnom sistemu Republike Srbije, kao i kontinuirano informisanje opšte javnosti u ovoj oblasti.[123]

Osnovna ideja ove aktivnosti jeste adekvatna priprema konkretnih rešenja u pogledu osnovnih manjkavosti našeg kaznenog zakonodavstva koje je identifikovala radna grupa koja je radila na izradi Strategije i Akcionog plana. U tom smislu, Akcionim planom su predviđene izmene i dopune Krivičnog zakonika, Zakonika o krivičnom postupku, Zakona o posebnim merama za sprečavanje vršenja krivičnih dela protiv polne slobode prema maloletnim licima, Zakona o izvršenju krivičnih sankcija i Zakona o izvršenju vanzavodskih sankcija i mera.

U pogledu pružanja dodatne zaštite posebno osetljivim kategorijama žrtava, svakako su najrelevantnije planirane izmene Krivičnog zakonika i Zakonika o krivičnom postupku, gde su, kao ključne tačke koje zahtevaju legislativnu intervenciju prepoznata sledeća pitanja:

- usklađivanje sa definicijom žrtve iz Direktive 2012/029/EU;
- pravo žrtava da prilikom izvođenja dokaznih radnji sa njima bude osoba od poverenja;
- zabrana unakrsnog ispitivanja i sugestibilnih pitanja kod ispitivanja posebno osetljivih žrtava i svedoka;
- unapređenje prava žrtava na dostavljanje relevantnih akata u krivičnom postupku;
- unapređenje prava žrtava na pravni lek u krivičnom postupku;
- obim, dostupnost i postupak korišćenja podataka iz upitnika o proceni individualnih potreba žrtve tokom krivičnog postupka;

[123] Vidi više u: Kolaković-Bojović, M. (2017) *Žrtva krivičnog dela (Poglavlje 23 - norma i praksa u Republici Srbiji).* In: Reformski procesi i Poglavlje 23 (godinu dana posle) - krivičnoparni aspekti ; LVII Savetovanje Srpskog udruženja za krivičnopravnu teoriju i praksu; Srpsko udruženje za krivičnopravnu teoriju i praksu; Intermex, Beograd, str. 140-150.

- maloletno lice kao svedok i status posebno osetljivog svedoka;
- pitanje upotrebe video-linka;
- uslovi za isključenje javnosti sa glavnog pretresa;
- zaštita podataka o posebno osetljivim svedocima;
- upotreba jezika u krivičnom postupku;
- nadležnost i postupak obaveštavanja žrtve o puštanju okrivljenog iz pritvora.

Pored navedenih normativnih pretpostavki, nacionalnom strategijom je predviđen čitav niz koraka u pogledu stvaranja institucionalnih i stručnih preduslova za pružanje adekvatne podrške žrtvama krivičnih dela.

2022. godine izrađena je analiza, odnosno procena efekata primene Akcionog plana u periodu 2020-2022. godine, sa ciljem da pruži neophodne inpute radnoj grupi koju će Ministarstvo pravde, kao ovlašćeni predlagač, formirati za potrebe izrade Akcionog plana za sprovođenje Strategije u periodu 2023-2025. godine. Akcioni plan za pomenuti period je usvojen u julu 2023. godine.

2.2.2. Drugi relevantni dokumenti javnih politika

U pogledu zaštite, podrške i pristupa pravdi za žrtve ratnih zločina, od ključnog značaja je Nacionalna strategija za procesuiranje ratnih zločina za period od 2021. do 2026. godine.[124] Pored navedenog, od značaja u ovoj oblasti je i Strategija prevencije i zaštite od diskriminacije za period od 2022. do 2030. godine,[125] Strategija za sprečavanje i borbu protiv rodno zasnovanog nasilja prema ženama i nasilja u porodici za period 2021-2025. godine,[126] kao i Program za borbu protiv trgovine ljudima u Republici Srbiji za period 2024–2029. godine[127]

[124] Nacionalna strategija za procesuiranje ratnih zločina za period od 2021. do 2026. godine, "Službeni glasnik RS", broj 97/2021., dostupno na: https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2021/97/1, pristupljeno 28. septembra 2023. godine

[125] Strategija prevencije i zaštite od diskriminacije za period od 2022. do 2030. godine, "Službeni glasnik RS", broj 12 od 1. februara 2022. godine.

[126] Strategija za sprečavanje i borbu protiv rodno zasnovanog nasilja prema ženama i nasilja u porodici za period 2021-2025. godine, "Sl. glasnik RS", br. 47/2021.

[127] Program za borbu protiv trgovine ljudima u Republici Srbiji za period 2024–2029. Godine, "Sl. glasniku RS", br. 25/2024

3. Metodološki pristup

Kao što je prethodno pomenuto, pre nego što je sproveden monitoring čiji su nalazi predstavljeni u ovoj knjizi, razvijen je kompletan set metodoloških alata za potrebe monitoringa, kao i tri različita modela/scenarija monitoringa koji se mogu koristiti u zavisnosti od raspoloživog vremena i resursa za sprovođenje.

3.1. Mogući modeli

Na bazi prethodnog iskustva u sprovođenju sličnih zadataka, prepoznato je da je ranije opisane zadatke moguće je sprovesti po jednom od tri modela:

Model 1: Praćenje suđenja

Vremenski okvir sprovođenja: 15-18 meseci
Sastav projektnog tima: 6-8 istraživača (5 monitora suđenja i 2-3 senior eksperta)
Opis: Ovaj model podrazumeva pristup u četiri koraka kroz koje se vrši izbor predmeta u kojima bi suđenja bila neposredno praćena kroz praćenje pretresa u toku perioda od 12 meseci. Za svaki od predmeta bio bi popunjen upitnik. Prethodno opisani postupak bio bi propraćen primenom dodatnih, kvalitativnih tehnika istraživanja, poput intervjua i fokus grupa sa profesionalcima poput sudija, tužilaca i advokata, kao i sa socijalnim radnicima, psiholozima iz službi podrške žrtvama i centara za socijalni rad. Na bazi ovako prikupljenih informacija, bio bi sačinjen izveštaj o monitoring koji bi reflektovao ključne aspekte praksi koje se koriste sa ciljem zaštite osetljivih svedoka tokom njihovog svedočenja, kao i u ostatku postupka.

Model 2: Analiza spisa sudskih predmeta

Period sprovođenja: 9-12 meseci
Sastav projektnog tima: 5-6 istraživača (1 istraživač-asistent, 2-3 analitičara i 2 senior eksperta)
Opis: Ovaj model podrazumeva analizu spisa sudskih predmeta, odabranih na bazi precizno definisanih kriterijuma, a po odobrenju predsednika sudova za

pribavljanje kopija najvažnijih dokumenata iz spisa i kasnijeg popunjavanja upitnika, za svaki spis pojedinačno. Prethodno opisani postupak bio bi propraćen primenom dodatnih, kvalitativnih tehnika istraživanja, poput intervjua i fokus grupa sa profesionalcima poput sudija, tužilaca i advokata, kao i sa socijalnim radnicima, psiholozima iz službi podrške žrtvama i centara za socijalni rad. Na bazi ovako prikupljenih informacija, bio bi sačinjen izveštaj o monitoringu koji bi reflektovao ključne aspekte praksi koje se koriste sa ciljem zaštite osetljivih svedoka tokom njihovog svedočenja, kao i u ostatku postupka.

Model 3: Analiza zasnovana na sekundarnim izvorima

Period sprovođenja: 6-9 meseci
Sastav projektnog tima: 3-4 istraživača (1 istraživač-asistent, 1-2 analitičara i 1 senior ekspert)

Opis: Ovaj pristup je zasnovan na prikupljanju, analizi i sintezi podataka dostupnim u različitim, nedavno izrađenim, izveštajima i studijama, zajedno sa primenom dodatnih, kvalitativnih tehnika istraživanja, poput intervjua i fokus grupa sa profesionalcima poput sudija, tužilaca i advokata, kao i sa socijalnim radnicima, psiholozima iz službi podrške žrtvama i centara za socijalni rad.

3.2. Faktori koji određuju izbor metodološkog pristupa

Izbor metodologije, odnosno modela koji će biti primenjen zavisi od sledećih faktora:

e) Period sprovođenja: Ukoliko pripreme za predstojeći ciklus monitoringa započnu na vreme, sa tačke gledišta raspoloživog vremena, sva tri modela monitoringa su primenjiva. Što je vremenski period na raspolaganju za sprovođenje monitoringa kraći, tako se izbor sužava na modele 2 i 3 ili čak samo model 3, što je i bio slučaj u kontekstu analize koje smo sproveli, imajući u vidu ograničeno trajanje projekta.

f) Budžet: Imajući u vidu da sprovođenje monitoringa po bilo kojem od tri prezentovana modela zahteva obezbeđivanje finansijskih sredstava kako za honorare članova istraživačkog tima, tako i za materijalne troškove u kontekstu praćenja suđenja i/ili prikupljanja dokumenata i analize spisa

predmeta, resursi dostupni u ovom smislu su zahtevali izbor trećeg modela.

g) Slabosti IKT/sistema upravljanja predmetima koje u određenoj meri ograničavaju članovima istraživačkog tima prikupljanje statističkih podataka direktno iz sistema, umesto putem ručnog pregledanja spisa predmeta koji su uključeni u uzorak za analizu.

Uzimajući u obzir sve navedene faktore, u kontekstu sprovođenja odlučili smo se da proces kontinuiranog monitoringa započne primenom trećeg modela, pri čemu je istovremeno razvijen kompletan set metodoloških alata i za druga dva modela, čime se obezbeđuje da monitoring može biti uspešno sproveden u različitim okolnostima u odnosu na gore opisane faktore.

3.3. Metodologija korišćena za potrebe izrade ove analize

Period sprovođenja: Ova analiza sprovedena je u periodu od 15. jula do 15. decembra 2024. godine.

Sastav projektnog tima: 3 istraživača (1 asistent istraživač, 1 administrativno-tehnički asistent i 1 senior ekspert)

Opis aktivnosti- aktivnosti u okviru ovog projektnog zadatka bile su sprovedene u nekoliko faza:

Faza 1: Pripremne aktivnosti

U ovoj fazi održani su konsultativni sastanci IKSI tima sa Ministarstvom pravde i ADA Projektnim timom sa ciljem definisanja potrebnih koraka, rokova i mogućnosti da se monitoring sprovede u skladu sa jednim od tri moguća modela u datim okolnostima. Istovremeno, Istraživački tim Instituta je formiran i definisan vremenski okvir rada.

Faza 2:Definisanje uzorka i preciziranje istraživačkih metoda

U skladu sa, ranije opisanim, aktivnostima predviđenim AP 2023-2025. kao i relevantnim odredbama Direktive 2012/029/EU Evropskog parlamenta i Saveta od 25 oktobra 2012 kojom se uspostavljaju minimalni standardi u oblasti prava,

podrške i zaštite žrtava krivičnih dela kojom se zamenjuje Okvirna odluka Saveta 2001/220/JHA (u daljem tekstu: Direktiva 2012/029/EU, Direktiva o žrtvama) odlučeno je da fokus bude na sledećim kategorijama posebno ranjivih žrtava:

- Deca žrtve
- Žene, žrtve porodičnog i rodno zasnovanog nasilja
- Žrtve trgovine ljudima
- Žrtve ratnih zločina
- Žrtve zločina iz mržnje[128]

Isti pristup važi kada je reč o izbor prava i/ili zaštitnih mera koje se, u skladu sa Zakonikom o krivičnom postupku (u daljem tekstu: ZKP) i Direktivom 2012/029/EU i drugih relevantnih standarda[129] primenjuju prilikom ispitivanja navedenih kategorija žrtava u procesnom svojstvu oštećenog kao svedoka u krivičnom postupku, odnosno ključnih pitanja od kojih zavisi pristup pravdi za žrtve:

- Pravo žrtve da se njen glas čuje, odnosno da aktivno učestvuje u krivičnom postupku
- Status posebno osetljivog svedoka/individualna procena potreba
- Pravo na pravnu pomoć i zastupanje
- Prisustvo psihologa i/ili osobe od poverenja saslušanju
- Ograničenje višestrukog ispitivanja
- Nedozvoljene ili neprikladne tehnike ispitivanja
- Disciplinske mere u slučaju pritisaka i/ili odmazde prema osetljivim žrtvama

[128] Važno je napomenuti da Direktiva 2012/029/EU takođe eksplicitno pominje i žrtve terorizma, što je, očigledno motivisano serijom terorističkih napada širom sveta, uključujući i države članice EU u periodu koji je prethodio usvajanju ove direktive. Ipak, u kontekstu Republike Srbije ne bi bilo smisleno fokusirati se na ovu kategoriju žrtava, budući da krivičnih postupaka za ovu vrstu krivičnih dela (gotovo da) nema. Ovo ipak ne znači da ne bilo moguće naknadno uključivanje i ove kategorije žrtava u narednim ciklusima monitoringa ukoliko za tim bude postojala potreba.

[129] Direktiva 2011/36/EU Evropskog parlamenta i Saveta od 5. aprila 2011. godine o sprečavanju i borbi protiv trgovine ljudima i zaštiti njenih žrtava i kojom se zamenjuje Okvirna odluka Saveta 2002/629/PPZ; Direktiva 2011/93/EU Evropskog parlamenta i Saveta od 13. decembra 2011. godine o borbi protiv seksualnog zlostavljanja i seksualne eksploatacije dece i dečje pornografije i kojom se zamenjuje Okvirna odluka Saveta 2004/68/PPZ, ali i nekoliko instrumenata Saveta Evrope i Ujedinjenih nacija relevantnih za prava odabranih kategorija žrtava.

- Upotreba tehničkih sredstava za prenos slike i zvuka (video linka) i infrastrukturni preduslovi u pravosuđu za zaštitu osetljivih žrtava u funkciji oštećenog kao svedoka
- Zaštita privatnosti žrtava i medijsko izveštavanje o suđenjima
- Imovinskopravni zahtev i zaštita žrtava

Veoma važno pitanje bilo je i definisanje perioda koji treba da bude obuhvaćen ovim inicijalnim monitoringom. U tom smislu, polazna tačka je zapravo bio kontekst Poglavlja 23 gde je glavni cilj u ovoj oblasti da se što pre ispune prelazna merila, a sa ciljem dobijanja Izveštaja o proceni ispunjenosti prelaznih merila, kao i definisanja merila za zatvaranje Poglavlja. S obzirom na ovo, doneta je odluka da se analiza fokusira na period nakon dobijanja prelaznih merila, dakle od 2017. godine, gde su, naravno, kvantitativni podaci uglavnom dostupni zaključno sa 2022/2023. godinom, dok kvalitativni podaci pokrivaju i 2024. Ovo je takođe usko povezano sa izvorima podataka koji su korišćeni u procesu monitoringa.

Faza 3: Prikupljanje podataka

U ovoj fazi Istraživački tim IKSI je identifikovao i prikupio veliki broj izvora sekundarne građe u kojoj su dostupni kvantitativni i kvalitativni podaci, npr: izveštaji o praćenju suđenja, procene uticaja, kvalitativne i kvantitativne studije/analize godišnji izveštaji Vrhovnog javnog tužilaštva i Vrhovnog suda, kao i izveštaji Republičkog zavoda za statistiku, naučni članci i monografije, novinski članci, kao i objave na medijskim portalima i društvenim mrežama.[130]

Prilikom izbora sekundarne građe, istraživački tim je vodio računa o verodostojnosti navedenih podataka i metodologiji pripreme tih dokumenata, čime se izbegava preuzimanje netačnih podataka ili pogrešnih interpretacija/tumačenja podataka.

Najvažniji izvor podataka bili su izveštaji o praćenju koje su prethodnih godina pripremali IKSI, ASTRA, FHP i dr, s obzirom da su nastali analizom nekoliko

[130] Za celokupan spisak izvora videti listu literature.

hiljada spisa predmeta i/ili odluka u krivičnom postupku, uključujući posebno osetljive kategorije žrtava.[131]

Veoma važan izvor informacija za ovu analizu bio je dokument koji je pripremila Radna grupa za izradu izmena i dopuna ZKP u kome je dat detaljan pregled izmena i dopuna ZKP, imajući u vidu da od ovih položaj posebno osetljivih žrtava i svedoka u krivičnom postupku prvenstveno zavisi od odredaba ZKP-a, a sekundarno od načina na koji ih primenjuju policija, tužioci, sudije i advokati.

Očekuje se da će naredni ciklus monitoringa baciti svetlo na moguće izazove u vezi sa primenom novousvojenih odredaba ZKP-a u praksi, ali i da će se treći i svaki naredni ciklus praćenja posle drugog, posvetiti mnogo više pažnje na prakse implementacije i izazove koji su sa njima povezani.

Pored analize sekundarnih izvora u ovoj fazi, IKSI istraživački tim je razvio i distribuirao specijalizovani upitnik za Advokatsku komoru Srbije (u daljem tekstu: AKS) u cilju prikupljanja podataka o radnjama koje je AKS preduzela u slučajevima kada je sud izrekne disciplinske mere advokatima čije ponašanje i postupci utiču na dostojanstvo suda, procesnu disciplinu ili bezbednost i/ili spokojstvo i integritet žrtava/svedoka.

Faza 4: Analiza podataka i identifikacija pitanja koja je neophodno dalje adresirati kroz kvalitativnu analizu

Ova faza je obuhvatila ukrštanje i analizu podatka prikupljenih iz različitih izvora, kao i prepoznavanje najvažnijih pitanja koja je neophodno dubinski istražiti korišćenjem kvalitativnih metoda.

Faza 5: Kvalitativna analiza

Kvalitativna analiza koristeći intervjue i fokus grupu sa pravnim stručnjacima (sudije, tužioci i advokati koji zastupaju posebno osetljive žrtve), kao i sa socijalnim radnicima i psiholozima iz službi za podršku žrtvama. Diskusija sa ovim stručnjacima održana je početkom novembra 2024. godine uz podršku Misije

[131] Videti više na: http://institutecsr.iksi.ac.rs/; https://astra.rs/en/astras-publications/ i http://www.hlc-rdc.org/?cat=268.

OEBS-a u Srbiji. U ovoj fazi su takođe razvijene studije slučaja za odabrane slučajeve.

Faza 6: Izrada nacrta Studije i prezentacija početnih nalaza.

Faza 7: Izrada finalnog teksta analize.

3.4. Sadržina i struktura predstavljenih nalaza

Podaci prikupljeni korišćenjem prethodno prikazane metodologije u Poglavlju 4 su prikazani na osnovu osnovnih elemenata/pitanja koja određuju položaj posebno osetljivih žrtava u procesnom statusu/funkciji svedoka u krivičnom postupku, ali i određuju domete njihovog pristupa pravdi. Stoga je Izveštaj o monitoringu ali i nalazi prezentovani u ovoj knjizi organizovani na osnovu sledećih pitanja/tema:

1) Pravo žrtve da se njen glas čuje, odnosno da aktivno učestvuje u krivičnom postupku
2) Status posebno osetljivog svedoka/individualna procena potreba
3) Pravo na pravnu pomoć i zastupanje
4) Prisustvo psihologa i/ili osobe od poverenja saslušanju
5) Ograničenje višestrukog ispitivanja
6) Nedozvoljene ili neprikladne tehnike ispitivanja i Disciplinske mere u slučaju pritisaka i/ili odmazde prema osetljivim žrtvama
7) Upotreba tehničkih sredstava za prenos slike i zvuka (video linka) i infrastrukturni preduslovi u pravosuđu za zaštitu osetljivih žrtava u funkciji oštećenog kao svedoka
8) Zaštita privatnosti žrtava i medijsko izveštavanje o suđenjima
9) Imovinskopravni zahtev i zaštita žrtava

Za svako od ovih pitanja, nalazi treba da budu prezentovani u odnosu na sledeće tačke:

1. Relevantni međunarodni standardi[132]
2. Pozitivno zakonodavstvo, nedostaci zakonodavstva i tekuće/planirane izmene zakonodavstva
3. Izazovi u praksi
4. Preporuke za unapređenje

Takođe, svako od navedenih pitanja analizirano je iz ugla specifičnih potreba i izazova sa kojima se suočavaju različite, naročito osetljive kategorije žrtava u procesnoj funkciji oštećenog kao svedoka, a u odnosu na potrebu obezbeđivanja dodatne zaštite koja pripada svim žrtvama krivičnih dela.

- Deca žrtve
- Žene, žrtve porodičnog i rodno zasnovanog nasilja
- Žrtve trgovine ljudima
- Žrtve ratnih zločina
- Žrtve zločina iz mržnje

P1. Kontinuirano koristiti standardizovanu strukturu izveštaja o monitoringu čime bi se omogućilo državnim organima da prate napredak i izazove u svakom od segmenata obuhvaćenih monitoringom između ciklusa izveštavanja, i u skladu sa tim razviju korektivne mere.

[132] Važno je napomenuti da je u predstavljanju relevantnih međunarodnih standarda glavni fokus bio na primenljivim direktivama EU i/ili instrumentima SE imajući u vidu ograničeni predmetni obuhvat i svrhu ovog dokumenta.

4. Nalazi

4.1. Pravo žrtve da se njen glas čuje, odnosno da aktivno učestvuje u krivičnom postupku

Pristup ovom suštinskom pravu žrtava u krivičnom postupku direktno je uslovljen ulogom koja je žrtvama dodeljena u nacionalnom pravnom sistemu. Shodno tome, ovo se odnosi i na pravo da aktivno učestvuje i bude ispitan u krivičnom postupku u svojstvu oštećenog kao svedoka.

Imajući ovo u vidu, važno je napomenuti da krivično zakonodavstvo Srbije ima dugu tradiciju da žrtvama krivičnih dela daje širok spektar prava, uključujući i pravo da budu ispitane u svojstvu oštećenog kao svedoka u krivičnom postupku.

Veoma važna tačka u ovom pogledu je način definisanja pojma žrtve u Zakoniku o krivičnom postupku (u daljem tekstu: ZKP) kako bi se obezbedilo da indirektne žrtve ne budu ostavljene bez mogućnosti pristupa pravdi.

4.1.1. Relevantni međunarodni standardi

Direktiva 2012/029/EU u par. 20 prepoznaje raznolikost uloga koje žrtva može imati u krivičnom postupku u različitim nacionalnim pravnim sistemima, naglašavajući da je ovaj položaj „određen jednim ili više od sledećih kriterijuma: da li nacionalni pravni sistem garantuje žrtvi status stranke u krivičnom postupku; da li žrtva ima zakonsku obavezu ili se od nje traži da aktivno učestvuje u krivičnom postupku, na primer kao svedok; i/ili da li žrtva ima zakonsko pravo prema nacionalnom pravu da aktivno učestvuje u krivičnom postupku i to zahteva, ako nacionalni sistem ne predviđa da žrtve imaju pravni status stranke u krivičnom postupku. Države članice treba da odrede koji od tih kriterijuma se primenjuju da bi se odredio obim prava navedenih u ovoj Direktivi kada se pominje uloga žrtve u relevantnom sistemu krivičnog pravosuđa."

Kada je u pitanju definicija žrtve, odnosno definisanje kruga lica koja se smatraju žrtvom krivičnog dela, Direktiva 2012/029/EU u čl. 2 predviđa da „žrtva“ označava:

(i) fizičko lice koje je pretrpelo štetu, uključujući fizičku, psihičku ili emocionalnu štetu ili ekonomski gubitak koji je direktno prouzrokovan krivičnim delom.

(ii) Članove porodice osobe čija je smrt direktno prouzrokovana krivičnim delom i koji su pretrpeli štetu usled smrti te osobe.

(a) članom porodice se smatra supružnik, osoba koja živi sa žrtvom u bliskoj intimnoj vezi, u zajedničkom domaćinstvu i na stabilnoj i kontinuiranoj osnovi, srodnike u pravoj liniji, braću i sestre i izdržavane osobe žrtva.

(b) „dete“ označava lice mlađe od 18 godina.

U skladu sa članom 10 Direktive 2012/029/EU, pravo žrtve da se njen glas čuje u postupku znači obavezu država članica da obezbede da žrtve mogu biti ispitane tokom krivičnog postupka i mogu predlagati dokaze. Kada se ispituje dete žrtva, mora se voditi računa o uzrastu i zrelosti deteta. Procesna pravila prema kojima žrtve mogu biti ispitane tokom krivičnog postupka i mogu pružiti dokaze utvrđuju se nacionalnim zakonodavstvom.

Pored prava na saslušanje u krivičnom postupku, pravo na učešće žrtve u krivičnom postupku garantuje se kroz skup prava predviđenih čl. 4-11 Direktive: kroz pravo da dobije informacije od prvog kontakta sa nadležnim organom, da se informiše o statusu svog predmeta/žalbe, pravo na tumačenje i prevod, pravo na pristup uslugama podrške za žrtve i prava u slučaju odluke da se okrivljeni ne goni.

4.1.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Kao što je već pomenuto, jedan od prioriteta u kontekstu implementacije Strategije i pratećeg Akcionog plana kao i u smislu ispunjavanja PM 44 je potpuno usklađivanje odredaba ZKP sa relevantnim standardima u oblasti procesnih garancija. Da bi se to osiguralo, radna grupa koju je osnovalo MP je sredinom

2024. godine izradila nacrt sveobuhvatnih izmena i dopuna ZKP-a. Izmene su bile predmet javne rasprave koja je još bila u toku u trenutku sprovođenja monitoringa, a nisu usvojene ni u momentu objavljivanja ove knjige.

Ovim izmenama, između ostalog, obuhvaćena je definicija žrtve koja je tradicionalno data u članu 2 ZKP-a kao definicija oštećenog, ali i značajno proširen obim prava žrtava, uključujući pravo da budu ispitane i mehanizme zaštite posebno osetljivih žrtava u kontekstu ostvarivanja ovog prava u krivičnom postupku.

Pre predloženih izmena, član 2, tačka 11 ZKP-a je oštećenog definisao kao lice čije je lično ili imovinsko pravo krivičnim delom povređeno ili ugroženo.

U skladu sa članom 2 predloženih izmena ZKP-a „oštećeni" je lice čije je lično ili imovinsko pravo krivičnim delom povređeno ili ugroženo, kao i bračni drug lica čija smrt je posledica krivičnog dela, lice sa kojim je živeo u vanbračnoj ili kakvoj drugoj trajnoj zajednici života, deca, roditelji, usvojenik, usvojilac, brat, sestra i zakonski zastupnik tog lica.

Predložene izmene predstavljaju značajan korak napred u smislu usklađivanja definicije žrtve u ZKP-u sa članom 2 Direktive 2012/029/EU. Naime, nova definicija data u nacrtu ZKP-a u potpunosti je usklađena sa članom 2. Direktive 2012/029/EU, pri čemu je jedina razlika u upotrebi pojma „oštećeni" umesto „žrtva", što je direkta posledica srpske pravne tradicije gde je pojam žrtve uži od pojma oštećenog i tradicionalno se koristi za označavanje samo osobe koja neposredno pretrpeo štetu od krivičnog dela.

Dakle, ova nova definicija žrtve garantuje da su sva prava[133] dodeljena svim licima koja su priznata Direktivom 2012/029/EU, ali su ta lica terminološki označena pojmom „oštećeni" umesto „žrtva".

[133] Kada je reč o pravima oštećenog, u skladu sa predloženim izmenama člana 50, oštećeni ima pravo: na prevodioca, odnosno tumača u skladu sa odredbama ovog zakonika; 2) na besplatan i poverljiv pristup službama za pomoć i podršku; 3) da podnese predlog i dokaze za ostvarivanje imovinskopravnog zahteva i da predloži privremene mere za njegovo obezbeđenje; 4) da ukaže na činjenice i da predlaže dokaze koji su od važnosti za predmet dokazivanja; 5) da angažuje punomoćnika iz reda advokata; 6) da bude obavešten o vrsti i načinu ostvarivanja medicinske, psihološke i druge stručne pomoći, podrške i zaštite u skladu sa zakonom; 7) da na lični zahtev ima pratnju lica od poverenja pri preduzimanju radnji u kojima učestvuje, osim ukoliko se time ne bi štetilo interesima postupka; 8) da razmatra spise i razgleda predmete koji služe kao dokaz; 9) da bude

4.1.3. Izazovi u praksi

Predložene izmene imaju ogromnu praktičnu vrednost kroz sužavanje diskrecionog prava nadležnih u proceni da li se neko može smatrati žrtvom i time mu priznati prava, uključujući i pravo žrtve da bude ispitana u krivičnom postupku. Može se očekivati da će to u budućnosti sprečiti situacije identifikovane u nekim oblastima monitoringa, npr. kada su u pitanju slučajevi žena, žrtava rodno zasnovanog i/ili porodičnog nasilja, gde su nedavni rezultati monitoringa pokazali da pojedinim članovima porodica žena žrtava ubistva nisu priznata sva prava (npr. njihovoj deci) budući da im nije priznat status oštećenog u krivičnom postupku, nije im pružena pravna pomoć i zastupanje, pa su bili prinuđeni da sami plaćaju pravnu advokata i sl.).[134]

4.1.4. Preporuke za unapređenje

P. 2. Sudijama i tužiocima, kao i advokatima koji postupaju u svojstvu zakonskih zastupnika/punomoćnika žrtava, potrebno je obezbediti adekvatnu obuku za bolje razumevanje novousvojenog koncepta žrtve u srpskom krivičnom postupku, posebno u kontekstu zaštite njihovih prava koja su nedavno ugrađena u ZKP.

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obavešten o odbacivanju krivične prijave ili o odustanku javnog tužioca od krivičnog gonjenja; 10) da bude poučen o mogućnosti da preuzme krivično gonjenje i zastupa optužbu; 11) da podnese prigovor protiv odluke javnog tužioca da ne preduzme ili da odustane od krivičnog gonjenja, osim u slučaju iz člana 283. stav 3. i člana 284a ovog zakonika; 12) da bude obavešten o fazi postupka, preduzetim radnjama i merama povodom krivične prijave koju je podneo, odnosno predloga za krivično gonjenje, osim ako se time ne bi štetilo interesima postupka; 13) da bez odlaganja, na lični zahtev, bude obavešten o ukidanju pritvora ili bekstvu okrivljenog iz pritvora, kao i merama koje su preduzete radi njegove zaštite, ukoliko je to potrebno; 14) da prisustvuje glavnom pretresu i učestvuje u izvođenju dokaza; 15) da bude ispitan kao svedok bez nepotrebnog odlaganja, minimalan broj puta i samo ukoliko je to neophodno za vođenje postupka; 16) da bude obavešten o ishodu postupka i da mu se dostavi pravnosnažna presuda, osim ukoliko se izričito u pisanoj formi izjasni da se odriče tog prava. pravo na odricanje se ne odnosi na informacije koje se moraju pružiti oštećenom radi aktivnog učestvovanja u krivičnom postupku; 17) da podnese žalbu protiv odluke o troškovima krivičnog postupka i dosuđenom imovinskopravnom zahtevu; 18) na besplatnu pravnu pomoć u skladu sa zakonom; 19) da preduzima druge radnje kada je to određeno ovim zakonikom ili drugim zakonom. Oštećenom se može uskratiti pravo da razmatra spise i razgleda predmete dok ne bude ispitan kao svedok. Organ postupka upoznaće oštećenog sa pravima navedenim u stavu 1. ovog člana i u pisanoj formi.

[134] Ignjatović, T., & Macanović, V. (2018) *Unapređeno zakonodavstvo – neuspešna zaštita: nezavisni izveštaj o primeni Konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja prema ženama i nasilja u porodici.* Autonomni ženski centar, Beograd.

4.2. Status posebno osetljivog svedoka/individualna procena potreba

Kada ZKP garantuje status žrtve sveobuhvatnoj listi lica pogođenih krivičnim delom, sledeći korak za obezbeđivanje pravilnog tretmana posebno osetljivih žrtava je da im se dodeli status posebno osetljivog svedoka, nakon čega sledi adekvatna lista zaštitnih mera, usmerenih na prevenciju/smanjenje njihove dalje traumatizacije, stigmatizacije i sekundarne viktimizacije.

Korak koji prethodi određivanju ovih zaštitnih mera je procena, u svakom pojedinačnom slučaju, rizika i individualnih potreba žrtve.

4.2.1. Relevantni međunarodni standardi

Obaveza sprovođenja pravovremene individualne procene žrtve pre donošenja odluke o konkretnim zaštitnim merama i njenog statusa u vezi sa posebnom ranjivošću ugrađena je u bazično zakonodavstvo EU u ovoj oblasti, uključujući Direktivu 2011/036/EU (čl. 12) i Direktivu 2012/029/EU (par. 58 i čl. 22)[135] koji donose listu kriterijuma koji se moraju uzeti u obzir prilikom sprovođenja individualne procene:[136]

a) lične karakteristike žrtve,

[135] 58) Žrtvama koje su identifikovane kao podložne sekundarnoj i ponovljenoj viktimizaciji, zastrašivanju i odmazdi treba ponuditi odgovarajuće mere za njihovu zaštitu tokom krivičnog postupka. Tačnu prirodu takvih mera treba utvrditi kroz individualnu procenu, uzimajući u obzir želju žrtve. Obim svake takve mere treba da bude određen bez prejudiciranja prava odbrane i u skladu sa pravilima sudske diskrecije. Brige i strahovi žrtava u vezi sa postupkom treba da budu ključni faktor u određivanju da li im je potrebna neka posebna mera.

[136] Čl. 22, st. 3-4: U kontekstu individualne procene, posebna pažnja će se posvetiti žrtvama koje su pretrpele značajnu štetu zbog težine krivičnog dela; žrtve koje su pretrpele zločin počinjen sa pristrasnošću ili diskriminatornim motivom koji bi posebno mogao biti u vezi sa njihovim ličnim svojstvima; žrtve čiji odnos prema počiniocu i zavisnost od njega čine posebno ranjivim. U tom smislu, žrtve terorizma, organizovanog kriminala, trgovine ljudima, rodno zasnovanog nasilja, nasilja u bliskim odnosima, seksualnog nasilja, eksploatacije ili zločina iz mržnje, kao i žrtve sa invaliditetom biće propisno uzete u obzir. Za potrebe ove Direktive, smatraće se da deca žrtve imaju posebne potrebe za zaštitom zbog njihove ranjivosti na sekundarnu i ponovljenu viktimizaciju, zastrašivanje i odmazdu.

b) vrsta ili priroda krivičnog dela, i

c) okolnosti izvršenja krivičnog dela.

U kontekstu individualne procene, Direktiva takođe predviđa da će se posebna pažnja posvetiti žrtvama koje su pretrpele značajnu štetu zbog težine krivičnog dela; žrtve koje su pretrpele zločin počinjen sa pristrasnošću ili diskriminatornim motivom koji bi posebno mogao biti u vezi sa njihovim ličnim svojstvima; žrtve čiji odnos prema počiniocu i zavisnost od njega čine posebno ranjivim. U tom smislu, žrtve terorizma, organizovanog kriminala, trgovine ljudima, rodno zasnovanog nasilja, nasilja u partnerskim odnosima, seksualnog nasilja, eksploatacije ili zločina iz mržnje, kao i žrtve sa invaliditetom biće propisno uzete u obzir.

Pretpostavlja se da deca žrtve imaju posebne potrebe za zaštitom zbog njihove ranjivosti na sekundarnu i ponovljenu viktimizaciju, zastrašivanje i odmazdu. Da bi se utvrdilo da li i u kojoj meri bi mogle imati koristi od posebnih mera, deca žrtve podležu individualnoj proceni.

Prepoznajući uticaj drugog i trećeg faktora koje smo ranije pomenuli, Direktiva predviđa da se obim individualne procene može prilagoditi težini krivičnog dela i stepenu očigledne štete koju je pretrpela žrtva. Individualne procene se sprovodi uz neposredno učešće žrtve i uzima u obzir njene želje, uključujući i slučajeve kada žrtve ne žele da koriste posebne mere. Ako su se elementi koji čine osnovu individualne procene značajno promenili, države članice će obezbediti da se ona ažurira tokom krivičnog postupka.

Članom 23 iste Direktive 2012/029/EU takođe je propisana obaveza preduzimanja mera kako bi se izbeglo nepotrebno ispitivanje privatnog života žrtve koje nije u vezi sa krivičnim delom. Isti uslov je sadržan i u čl. 12 Direktive 2011/036/EU.

4.2.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Zakonik o krivičnom postupku predviđa zaštitu žrtava koje se pojavljuju kao svedoci u krivičnom postupku na dva nivoa. Dok je prvi nivo zaštite garantovan svim žrtvama u svojstvu oštećenog kao svedoka od uvreda, pretnji i svakog drugog

napada i predviđa mogućnost opomene i novčane kazne za one koji krše ova pravila (čl. 102 st. ZKP)[137]. Drugi nivo zaštite rezervisan je za posebno osetljive svedoke (čl. 103 ZKP) i upravo on bio je predmet izmena i dopuna ZKP-a.

U skladu sa predloženim izmenama ove odredbe ZKP-a, „svedoku koji je s obzirom na uzrast, životno iskustvo, način života, pol, lične osobine, zdravstveno stanje, vrstu ili prirodu krivičnog dela i okolnosti pod kojima je izvršeno krivično delo, posledice izvršenog krivičnog dela, odnosno druge okolnosti slučaja posebno osetljiv, javno tužilaštvo, odnosno sud može obrazloženim rešenjem, na zahtev stranaka, samog svedoka, ili po službenoj dužnosti odrediti status posebno osetljivog svedoka." Pre određivanja statusa posebnog osetljivog svedoka, organ postupka može pribaviti mišljenje službe za pomoć i podršku ili stručnog lica. Ako smatra da je to potrebno radi zaštite interesa posebno osetljivog svedoka, organ postupka će doneti rešenje o postavljanju punomoćnika svedoku, a glavni javni tužilac ili predsednik suda će postaviti punomoćnika na način koji propisuje i prema redosledu sa spiska advokata koji sačinjava nadležna advokatska komora (član 76).

Prema predloženim izmenama, protiv rešenja kojim se dodeljuje status posebno osetljivog svedoka dozvoljena je žalba.

Međutim, postoje najmanje tri nedoumice koje se mogu pojaviti u vezi sa ovim novinama:

! Iz date odredbe nije jasno da li zakonodavac pod pojmom službe podrške žrtvama označava službu podrške žrtvama kao generički pojam ili ovu individualnu procenu moraju da vrše samo službe za podršku žrtvama osnovane u okviru viših sudova; ili bilo u okviru tih službi za podršku žrtvama, ili službi za podršku žrtvama koje su osnovane u okviru nevladinih organizacija, ali su se pridružile Nacionalnoj mreži službi za podršku žrtvama. Ovo pitanje je od posebnog značaja imajući u vidu da pojam usluge podrške žrtvama nije definisan u članu 2 ZKP. Štaviše, potpuna jasnoća ove odredbe

[137] Uz to, po prijemu obaveštenja od policije ili suda ili po sopstvenom saznanju o postojanju nasilja ili ozbiljne pretnje upućene oštećenom ili svedoku javni tužilac će preduzeti krivično gonjenje ili će o tome obavestiti nadležnog javnog tužioca. Javni tužilac ili sud mogu zahtevati da policija, u skladu sa zakonom, preduzme mere za zaštitu oštećenog ili svedoka.

je važna u ovom prelaznom periodu kada je proces uspostavljanja službi za podršku žrtvama u okviru viših sudova još uvek u toku, a pridruživanje službi za podršku žrtvama u okviru NVO-a Nacionalnoj mreži još uvek nije počelo.

! Slična zabrinutost postoji i kada je u pitanju pojam „stručnog lica" koje može da sprovede individualnu procenu. Naime, ni ovaj termin nije definisan u članu 2 ZKP, ali ga je zakonodavac više puta koristio, uglavnom da opiše status različitih stručnjaka koji nisu pravnici, a učestvuju u krivičnom postupku radi podrške primeni posebnih istražnih tehnika kao što je audio i video nadzor, uzimanje DNK uzoraka, itd. Međutim, ovaj pojam zakonodavac nije koristio kao specifičan, već generički pojam dok opisuje tehnike intervjuisanja osetljivih svedoka kada ZKP kaže: „od psihologa, socijalnog radnika ili drugog stručnog lica". Dakle, nije jasno zašto zakonodavac nije odlučio da ponovi istu sintagmu, jer je očigledno da će sudski psiholog (gde on postoji u sudu) biti prva adresa na kojoj će sud dobiti rezultate individualne procene, dok će druga adresa biti nadležni centar za socijalni rad. U osnovi, glavni razlog zabrinutosti u odnosu na ovu odredbu je da će zbog nedostatka jasnoće i preciznosti odredbe sudije oklevati da zatraže takvu procenu pre nego što donesu odluku o statusu.

! Nije jasno zašto bi odluka o dodeli statusa posebno osetljivog svedoka bila predmet žalbe, jer ni na koji način ne utiče na status optuženog, već se isključivo tiče pružanja dodatne zaštite osetljivim kategorijama svedoka.

Pored člana 103 ZKP koji se neposredno bavi dodeljivanjem statusa posebno osetljivog svedoka, treba uzeti u obzir i čl. 150-154 Zakona o maloletnicima. Naime, čl. 150-151 ovog zakona uvodi se obavezna specijalizacija sudija, tužilaca i policijskih službenika u predmetima koji se odnose na maloletne žrtve teških

krivičnih dela navedenih u ovoj odredbi,[138] dok čl. 152 ograničava broj ispitivanja takve žrtve na najviše dva puta.[139]

Ako, s obzirom na specifičnosti krivičnog dela i lične osobine maloletnog lica, sud nađe za potrebno, sudija će odrediti da se maloletno lice sasluša uz upotrebu tehničkih sredstava za prenos slike zvuka i da se saslušanje obavi bez prisustva stranke i drugih učesnika u postupku, u prostoriji u kojoj se nalazi svedok, tako da stranke i druga ovlašćena lica mogu postavljati pitanja preko sudije, psihologa, pedagoga, socijalnog radnika ili drugog stručnog lica. Ako je kao svedok saslušano maloletno lice koje je zbog prirode krivičnog dela, posledica ili drugih okolnosti posebno ugroženo, odnosno nalazi se u posebno teškom psihičkom stanju, za razliku od rešenja propisanih ZKP, zabranjeno je da se izvrši suočenje između takvog svedoka i okrivljenog (član 153), ali ostaje pitanje ocene ovih okolnosti. Maloletno lice kao oštećeno mora imati advokata od prvog saslušanja okrivljenog.[140]

! Odluka o dodeljivanju žrtvi statusa posebno osetljivog svedoka osnovni preduslov za primenu čitavog spektra zaštitnih mera. Međutim, izostanak takve odluke ne znači da žrtvu ne treba štititi i tretirati sa poštovanjem tokom ispitivanja, na način koji čuva njeno dostojanstvo i privatnost i sprečava traumatizaciju, stigmatizaciju i sekundarnu viktimizaciju.

[138] Teško ubistvo (član 114); Navođenje na samoubistvo i pomaganje u samoubistvu (član 119); Teška telesna povreda (član 121); Otmica (član 134); Silovanje (član 178); Obljuba nad nemoćnim licem (član 179); Obljuba sa detetom (član 180); Obljuba zloupotrebom položaja (član 181); Nedozvoljene polne radnje (član 182); Podvođenje i omogućavanje vršenja polnog odnosa (član 183); Posredovanje u vršenju prostitucije (član 184); Prikazivanje pornografskog materijala i iskorišćavanje dece za pornografiju (član 185); Vanbračna zajednica sa maloletnikom (član 190); Oduzimanje maloletnog lica (član 191); Promena porodičnog stanja (član 192); Zapuštanje i zlostavljanje maloletnog lica (čl. 193); Nasilje u porodici (član 194); Nedavanje izdržavanja (član 195); Rodoskrvnjenje (član 197); Razbojnička krađa (član 205); Razbojništvo (član 206); Iznuda (član 214); Omogućavanje uživanja opojnih droga (član 247); Ratni zločin protiv civilnog stanovništva (član 372); Trgovina ljudima (član 388); Trgovina decom radi usvojenja (član 389); Zasnivanje ropskog odnosa i prevoz lica u ropskom odnosu (član 390).

[139] Ispitivanje se može obaviti najviše dva puta, a izuzetno i više puta ako je to neophodno radi ostvarivanja svrhe krivičnog postupka. Nedosledno sprovođenje ovih odredbi u praksi dovodi do situacija u kojima se maloletnici više puta saslušavaju.

[140] ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, dostupno na: https://drive.google.com/file/d/1l6aCZGbtc2VDg3V1hcJbtuQ40lARmufE/view.

! Štaviše, ako pažljivo analiziramo čl. 150-154 Zakona o maloletnicima, posebno iz ugla obavezne specijalizacije/obuke stručnjaka koji učestvuju u postupku, kao i u pogledu različitih zaštitnih mera koje se primenjuju (kao što su ograničeni broj ispitivanja, daljinski intervjue, pažljivo ophođenje sa maloletnikom tokom ispitivanja) postavlja se legitimno pitanje: Da li ove odredbe treba smatrati implicitnim načinom da se dodeli status posebno osetljivog svedoka onim maloletnicima bez primene čl. 103 ZKP?

Najzad, u vreme sprovođenja monitoringa, Ministarstvo unutrašnjih poslova (u daljem tekstu: MUP) formiralo je međusektorsku radnu grupu zaduženu za izradu nacrta Zakona o suzbijanju trgovine ljudima i zaštiti žrtava trgovine ljudima. Od ideja koje su kružile tokom prvih sastanaka radne grupe bilo je da se ovaj zakon koristi kao *lex specialis* alat za davanje *ex lege* statusa posebno osetljivih svedoka žrtvama trgovine ljudima. Međutim, pošto ne postoji, barem inicijalni nacrt zakona koji je javno dostupan, te ideje ne bi trebalo dalje razrađivati niti raspravljati u ovoj knjizi. U svakom slučaju, od velike je važnosti da se odredbe takvog zakona uvrste u buduće cikluse monitoringa.

4.2.3. Izazovi u praksi

Trenutno stanje važećeg zakonodavstva, odnosno široka diskreciona ovlašćenja suda da (ne)dodeli status posebno osetljivog svedoka bez zasnivanja takve odluke na proceni individualnih potreba, kao i nedostatak ljudskih resursa, (službe za podršku žrtvama i sudski psiholozi) rezultiralo je niskim udelom žrtava koje pripadaju grupama posebno ugroženih kojima je dodeljen ovaj status.

Tako su npr. nalazi praćenja položaja maloletnih žrtava u krivičnom postupku u Srbiji 2020. godine[141] pokazali da je samo u tri od 58 slučajeva (od 70 oštećenih)[142]

[141] Vidi više u: Milica Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, dostupno na: http://institutecsr.iksi.ac.rs/339/.

[142] Silovanje (član 178, st. 3-4); Obljuba nad nemoćnim licem (član 179 st. 2-3); Obljuba sa detetom (član 180); Obljuba zloupotrebom položaja (član 181); Podvođenje i omogućavanje vršenja polnog odnosa (član 183); Prikazivanje, pribavljanje i posedovanje pornografskog materijala i iskorišćavanje maloletnog lica za pornografiju (član 185, st. 2-3); Prinudno zaključenje braka (član 187a); Vanbračna

žrtvi/oštećenom dodeljen status posebno osetljivog svedoka, od čega u dva slučaja rešenjem javnog tužioca. U ovim slučajevima status su dobijale žrtve trgovine ljudima (1 oštećena) i obljube sa detetom (dve oštećene).

Čak i ako se tako nizak udeo može objasniti posrednim dodeljivanjem statusa primenom čl. 150-154 Zakona o maloletnicima, bilo bi izuzetno teško naći objašnjenje za statistiku o udelu žrtava trgovine ljudima kojima je ovaj status dodeljen prethodnih godina.

Grafikon 1: Žrtve trgovine ljudima kojima je dodeljen status posebno osetljivog svedoka[143]

Naime, između 0% i 16% dali su svoje iskaze u ovom statusu, gde poseban razlog za zabrinutost predstavlja i učestalost višestruke ranjivosti među njima, npr. Oko 30% žrtava trgovine ljudima su maloletnici.[144] Dakle, većina žrtava trgovine ljudima

zajednica sa maloletnikom (član 190); Zapuštanje i zlostavljanje maloletnog lica (član 193, st. 2); Trgovina maloletnim licima radi usvojenja (član 389).

[143] Ovaj grafikon izrađen je na osnovu statističkih podataka prezentovanih u godišnjim izveštajima o položaju žrtava trgovine ljudima, dostupno na: https://astra.rs/en/astras-publications/, pristupljeno 31. oktobra 2024. godine.

[144] ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2021. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, dostupno na: https://drive.google.com/file/d/1hb79RIhUuWAyaOve929J1SeOgRVjBYsJ/view.

ispunjavaju jedan ili više uslova/zahteva predviđenih članom 103 ZKP-a (starost, način života, pol, zdravstveno stanje, priroda, način izvršenja ili posledice krivičnog dela i druge okolnosti slučaja).

4.2.4. Preporuke za unapređenje

P.3. Usvojiti predlog izmena i dopuna čl. 103 ZKP-a uključujući mogućnost da se preciznije definišu nadležni organi za sprovođenje individualne procene potreba žrtava koji prethode sudskoj odluci o dodeli statusa posebno osetljivog svedoka, isključujući uvođenje prava optuženog na žalbu na odluku o dodeli statusa posebno osetljivog svedoka.

P.4. Osigurati brzo uspostavljanje službi podrške žrtvama u svim višim sudovima.

P.5. Obezbediti pridruživanje i finansiranje službi podrške žrtvama osnovanim pri NVO u okviru Nacionalne mreže službi podrške žrtvama.

P.6. Povećati broj psihologa zaposlenih u višim sudovima.

4.3. Pravo na pravnu pomoć i zastupanje

Dok se čini da je pravo okrivljenog na pravnu pomoć, odnosno pravo na advokata sasvim jasno kako u pogledu zakonskih rešenja, tako i u pogledu njegove primene, situacija je malo drugačija kada je u pitanju pravo žrtve na pravnu pomoć/punomoćnika. Specifičnost relevantnog zakonskog okvira, uz nedostatak dostupnih informacija žrtvama o dostupnim mehanizmima besplatne pravne pomoći, kao i zakonska ograničenja u pogledu kategorija žrtava kojima je ovo pravo dodeljeno, čini ga teško dostupnim za mnoge posebno ranjive žrtve. Ovo stavlja žrtve bez pratnje punomoćnika u nezavidnu situaciju, uključujući, ali ne ograničavajući se na proces svedočenja.

4.3.1. Relevantni međunarodni standardi

Značaj obezbeđivanja pravne pomoći posebno osetljivim žrtvama je široko priznat u glavnim univerzalnim i regionalnim instrumentima o ljudskim pravima, uključujući Direktivu 2012/029/EU koja propisuje da države članice obezbeđuju žrtvama pristup pravnoj pomoći, tamo gde imaju svojstvo stranaka u krivičnom postupku. Uslovi ili proceduralna pravila pod kojima žrtve imaju pristup pravnoj pomoći određuju se nacionalnim zakonodavstvom. (čl. 13)

Pored ovog minimalnog standarda koji se primenjuje na sve žrtve koje imaju status stranke u postupku, slične garancije su uključene u pravne instrumente koji štite različite kategorije posebno ugroženih žrtava, uključujući i čl. 20 Direktive 2011/093/EU koji predviđa obavezu da se obezbedi pristup pravnom savetovanju i, u skladu sa ulogom žrtava u relevantnom pravosudnom sistemu, pravnom zastupanju, uključujući i u svrhu zahtevanja naknade štete. Pravno savetovanje i pravno zastupanje su besplatni kada žrtva nema dovoljno finansijskih sredstava.

4.3.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Već smo pojasnili, u prethodnom odeljku, da čl. 103 predviđa uslove koje treba ispuniti da žrtva dobije status posebno osetljivog svedoka. Međutim, ovaj status sam po sebi ne garantuje pristup besplatnoj pravnoj pomoći/punomoćniku. Naime, ista odredba propisuje dodatne uslove koje treba da ispunjava žrtva i koje

ocenjuje tužilac ili sud, pa ZKP koristi sintagmu „ako smatra da je to potrebno radi zaštite interesa posebno osetljivog svedoka“, tj. organ postupka rešenjem postavlja punomoćnika svedoku po redosledu sa spiska advokata koje sudu dostavlja advokatska komora (član 76. ZKP).

Dakle, ova odredba reguliše pravo na punomoćnika posebno osetljivih svedoka. Međutim, kao što smo ranije objasnili, većina žrtava daje iskaze van ovog statusa, što ih usmerava ili na mehanizam Zakona o maloletnicima (ako su maloletni) ili na mehanizam predviđen Zakonom o besplatnoj pravnoj pomoći.

Zakon o maloletnicima predviđa da, „u slučaju da maloletno lice nema punomoćnika, njega će rešenjem iz reda advokata koji su stekli posebna znanja iz oblasti prava deteta i krivičnopravne zaštite maloletnih lica postaviti predsednik suda. Troškovi zastupanja padaju na teret budžetskih sredstava suda.“ (član 154)

Zakon o besplatnoj pravnoj pomoći prepoznaje kao moguće korisnike veoma uzak krug žrtava krivičnog dela (žrtve nasilja u porodici, žrtve trgovine ljudima i žrtve torture, nečovečnog ili ponižavajućeg postupanja) (čl. 4) i definiše modalitete besplatne pravne pomoći: pružanje pravnih saveta, sastavljanje pravnih podnesaka, zastupanje i odbranu. (čl. 6) Isti zakon definiše i listu pružalaca besplatne pravne pomoći: advokati i službe besplatne pravne pomoći u jedinicama lokalne samouprave, dok OCD imaju pravo da pružaju besplatnu pravnu pomoć samo u skladu sa zakonima o azilu i nediskriminaciji i to čine u saradnji sa advokatima. Međutim, neke oblike pravne pomoći OCD i službe pravne pomoći u jedinicama lokalne samouprave mogu pružati diplomirani pravnici, u skladu sa procesnim zakonodavstvom. OCD takođe mogu pružiti pravnu podršku kroz pružanje opštih pravnih informacija i podnošenje obrazaca.

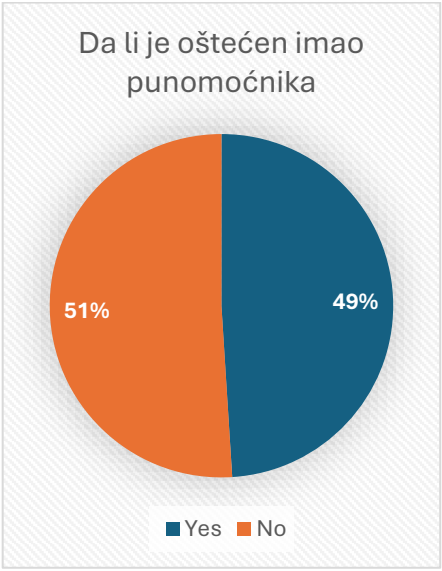
! Tekućim izmenama i dopunama ZKP uvodi se direktno pozivanje na Zakon o besplatnoj pravnoj pomoći u čl. 50. Ova odredba, iako lepo zvuči, zapravo ne donosi ništa novo za žrtve u pogledu ostvarivanja ovog prava jer je ono u potpunosti regulisano Zakonom o besplatnoj pravnoj pomoći sa svim gore opisanim ograničenjima.

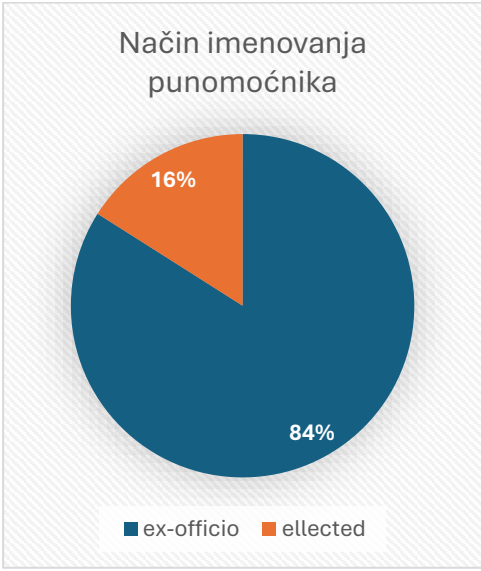
4.3.3. Izazovi u praksi

Praktične reperkusije gore opisanih slabosti trenutno važećeg normativnog okvira lako su vidljive iz rezultata nedavno sprovedenog monitoringa za neke od kategorija ranjivih žrtava.

Tako su npr. nalazi praćenja položaja maloletnih žrtava[145] u krivičnom postupku u Srbiji u 2020. godini[146] pokazali su da je od 70 oštećenih skoro jednak broj maloletnih oštećenih imao, odnosno nije imao punomoćnika u postupku.

Grafikon 2: Punomoćnik oštećenog





[145] Monitoringom su bile obuhvaćene žrtve sledećih krivičnih dela: Silovanje (čl. 178, st. 3- 4); Obljuba and nemoćnim licem (čl. 179 st. 2-3); Obljuba sa detetom (čl. 180); Obljuba zloupotrebom položaja (čl. 181); Podvođenje i omogućavanje vršenja polnog odnosa (čl. 183); Prikazivanje, pribavljanje i posedovanje pornografskog materijala i iskorišćavanje maloletnog lica za pornografiju (čl. 185, st. 2-3); Prinudno zaključenje braka (čl. 187a); Vanbračna zajednica sa maloletnikom (čl. 190); Zapuštanje i zlostavljanje maloletnog lica (čl. 193, st. 2); Trgovina maloletnim licima radi usvojenja (čl. 389).

[146] Vidi više u: Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, dostupno na: http://institutecsr.iksi.ac.rs/339/.

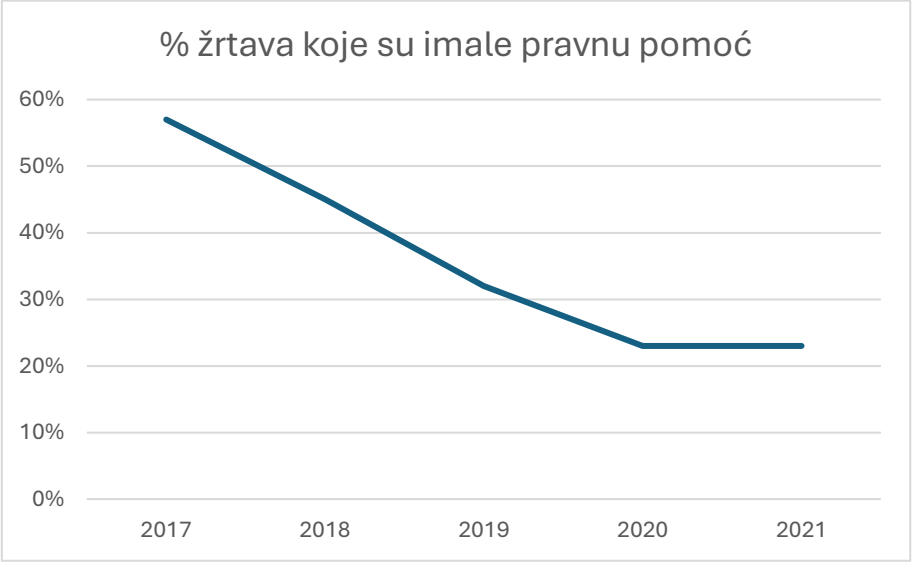
U okviru ukupnog broja maloletnih oštećenih koji su imali punomoćnika, 16% njih je zastupao izabrani punomoćnik, dok je 84% njih zastupao punomoćnik postavljen po službenoj dužnosti. Ovi podaci su zabrinjavajući ako uzmemo u obzir obavezu iz člana 154 ZKP.

Osnovni razlog za to može se tražiti u strukturi krivičnih dela gde je vođeno preko 50% postupaka za krivično delo zasnivanje vanbračne zajednice sa maloletnim licem iz člana 190. Krivičnog zakonika, a zatim najzastupljenije krivično delo zapuštanje i zlostavljanje maloletnog lica iz člana 193. KZ, sa 25% učešća.

Imajući u vidu prethodno navedenu strukturu krivičnih dela zastupljenih u posmatranom uzorku, važno je napomenuti da u velikom broju slučajeva (48%) glavni pretres nije održan. U predmetima u kojima nije održan glavni pretres, održano je ročište za izricanje krivične sankcije ili ročište po sporazumu o priznanju krivice.

Slično, trendovi koji proističu iz monitoringa položaja žrtava trgovine ljudima pred sudovima U republici Srbiji pokazuju dramatičan pad udela oštećenih koji su imali punomoćnika (sa 57% u 2017. na 23% u 2021).

Grafikon 3: Žrtve koje su imale pravnu pomoć



Očigledno, ovi podaci su u bliskoj vezi sa trendovima u pogledu procenta žrtava kojima se dodeljuje status posebno osetljivog svedoka. Kao što smo već naveli, oko 30% žrtava trgovine ljudima ispunjava bar jedan od osnova za dodelu ovog statusa, dok ista odredba člana 103 ZKP predviđa da usled njihovog postojanja organ postupka može odlučiti, ukoliko smatra da je to neophodno radi zaštite interesa posebno osetljivog svedoka, postaviti punomoćnika po redosledu sa spiska advokata koji sudu dostavlja nadležna advokatska komora za određivanje branilaca po službenoj dužnosti (član 103, stav 3, ZKP).

Prikazani trend je u nesporno i u vezi sa nedostatkom podataka o uslovima za ostvarivanje i procedurama za pristup uslugama besplatne pravne pomoći u skladu sa zakonom o BPP.

! Naime, postoji ne baš dobra praksa da se razvijaju i sprovode kampanje za podizanje svesti u periodima neposredno nakon usvajanja važnih novih zakona. Međutim, postoji očigledna potreba da se ne prestane sa radom na promociji takvih mehanizama čak ni u kasnijim fazama. Nije realno da (posebno) ranjive žrtve mogu da saznaju i efikasno koriste Registar pružalaca besplatne pravne pomoći, sa jasnim uvidom u to od koga i koju vrstu podrške mogu da dobiju, posebno u pogledu razlikovanja pravne pomoći i pravne podrške.

Drugi razlog za ovakvo stanje je vezan za gore navedena ograničenja za OCD u pogledu pružanja pravne pomoći u punom kapacitetu samo u saradnji/preko advokata.

Naime, prema nekim nalazima praćenja postupka za femicid, konstatovano je da sve organizacije kontinuirano pružaju besplatnu pravnu pomoć i podršku, iako nisu uvek obezbeđena sredstva za ove usluge. Ova vrsta podrške zasniva se na saradnji sa advokatima, koji imaju svoje uslove kada dođu u sedište organizacije i sretnu se sa ženama kojima je podrška potrebna. Neke od tih organizacija su potpisale ugovore sa advokatima koji rade *pro bono*. Dakle, ako žena koju zastupaju na sudu izgubi slučaj, ostaju bez naknade. Organizacije obično imaju određene uslove u kojima se pruža pravna pomoć i podrška, jer se zasniva na saradnji sa advokatima koji to rade *pro bono*, ali postoje organizacije koje uspevaju

da obezbede sredstva za plaćanje advokata. Konačno, postoje i slučajevi u kojima OCD imaju advokate koji za njih rade puno radno vreme.[147]

! Ograničenja u pogledu nadležnosti OCD utvrđena Zakonom o besplatnoj pravnoj pomoći, zajedno sa gore navedenim pluralizmom postojećih modaliteta saradnje između OCD i advokata, donose nedostatak jasnoće za žrtve u pogledu toga šta mogu da očekuju i/ili dobiju kroz ovaj mehanizam.

! Gore opisane prakse u velikoj meri variraju u zavisnosti od grupe žrtava u fokusu ovih OCD, ali i na osnovu nejednake geografske distribucije OCD koje pružaju besplatnu pravnu pomoć žrtvama, gde je žrtvama u ruralnim sredinama i dalje izuzetno teško da dobiju informacije o dostupnim uslugama, ali i da im pristupe.

! Nestabilnosti u pogledu dostupnih usluga doprinosi nestabilnost finansiranja ovih usluga koje se često više oslanjaju na podršku projekata nego na Zakon o besplatnoj pravnoj pomoći.

Konačno, pitanje kvaliteta pružene podrške je od velikog značaja. Naime, većina advokata nije upoznata sa izazovima koji proizilaze iz rada sa, i za posebno ugrožene žrtve.

! Nedostatak adekvatnih veština na strani advokata ima dvostruki efekat: s jedne strane sprečava/demotiviše advokate da prihvate tu vrstu predmeta, ali sa druge strane utiče na kvalitet pravne pomoći koju žrtvama pružaju oni advokati koji nisu dovoljno stručni. Ponekad posledice ovakvog zastupanja pred sudom mogu biti čak i štetne i rezultirati ponovnom traumatizacijom žrtava.

[147] Petrušić, N., Žunić, N., & Vilić, V. (2019) *Društveni i institucionalni odgovor na femicid u Srbiji II.* Udruženje građanki FemPlatz, Pančevo, str. 81.

4.3.4. Preporuke za unapređenje

P.7. Izmeniti Zakon o besplatnoj pravnoj pomoći sa ciljem proširivanja njegovog obuhvata primene na način da osigura pristup besplatnoj pravnoj pomoći za (naročito osetljive) kategorije) žrtava.

P.8. Unaprediti pristup informacijama o dostupnoj besplatnoj pravnoj pomoći za žrtve.

P.9. Razviti održive trening programe za advokate da bi se osiguralo da prepoznaju specifične potrebe posebno ranjivih žrtava.

4.4. Prisustvo psihologa i/ili osobe od poverenja saslušanju

Osnaživanje žrtava da učestvuju u postupku i da daju svoj iskaz može se vršiti na različite načine. Međutim, prisustvo psihologa, drugog stručnjaka ili samo osobe od poverenja može značajno doprineti otpornosti žrtava.

Čak i pod veoma zastrašujućim okolnostima i bez odgovarajuće zaštite identiteta, žrtva može izaći iz suđenja jača i osnažena ako je imala nekoga pored sebe tokom suđenja, ko ju je podržavao i ako su se sudija i tužilac dobro ponašali prema njoj.[148]

Međutim, sud i/ili tužilac uvek treba da proceni potencijalni sukob interesa između žrtve i prisutne osobe od poverenja, posebno kada je reč o deci žrtvama. Pored prisustva profesionalaca (uglavnom iz službe za podršku žrtvama), od vitalnog je značaja da posebno ugrožene žrtve budu ispitane posredstvom posebno obučenih stručnjaka.

[148] Lindgren, M., & Nikolić-Ristanović, V. (2011) *Žrtve kriminaliteta: međunarodni kontekst i situacija u Srbiji.* Organizacija za evropsku bezbednost i saradnju, Misija u Srbiji, Beograd, str. 126.

4.4.1. Relevantni međunarodni standardi

Pravo žrtve da bude u pratnji osobe po svom izboru ugrađeno je u korpus osnovnih prava propisanih Direktivom 2012/029/EU. Naime, Direktiva o žrtvama predviđa da, osim ako nije u suprotnosti sa interesima žrtve ili ukoliko to ne bi bilo štetno za tok postupka, države članice treba da dozvole žrtvama da budu u pratnji osobe po njihovom izboru u prvom kontaktu sa nadležnim organom kada je, u odnosu na uticaj zločina, žrtvi potrebna pomoć da razume ili da bude shvaćena.

Pored ovog, nazovimo to osnovnog prava, član 23. Direktive takođe prepoznaje obavezu države da obezbedi da razgovore sa žrtvom obavljaju ili preko njih obučeni stručnjaci za tu svrhu u slučajevima kada žrtva pripada grupi posebno osetljivih žrtava.

Isti koncept sadržan je u Direktivi 2011/036/EU koja predviđa da dete žrtva može biti u pratnji zastupnika ili, gde je to prikladno, odrasle osobe po izboru deteta, osim ako nije doneta obrazložena suprotna odluka u odnosu na tu osobu.

Slično, Direktiva 2011/093/EU o deci žrtvama seksualnog nasilja predviđa u čl. 20 da države treba da obezbede da dete žrtva može biti u pratnji njegovog ili njenog zakonskog zastupnika ili, gde je to prikladno, odrasle osobe po njenom izboru, osim ako je u odnosu na tu osobu doneta suprotna obrazložena odluka. Takođe prepoznaje potrebu da se ispitivanje sprovodi putem profesionalaca.

4.4.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Relevantni zakonski okvir po ovom pitanju čine odredbe ZKP i Zakona o maloletnicima. Naime, tekućim izmenama i dopunama ZKP predviđene su dve veoma važne novine sadržane u izmenjenom čl. 50 (tačke 2 i 7). Dok je tačkom 7 direktno predviđeno pravo žrtve „da na lični zahtev ima pratnju lica od poverenja pri preduzimanju radnji u kojima učestvuje, osim ukoliko se time ne bi štetilo interesima postupka“, tačka 2 garantuje „besplatan i poverljiv pristup službama za pomoć i podršku”. Ove izmene se mogu oceniti kao važan korak napred ka boljoj zaštiti osetljivih svedoka tokom njihovog svedočenja. Međutim, još uvek postoji nekoliko zabrinutosti u vezi sa ovom odredbom.

Naime, tačka 2 ne predviđa direktno prisustvo stručnjaka službi za podršku žrtvama koji prate žrtvu na saslušanju, ali ako ove dve odredbe čitamo zajedno, postaje očigledno da su stručnjaci iz tačke 2. uključeni u tačku 7.

Takođe, veoma je važno napraviti razliku između ovog prava i prava iz člana 104 ZKP koji predviđa da se „posebno osetljivom svedoku mogu postavljati pitanja samo preko organa postupka (sudije), koji će se prema njemu ophoditi sa posebnom pažnjom, nastojeći da izbegne moguće štetne posledice krivičnog postupka po ličnost, fizičko i psihičko stanje svedoka. Pregled se može obaviti uz pomoć psihologa, socijalnog radnika ili drugog stručnog lica, o čemu odlučuje organ postupka. Oba rešenja imaju za cilj zaštitu i jačanje svedoka, ali i uloge stručnjaka. Naime, njihova uloga prepoznata u članu 50 (tačke 2 i 7) je pasivnija, ona su prisutna samo da bi pratila/podržavala/osnažila žrtvu/svedoka. Drugačije, stručno lice iz člana 104. poziva se da aktivno učestvuje u postupku i da na profesionalan i zaštitnički način prenosi pitanja stranaka. Slično, prema Zakonu o maloletnicima, maloletne žrtve se ispituju uz pomoć psihologa, pedagoga ili drugog stručnog lica (član 152).

Takođe, posebnu pažnju treba obratiti na sintagmu „osim ukoliko se time ne bi štetilo interesima postupka" koja se čini pomalo nejasnom jer se ne odnosi na interese žrtve već na sam postupak. Jasno je da je zakonodavac želeo da pokrije širi obim potencijalnih rizika. Međutim, bez uvođenja konkretnog pozivanja na sukob interesa između prisustva određene osobe i žrtve, čini se da postoji previše širok diskrecioni prostor za sud prilikom donošenja ove ocene.

! Od najveće je važnosti osigurati da prisustvo osobe po izboru žrtve zaista osnaži žrtvu a da ne dođe do sukoba njihovih interesa koji može dodatno povrediti žrtvu. U praksi, ovo treba posebno imati u vidu kada se radi sa decom žrtvama, jer je široko rasprostranjena praksa da se roditeljima dozvoljava prisustvo tokom ispitivanja, što detetu žrtvu onemogućava da otvoreno i iskreno svedoči jer okleva da slobodno govori u prisustvo roditelja bilo zbog neke vrste umešanosti/doprinosa roditelja u ono što se desilo, bilo zbog stida zbog onoga što mu se desilo čak i u potpunom odsustvu doprinos roditelja.

4.4.3. Izazovi u praksi

Nalazi nedavno sprovedenih monitoringa i analiza pokazuju da su prethodno pokrenuta pitanja normativnog okvira takođe od velikog značaja u smislu primene u praksi.

Tako je npr. praćenje sudske prakse o položaju maloletnih žrtava krivičnog dela pred sudovima u Republici Srbiji u 2020. godini pokazalo je da je u 47% slučajeva oštećeni imao stručnu podršku na glavnom pretresu, u 70% slučajeva podršku psihologa i u 10% slučajeva podršku socijalnog radnika iz centara za socijalni rad. Samo u jednom slučaju oštećeni je imao podršku/pratnju službe za podršku žrtvama. U 71,5% slučajeva na glavnom pretresu oštećeni je imao podršku članova porodice, uglavnom roditelja, uz jednaku zastupljenost majki i očeva kao podrške. U samo dva slučaja, majka i brat žrtve morali su da budu udaljeni iz sudnice jer je trebalo da budu saslušani kao svedoci.[149]

Koliko je značajna uloga psihologa u ispitivanju posebno ugroženih svedoka lako se može zaključiti iz sledeće studije slučaja:[150]

Studija slučaja 1:

Maloletna A.B. (17 godina) se pred sudom za maloletnike istovremeno pojavljuje kao oštećena u tri nezavisna predmeta.

Istovremeno se pojavljuje kao oštećena u tužilačkoj istrazi koja se vodi protiv lica starog 64 godine zbog krivičnog dela trgovina ljudima i podvođenja maloletnog lica.

U jednom maloletničkom predmetu postupak se vodi protiv dve maloletnice za trgovinu ljudima i podvođenje.

[149] Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020.* Institute of Criminological and Sociological Research, Belgrade, dostupno na: http://institutecsr.iksi.ac.rs/339/.

[150] Ova studija slučaja je pripremljena u saradnji sa psihologom Višeg suda u Beogradu Ljubinkom Marković i prezentovana u: Stevanović, I., & Marković, Lj. (2024) *The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next.* In: International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024. Institute of Criminological and Sociological Research, Belgrade, pp. 165-182.

U dva nezavisna predmeta (koje vode različite sudije) protiv dva maloletnika je pokrenut postupak zbog silovanja. Ova dva maloletnika su već bili u postupcima zbog drugih krivičnih dela, te su dodeljeni sudijama koje već vode postupak.

Postupajuća sudija u predmetu koji se vodi prema dve maloletnice je već u pripremnom postupku uključila psihologa suda. Po dogovoru, psiholog suda je pozvala telefonom roditelje ponudila da pre saslušanja, kada im to odgovara i ako žele, dođu u sud radi razgovora u cilju pripreme za davanje iskaza. Rado su prihvatili.

U razgovoru, od roditelja dobijen podatak o ostalim predmetima u kojima je maloletna pozvana da da iskaz.

Devojčica ide na tretman u savetovalište Centra za zaštitu žrtava trgovine ljudima (CZŽTLj).

Obavljen je razgovor i sa CZŽTLj, koji je istakao vulnerabilnost maloletnice i visok rizik od svedočenja u četiri krivična postupka.

Uvidom u sva tri "maloletnička" predmeta i u kontaktu sa nadležnim CSR bilo je evidentno da su vrlo izvesne negativne posledice ukoliko devojčica bude saslušavana u svim ovim predmetima.

Maloletna je prvo od dvoje dece. Roditelji su veoma brižni i zainteresovani. Zbog sniženih mentalnih sposobnosti, roditelji su čak bili prezaštićujući. Uslovi odrastanja u porodici su povoljni. Mal. A.B. je kao dete sa posebnim potrebama bila učenica specijalne osnovne škole za decu ometenu u razvoju. Uvođenjem inkluzivnog obrazovanja upisana je u srednju Školu za negu lepote.

Od strane dve školske drugarice (protiv kojih se vodi postupak) uvučena je u lanac prostitucije. Porodica nekoliko meseci nije prepoznala problem jer se veći deo problematičnih aktivnosti dešavao tokom nastave (sa koje je maloletna izostajala). Njeno izlaženje i druženje, roditelje je čak i radovalo, misleći da je napokon, našla drugarice i drugove.

Prve probleme uočavaju kada je maloletna na nekoliko dana pobegla od kuće, a potom zbog zarazne polne bolesti morala na ginekološki pregled i lečenje. Lekaru i roditeljima je tada saopštila da ona već nekoliko meseci ima odnose sa različitim, uglavnom nepoznatim muškarcima, koje poznaju njene (maloletne) drugarice. Često je imala odnose sa više muškaraca odjednom (u nekoj napuštenoj udžerici

blizu škole). Bolelo je i nije joj se sve to dopadalo, ali su je drugarice ubedile da je "sad odrasla i da tako treba". Zastrašile su je da ako kaže roditeljima više neće ići u redovnu školu. One su organizovale ta "druženja" i ne zna da li su i koliko novaca one uzimale od tih ljudi.

U kući gore pomenutog muškarca (64g) je boravila tokom bekstva od kuće. Odlazila je i pre toga, jer ove njene "drugarice" tu žive.

Kontaktirane su i ostale sudije za maloletnike i viši javni tužilac koji vodi istražni postupak protiv 64-orogodišnjeg muškarca. Već je naložio veštačenje devojčice. Tek nakon pribavljenih nalaza veštaka, planira postavljanje punomoćnika i uzimanje iskaza.

Psiholog suda je sačinila belešku za sva četiri predmeta i dostavila obaveštenje da je neophodno maloletnu, kao posebno osetljivog svedoka, sa svim karakteristikama koje upućuju na potrebu saslušanja uz stručno vođenje intervjua, te da iskaz treba uzeti uz pomoć Jedinice za zaštitu dece u krivičnom postupku (koja je u to vreme bila aktivna).

I pored pismenog i usmenog obaveštenja (i upozorenja) jedan od sudija za maloletnike i koji je prvi pozvao maloletnu oštećenu, saslušao je devojčicu za sva krivična dela u četiri postupka.

Devojčica je saslušavana u prisustvu oca i veštaka psihijatra, bez punomoćnika. Iskaz devojčice je bio konfuzan, bez jasnih detalja, nije bilo distinkcije među događajima, najvećeg broja događaja se nije sećala, ili ih opisivala na identičan način.

Ne samo da je devojčica bila izložena sekundarnoj viktimizaciji, već je jasno da je i dobijeni iskaz sumnjive validnosti.

Ovako dobijeni iskaz nije imao težinu utemeljenih dokaza. Optuženom, maloletnicama i maloletnom je obustavljen krivični postupak zbog nedostatka dokaza.

Gubitkom statusa žrtve trgovine ljudima, maloletna je ostala i bez mogućnosti tretmana u savetovalištu CZŽTLj.

Psiholog suda je pokušala kontakt sa roditeljima maloletne, ali nisu želeli da se jave.

Na jedan poziv je odgovorio otac devojčice. Rekao je da se svi osećaju veoma loše. Devojčica je gotovo u kućnom pritvoru. Boji se da izlazi. Povukla se u sebe. Uglavnom spava i gleda televiziju. Često plače. Ne ide u školu. Polagaće razredni ispit, da se ne bi sretala sa ostalim učenicima. Ne žele da traže drugu zaštitu, da devojčica ne bi ponovo prolazila kroz sve. Dodaje da se i njihova mlađa kćer, koja ima 15 godina, povukla u sebe. Stidi se i boji se da izađe iz kuće. Popustila je u školi,...Zahvalio se i zamolio je da ih više niko iz suda ili tužilaštva ne poziva, jer ih to jako uznemiri.

* * *

Ova studija slučaja pokazuje da čak i kada je sudski psiholog uključen u pripremu svedočenja i samo ispitivanje, neznanje na strani suda može uništiti sav napor koji je učinjen da se ohrabri, osnaži i podrži žrtva da pruži potpuno i tačno svedočenje.

Ovo je posebno važno za maloletne žrtve koje se još uvek ne evidentiraju ni u jednoj vrsti centralizovanog registra. „Iako je Sudskim poslovnikom[151] predviđen Registar oštećenih i svedoka, namenjen Službi za pomoć i podršku oštećenima i svedocima, ovaj registar se u praksi ne sprovodi (osim u Posebnom odeljenju za ratne zločine i Posebnom odeljenju za organizovani kriminal i korupciju pri Višem sudu u Beogradu). Ovakvo stanje proizilazi iz opravdanog straha da bi unutar sistema podaci o žrtvama mogli biti kompromitovani, kao i iz činjenice da Službe još uvek nisu adekvatno strukturisane. Sam registar je zamišljen da bude interni, dostupan samo predstavnicima Službe preko lozinke.

Tužilaštva takođe nemaju formalno određen registar žrtava/svedoka koji su oštećeni. Shodno tome, gotovo je nemoguće steći uvid u ukupan broj žrtava, uključujući i maloletne žrtve, u krivičnom postupku i planirati organizaciju njihove zaštite na nivou krivično-pravnog sistema. Dok evidencija zasnovana na vrsti krivičnih dela može otkriti slučajeve gde je uzrast žrtve kvalifikatorna ili otežavajuća okolnost, oni ne pružaju informacije o stvarnom broju žrtava.

Nedostatak odgovarajuće evidencije nije značajan samo za analizu i planiranje. U nekim slučajevima, nedostatak evidencije dodatno otežava položaj maloletnih žrtava. Na primer, u slučajevima koji se tiču krivičnog dela proizvodnje, pribavljanja ili posedovanja pornografskog materijala i iskorišćavanja maloletnog

[151] Sudski poslovnik ("Sl. glasnik RS", br. 110/09, 70/11, 19/12, 89/13, 96/15, 104/15, 113/15, ispr., 39/16, 56/16, 56/16, 77/16, 16/18, 78/18, 43/19, 93/19 i 18/22).

lica za pornografiju, goni se više osumnjičenih, koji se ponekad ne otkrivaju i procesuiraju istovremeno, a može se saslušati ista maloletna žrtva. u više slučajeva. Ovakva situacija se dešava i u drugim vrstama predmeta, gde se postupci organizuju na osnovu okrivljenih."[152]

! Nedostatak komunikacije i saradnje između tužilaca, sudija i stručnjaka zaduženih za pratnju/podršku žrtvama i svedocima u sudskim postupcima, u sadejstvu sa nedostatkom evidencija i statistika o žrtvama u pravosudnom sistemu koja je neophodna za praćenje potencijalnog pojavljivanja istih žrtava u više od jednog sudskog postupka i/ili u više procesnih funkcija može značajno uticati na ishod postupka u pogledu kvantiteta i kvaliteta dokaza, ali i u pogledu štetnih posledica po posebno osetljive žrtve/svedoke.

Nema sumnje da je jedan od osnovnih razloga za nepostojanje ohrabrujući podataka usko povezan sa veoma ograničenim brojem stručnjaka za psiho-socijalnu podršku zaposlenih u našem pravosuđu- samo tri u višim sudovima (Beograd, Novi Sad i Novi Pazar) i takođe ograničen broj u postojećim službama za podršku žrtvama koje deluju u okviru pravosudnog sistema. Npr. u Službi za informisanje i podršku oštećenima i svedocima Javnog tužilaštva za ratne zločine raspoređen je određeni broj tužilačkih pomoćnika, savetnika i javnih tužilaca, kao i psiholog.[153]

Slično, postoji potreba za jačanjem kapaciteta Službe za pomoć i podršku oštećenima i svedocima Višeg suda u Beogradu koja pruža podršku/prati i žrtve ratnih zločina i organizovanog kriminala, koja pruža usluge koje obuhvataju dve vrste mera – logističku pomoć u organizaciji puta i emocionalnu podršku pre, za vreme i neposredno posle suđenja.

Određeni stručni kapaciteti su dostupni i u Centru za zaštitu žrtava trgovine ljudima.[154]

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[152] Stevanović, I., & Marković, Lj. (2024) *The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next.* In: International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024. Institute of Criminological and Sociological Research, Belgrade, pp. 165-182.

[153] 6th Report on implementation of the National Strategy for the Prosecution of War Crimes in 2021-2026 period, dostupno na: https://mpravde.gov.rs/sr/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php, pristupljeno 14. decembra 2024. godine

[154] Vidi više na: https://centarzztlj.rs/tim-centra/, pristupljeno 14. decembra 2024. godine

Konačno, u Srbiji deluje veliki broj nevladinih organizacija specijalizovanih za pružanje pomoći i podrške ženama žrtvama rodno zasnovanog nasilja i nasilja u porodici. Veliki broj žena žrtava nasilja dobilo je savete, pomoć i emocionalnu podršku pre, u toku i nakon završetka postupka. Pitanje prisustva predstavnika NVO nije regulisano ZKP-om[155], stoga je teško sistematski analizirati njihovu uključenost u postupak.

Veoma važan faktor koji je i u praksi u ovom pogledu u prethodnom periodu oblikovao postojeće stanje vezan je za okolnosti povezane sa pandemijom COVID-19. Vanredno stanje je u Republici Srbiji proglašeno 15. marta 2020. godine, a ukinuto je 6. maja 2020. U tom periodu suđenja su uglavnom odlagana. Ovo je značajno uticalo i na suđenja za ratne zločine u kojima učestvuju subjekti iz čitavog regiona. „Ista nastavljena tek 28. maja 2020. godine. Nakon ukidanja vanrednog stanja, suđenja su se odvijala uz posebne mere zaštite u skladu sa propisima o vanrednim merama i vanrednoj situaciji zbog epidemije virusa Covid-19. Međutim, i u tom periodu suđenja su više puta odlagana jer sudu nisu pristupali svedoci,[156] posebno oni iz regiona, zbog problema izazvanih epidemijom (kao što su povećan rizik od posledica eventualnog zaražavanja zbog vlastitog lošeg zdravstvenog stanja ili stanja člana porodičnog domaćinstva, te zbog trenutnog zdravstvenog stanja sa simptomima sličnim Covid-19 infekciji) ili zbog potrebe primene mere izolacije nakon povratka iz Srbije. Takođe su suđenja odlagana i jer su se i pojedini optuženi i branioci pozivali na postojanje simptoma sličnih Covid-19 infekciji ili obavezi primene mera izolacije. Nakon ukidanja vanrednog stanja, broj prisutnih u publici je zbog bezbednosnih razloga ograničavan, mada su i tada mnogi članovi porodica žrtava, obzirom da među njima ima dosta starijih osoba sa narušenim zdravljem, odustajali od putovanja iz zdravstvenih razloga. Nakon pogoršanja epidemiološke situacije u novembru 2020. godine, suđenja za ratne zločine su se odvijala bez prisustva publike. Ista je bilo moguće pratiti samo uz posebnu dozvolu suda za prisustvo u sudnici ili medijskoj sobi.“[157]

[155] Izveštaj Srbije podnet u skladu sa članom 68. stav 1. Konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici, 2018, str. 81-82.
[156] Humanitarian Law Center (HLC) (2021) *War crimes trials in Serbia during 2020*, p. 10, dostupno na: https://hlc-rdc.org/wp-content/uploads/2021/05/Report_on_War_Crimes_Trials_in_Serbia_during_2020.pdf, pristupljeno 14 decembra 2024. godine.
[157] Ibidem.

4.4.4. Preporuke za unapređenje

P.10. Usvojiti predložene izmene člana 50. ZKP-a čime bi se uspostavio pravni osnov za prisustvo osobe od poverenja i unaprediti predloženi tekst izmena ZKP-a u pogledu potencijalnog sukoba interesa između žrtve i osobe od poverenja.

P.11. Unaprediti mehanizme koordinacije u pravosuđu kako bi se bolje iskoristio rad sudskih psihologa da bi se izbeglo višestruko i/ispitivanje ranjivih žrtava bez odgovarajuće pripreme i/ili podrške psihologa.

P.12. Redovno vršiti procenu da li postoji sukob interesa u vezi sa prisustvom „osobe od poverenja" tokom ispitivanja žrtava, posebno u slučajevima koji se tiču dece žrtava.

P.13. Kontinuirano raditi na razvoju Nacionalne mreže službi za podršku žrtvama kako bi se obezbedili adekvatni stručni resursi za pratnju žrtava i svedoka tamo gde je to potrebno.

P.14. Kontinuirano raditi na razvoju baza podataka i statistike usmerenih na žrtve u pravosuđu kako bi se osigurala bolja koordinacija u slučajevima kada se ista žrtva pojavljuje u više od jednog sudskog postupka i/ili u više procesnih svojstava.

4.5. Ograničenje višestrukog ispitivanja

4.5.1. Relevantni međunarodni standardi

Najrelevantnije EU zakonodavstvo u oblasti prava žrtava zločina prepoznaje potrebu da se ograniči broj intervjua sa posebno ranjivim žrtvama. S tim u vezi, član 20(b) Direktive 2012/012/EU predviđa da, ne dovodeći u pitanje prava odbrane i u skladu sa pravilima sudske diskrecije, države članice obezbeđuju da je tokom krivične istrage broj razgovora sa žrtvom sveden na minimum, a razgovori se obavljaju samo tamo gde je to neophodno za potrebe krivične istrage.

Slično, čl. 12, st. 4(a) Direktive 2011/036/EU predviđa da države članice obezbede da žrtve trgovine ljudima dobiju specifičan tretman u cilju sprečavanja sekundarne

viktimizacije izbegavanjem, između ostalog, nepotrebnog ponavljanja intervjua tokom istrage, krivičnog gonjenja ili suđenja.

Direktiva 2011/093/EU, član 20(e) naglašava da je broj intervjua što je moguće ograničeniji, a intervjui se obavljaju samo tamo gde je to neophodno u svrhu krivičnih istraga i postupka.

4.5.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Kada je reč o trenutno važećem zakonodavnom okviru u Srbiji, Zakonik o krivičnom postupku ne predviđa ograničenje (čak i instruktivno) u pogledu broja intervjua/saslušanja žrtava.

Ipak, predloženim izmenama i dopunama člana 50, tačka 15) predviđeno je da oštećeni ima pravo da bude ispitan kao svedok bez nepotrebnog odlaganja, minimalan broj puta i samo ukoliko je to neophodno za vođenje postupka. Dakle, zakonodavac je odlučio da prati instrukcije iz prethodno navedenih EU standarda.

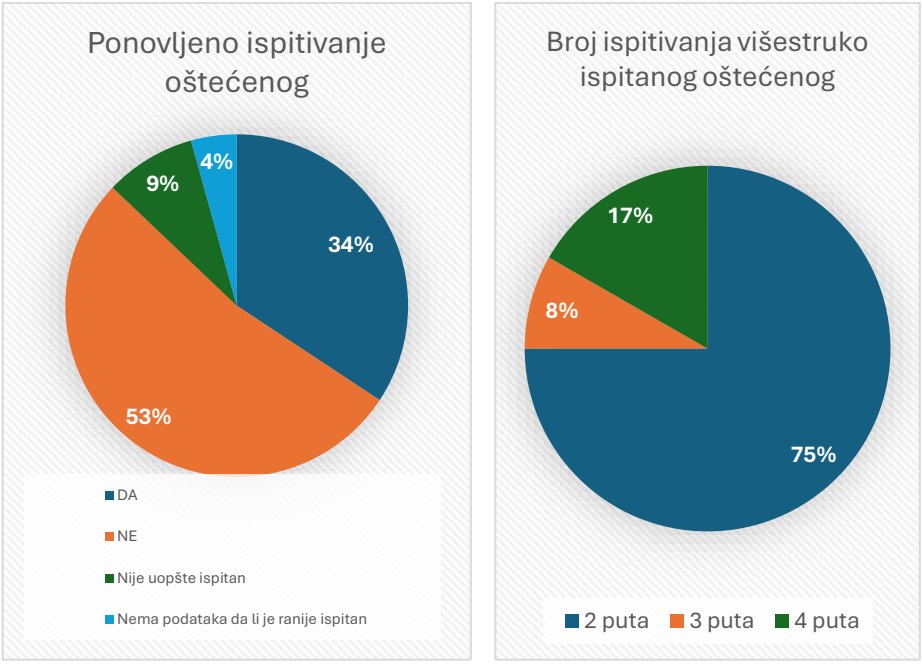
Istovremeno, važno je pomenuti da je ovaj princip u zakonodavstvo Srbije inkorporiran još 2005. kroz usvajanje Zakona o maloletnicima koji u članu 152 predviđa da ako se kao svedok saslušava maloletno lice koje je oštećeno krivičnim delom navedenim u članu 150[158] ovog zakona, saslušanje se može sprovesti najviše dva puta, a izuzetno i više puta ako je to neophodno radi ostvarenja svrhe krivičnog postupka. U slučaju da se maloletno lice saslušava više od dva puta, sudija je dužan da posebno vodi računa o zaštiti ličnosti i razvoja maloletnog lica.

[158] Monitoringom su bile obuhvaćene žrtve sledećih krivičnih dela: Teško ubistvo (član 114); Navođenje na samoubistvo i pomaganje u samoubistvu (član 119); Teška telesna povreda (član 121); Otmica (član 134); Silovanje (član 178); Obljuba nad nemoćnim licem (član 179); Obljuba sa detetom (član 180); Obljuba zloupotrebom položaja (član 181); Nedozvoljene polne radnje (član 182); Podvođenje i omogućavanje vršenja polnog odnosa (član 183); Posredovanje u vršenju prostitucije (član 184); Prikazivanje pornografskog materijala i iskorišćavanje dece za pornografiju (član 185); Vanbračna zajednica sa maloletnikom (član 190); Oduzimanje maloletnog lica (član 191); Promena porodičnog stanja (član 192); Zapuštanje i zlostavljanje maloletnog lica (član 193); Nasilje u porodici (član 194); Nedavanje izdržavanja (član 195); Rodoskrvnjenje (član 197); Razbojnička krađa (član 205); Razbojništvo (član 206); Iznuda (član 214); Omogućavanje uživanja opojnih droga (član 247); Ratni zločin protiv civilnog stanovništva (član 372); Trgovina ljudima (član 388); Trgovina decom radi usvojenja (član 389); Zasnivanje ropskog odnosa i prevoz lica u ropskom odnosu (član 390).

4.5.3. Izazovi u praksi

Rezultati monitoringa položaja maloletnih žrtava u krivičnom postupku u Srbiji u 2020. godini[159] su pokazali da je 34% maloletnih oštećenih ispitano više o jednog puta. Među višestruko ispitanima, 75% njih je ispitano dva puta, 8% tri puta, dok je 17% maloletnih oštećenih ispitano čak četiri puta. Ono što posebno zabrinjava je da su najviše puta (tri ili četiri puta) ispitane žrtve najtežih krivičnih dela protiv polne slobode i da su iskaze najčešće ponavljale policijskom inspektoru, stručnjacima CSR, javnom tužiocu i potom na glavnom pretresu.

Grafikon 4: Višestruko ispitivanje oštećenog



[159] Vidi više u: Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

! Pored retraumatizacije i sekundarne viktimizacije povezane sa višestrukim intervjuisanjem, ova praksa u velikoj meri utiče i na kvalitet svedočenja, a preko njega i na kvalitet dokaza i mogućnost rasvetljavanja okolnosti krivičnog dela. Ovaj rizik je uglavnom vidljiv kroz promene u iskazima žrtve.

Rezultati istog monitoringa su pokazali da je 12,5% oštećenih je promenilo iskaz tokom ponovljenog ispitivanja, pri čemu je interesantno da ni u jednom slučaju to nisu bile gore pomenute žrtve teških krivičnih dela protiv polne slobode, već po pravilu oštećene krivičnim delom vanbračna zajednica sa maloletnim licem iz člana 190. KZ-a. Ovo dodatno govori u prilog uzaludnosti i štetnosti višestrukog ispitivanja maloletnih žrtava.

Nažalost, sudovi često zanemaruju prave razloge za promenu iskaza, kao što su strah od pretnji i/ili osvete, ali i vremenska distanca. Ovakva praksa se jasno može videti iz studija slučaja predstavljenih u nastavku, razvijenih u okviru kontinuiranog monitoringa slučajeva trgovine ljudima pred sudovima u Republici Srbiji.[160]

Studija slučaja 2:

Na osnovu nalaza veštačenja maloletnog oštećenog (starog 14 godina) sud je utvrdio da se oštećeni plaši za sebe i živote svojih bližnjih i da je kod njega prisutan strah veoma jakog intenziteta - na skali do 10 iznosio je 8. Maloletni oštećeni je tokom saslušanja na glavnom pretresu koje je izvršeno u prisustvu okrivljenih promenio svoj iskaz na način da ne tereti okrivljene. U obrazloženju prvostepene presude sud samo navodi da taj izmenjeni iskaz nije prihvatio kao istinit jer je utvrdio činjenicu da se oštećeni plašio okrivljenih. U obrazloženju se navodi sledeće: „Nesumnjivo da je oštećeni upravo iz straha za sebe i svoju porodicu, plašeći se okrivljenog, u njegovom prisustvu na glavnom pretresu u potpunosti izmenio svoj ranije dat iskaz, negirajući sve što je u istražnom postupku izjavio, te promenjeni iskaz oštećenog sud kao takav

[160] Vidi više u: ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, dostupno na: https://drive.google.com/file/d/1l6aCZGbtc2VDg3V1hcJbtuQ40lARmufE/view, str. 17-18.

nije prihvatio". Dakle, maloletni oštećeni nije dobio status posebno osetljivog svedoka i saslušavan je u prisustvu okrivljenih.

Studija slučaja 3:

Maloletna oštećena je saslušavana dva puta u istražnom postupku i dva puta na glavnim pretresima (uključujući i pretres u ponovljenom postupku) i nekoliko puta je menjala iskaz tako da više ne tereti okrivljenog. Ceneći njene iskaze, sud u obrazloženju prvostepene presude navodi da je prihvatio njen prvobitni iskaz, dok ostale nije jer su dati iz straha od okrivljenog „čijeg je fizičkog i psihičkog maltretiranja oštećena bila žrtva". Maloletna oštećena je veštačena nekoliko puta ali joj uprkos nalazu veštaka nije joj dodeljen status posebno osetljivog svedoka. Iako prvobitnom ispitivanju maloletne oštećene nije prisustvovao psiholog, pedagog ili drugo stručno lice kako to predviđa čl.152 Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, sud navodi da je saslušanje izvršeno u prisustvu punomoćnika koji ima sertifikat za učestvovanje u postupcima gde se kao oštećeni pojavljuju maloletnici, te da je nakon davanja iskaza izvršen psihološki pregled oštećene u kome je sudski veštak ustanovio da je maloletna oštećena u vreme davanja iskaza bila sposobna da svedoči. Prema nalaženju suda, takvo postupanje ne predstavlja povredu odredaba postupka, jer pedagog, psiholog i druga stručna lica treba da doprinesu tome da se izbegnu štetne posledice po ličnost i razvoj maloletnika, a u konkretnom slučaju ni psiholog ni psihijatar nisu uočili štetne posledice kod oštećene (iako je veštačenje sprovedeno nakon njenog saslušanja). Ove razloge u potpunosti prihvata i drugostepeni sud.

4.5.4. Preporuke za unapređenje

P.15. Usvojiti predložene izmene člana 50. ZKP-a čime bi se uspostavio pravni osnov za ograničavanje broja ispitivanja žrtve.

P.16. Obratiti više pažnje na procenu stvarnih razloga za promene iskaza žrtve i uključiti stručnu podršku u ovim slučajevima.

4.6. Nedozvoljene ili neprikladne tehnike ispitivanja i Disciplinske mere u slučaju pritisaka i/ili odmazde prema osetljivim žrtvama

4.6.1. Relevantni međunarodni standardi

Član 18. Direktive 2012/029/EU predviđa da, ne dovodeći u pitanje prava na odbranu, države članice osiguravaju da su dostupne mere zaštite žrtava i članova njihovih porodica od sekundarne i ponovljene viktimizacije, od zastrašivanja i odmazde, uključujući rizik od emocionalne ili psihičke povrede, kao i za zaštitu dostojanstva žrtava tokom ispitivanja i svedočenja. Kada je potrebno, takve mere će takođe uključiti postupke utvrđene nacionalnim pravom u pogledu fizičke zaštite žrtava i članova njihovih porodica.

4.6.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Pravni režim koji reguliše način saslušanja posebno osetljivih svedoka, kao i pravne posledice kršenja tih pravila, uporedo su predviđeni ZKP i Zakonom o maloletnicima.

Kao što je ranije opisano, Zakonik o krivičnom postupku predviđa dva nivoa zaštite žrtava koje se pojavljuju kao svedoci u krivičnom postupku. Dok se prvi nivo zaštite daje svim žrtvama/oštećenima u svojstvu svedoka od uvreda, pretnji i svakog drugog napada i predviđa mogućnost opomene i novčane kazne za one koji krše ova pravila (čl. 102 st. ZKP),[161] drugi sloj zaštite rezervisan je za posebno osetljive svedoke (čl. 103-104 ZKP) koji je predmet tekućih izmena i dopuna ZKP. Naime, dok se čl. 103 ZKP bavi se dodelom statusa posebno ugroženog svedoka (videti tačku 3.2) čl. 104 se bavi načinom na koji bi takvi svedoci trebalo da budu ispitani.

[161] Uz to, po prijemu obaveštenja od policije ili suda ili po sopstvenom saznanju o postojanju nasilja ili ozbiljne pretnje upućene oštećenom ili svedoku javni tužilac će preduzeti krivično gonjenje ili će o tome obavestiti nadležnog javnog tužioca. Javni tužilac ili sud mogu zahtevati da policija preduzme mere za zaštitu oštećenog ili svedoka u skladu sa zakonom.

Nakon što je u prethodnom periodu bila široko kritikovana, zakonodavac je u ovoj odredbi značajnije intervenisao.[162] Ovim izmenama uneta je i zabrana unakrsnog ispitivanja kao element koji nedostaje u članu 104. jer je prvobitna odredba već sadržala druge elemente propisane citiranim odredbama Direktive 2012/029/EU i Direktive 2011/036/EU. Naime, pored zabrane suočenja sa okrivljenim, mogućnosti ispitivanja na daljinu (svedočenje u drugim prostorijama i/ili putem video linka), posebno osetljivom svedoku mogu se postavljati pitanja samo preko nadležnih organa (sudije), koji će prema njemu postupati sa posebnom pažnjom, nastojeći da izbegne moguće štetne posledice krivičnog postupka po ličnost, fizičko i psihičko stanje svedoka. Ispitivanje se može obaviti uz pomoć psihologa, socijalnog radnika ili drugog stručnog lica, o čemu odlučuje organ postupka.

Pored toga, zakonodavac treba da razmisli o tome da u zakonodavstvo (ne obavezno u ZKP) unese zabranu ispitivanja u vezi sa privatnim životom žrtve. Teško je ovo ugraditi u ZKP jer je u pitanju deo sudske ocene koje pitanje je relevantno za predmet postupka i treba da bude dozvoljeno. Stoga bi ovo pre mogao biti deo nekih smernica za ispitivanje osetljivih svedoka i naravno deo obuke za sudije, tužioce i advokate.

Odredbe Zakona o maloletnicima predviđaju obaveznu specijalizaciju svih stručnjaka koji se bave maloletnim žrtvama (član 151) takođe predviđaju i samo mogućnost, ali ne i obavezu ispitivanja maloletnih oštećenih uz korišćenje tehničkih sredstava za prenos slike i zvuka, a bez prisustva stranaka i drugih učesnika u postupku. Organ postupka će se odnositi prema oštećenom vodeći računa o njegovom uzrastu, svojstvima ličnosti, obrazovanju i prilikama u kojima živi, posebno nastojeći da se izbegnu moguće štetne posledice postupka po njegovu ličnost i razvoj. Saslušanje maloletnih lica obaviće se uz pomoć psihologa, pedagoga ili drugog stručnog lica. (član 152)

Ako se kao svedok saslušava maloletno lice koje je usled prirode krivičnog dela, posledica ili drugih okolnosti, posebno osetljivo, odnosno nalazi se u posebno teškom duševnom stanju, zabranjeno je vršiti suočenje između njega i okrivljenog. (član 153) Dakle, suočenje nije apsolutno zabranjeno. U sadejstvu sa trenutno važećim pravnim okvirom koji ne dozvoljava da se svi maloletnici smatraju

[162] Predložene izmene predviđaju sledeće:"Čl 50: U članu 104, nakon st. 4, dodaje se novi st. 5 koji glasi: „Tokom unakrsnog ispitivanja posebno osetljivog svedoka ili svedoka koji je maloletnik, zabranjeno je na glavnom ročištu postavljati sugestivna pitanja ili pitanja zasnovana na pretpostavci da je svedok izjavio nešto što nije. Prethodni st. 5 postaje st. 6."

posebno osetljivim svedocima, to znači da je suočenje maloletnika sa okrivljenim i dalje moguće.

Pored ovog skupa odredaba koje regulišu način saslušanja posebno osetljivih svedoka, čl. 370-374 ZKP su takođe relevantni za obezbeđivanje ispravnog postupanja učesnika u postupku koji omogućava ne samo nesmetana ispitivanja, već i pogodno okruženje za ispitivanje osetljivih svedoka.

Naime, drugačije od člana 102 koji dozvoljava sudu da izrekne novčanu kaznu kao posledicu nepoštovanja svedoka, član 370 ZKP uređuju situacije narušavanja reda na glavnim pretresima. „Ako optuženi, branilac, oštećeni, zakonski zastupnik, punomoćnik, svedok, veštak, stručni savetnik, prevodilac, tumač ili drugo lice koje prisustvuje glavnom pretresu narušava red tako što ne poštuje naređenja predsednika veća za održavanje reda ili vređa dostojanstvo suda, predsednik veća će ga opomenuti, a ako lice nastavi da narušava red, kazniće ga novčanom kaznom do 150.000 dinara." Ista odredba adresira i situacije narušavanja reda od strane javnog tužioca ili lica koje ga zamenjuje, kada će predsednik veća izvestiti nadležnog javnog tužioca i Državno veće tužilaca,[163] ili će prekinuti glavni pretres i od nadležnog javnog tužioca zatražiti da odredi drugo lice da u nastavku glavnog pretresa zastupa optužnicu, uz obavezu obaveštavanja suda o preduzetim merama. (član 370, stav 3 ZKP)

Branioca ili punomoćnika koji posle izricanja kazne produži da narušava red, veće će isključiti iz daljeg postupka i pozvati stranku ili zastupano lice da uzme drugog branioca, odnosno punomoćnika i o tome obavestiti nadležnu advokatsku komoru. (član 372, stav 1 ZKP) Braniocu, oštećenom, zakonskom zastupniku, punomoćniku, oštećenom kao tužiocu ili privatnom tužiocu koji preduzima radnje očigledno usmerene na odugovlačenje postupka, veće će izreći opomenu. (član 372, stav 1 ZKP) Predsednik veća obavestiće nadležnu advokatsku komoru o kazni izrečenoj advokatu zbog narušavanja reda, uz obavezu obaveštavanja suda o preduzetim merama. (čl. 370 i 374 ZKP) Ova dvostruka obaveza je od velikog značaja u smislu postizanja dugoročnih efekata u pogledu poštovanja procesne discipline od strane advokata.[164]

[163] Zbog kašnjenja izmena, ZKP i dalje nije usklađen sa novim nazivima institucija u skladu sa Ustavom RS i Zakonom o javnom tužilaštvu, reč je dakle o Visokom savetu tužilaštva.
[164] O primeni i efektima ovih mera, vidi više u poglavlju 3.6.3.

Sa stanovišta postizanja kratkoročnog cilja (kažnjavanje advokata za neetičko ponašanje), ali i dugoročnog efekta kroz prevenciju takvog ponašanja, nije najjasnije zašto je zakonodavac odlučio da ne uvede u čl. 102 ZKP obaveza suda da obavesti nadležnu advokatsku komoru o novčanoj kazni izrečenoj advokatu zbog neprimerenih radnji prema osetljivom svedoku iz st. 1 te odredbe, kao i obavezu nadležne advokatske komore da po prijemu obaveštenja od suda obavesti sud o preduzetim merama protiv tog advokata.

4.6.3. Izazovi u praksi

Ako pokušamo da istražimo uzroke sadašnjih izazova u praksi, ali i same postojeće izazove, treba uzeti u obzir okvire trenutno važećeg zakonodavstva, ali i nivo svesti profesionalaca uključenih u proces, kao i njihove veštine u ispitivanju posebno osetljivih svedoka. Pored ovoga, treba uzeti u obzir i trenutnu situaciju u pogledu primene disciplinskih mera u slučajevima kršenja pravila koja regulišu ispitivanje ovih kategorija svedoka.

Kada su u pitanju izazovi povezani sa znanjem i veštinama profesionalaca uključenih u proces, treba uzeti u obzir nekoliko faktora:

a) Znanja i veštine koje stiču na univerzitetu.

b) Znanja i veštine koje stiču kroz početnu i stalnu obuku na Pravosudnoj akademiji.

c) Uticaj (ne)postojanja i (ne)uključenosti sudskih psihologa u sudovima.

d) Neki razlozi za neadekvatan tretman posebno osetljivih svedoka mogu se naći i u obrazovanju sudija i tužilaca. Senzibilizacija stručnjaka treba da počne od samog početka njihovog pravničkog obrazovanja, odnosno kroz časove krivičnog procesnog prava, kriminalistike i viktimologije. Stoga, nastavni planovi i programi i udžbenici za te predmete, kao i senzibilizacija profesora prava koji ove predmete predaju, igraju važnu ulogu u budućoj senzibilizaciji pravnih stručnjaka. Naime, Kriminalistika kao glavni predmet na pravnim fakultetima koji se bavi metodikom ispitivanja različitih kategorija žrtava i/ili svedoka nije obavezan za sve studente prava na različitim smerovima. Pored toga, sadržaj knjiga koje su studenti koristili decenijama za učenje za ovaj ispit uključivao je i neka sporna ili čak štetna, diskriminatorna ili mizogina

poglavlja/pasuse. Tako su autori udžbenika iz Kriminalistike korišćenog do pre nekoliko godina tvrdili da žene, *„zbog psihofizičkih osobina po kojima se razlikuju od muškaraca, na različite načine doživljavaju, shvataju i reaguju na pojave i zbivanja pa samim tim i drugačije reprodukuju pojave i događaje nego muškarci. No, to ne mora da znači da one neistinito prikazuju određene pojave. Međutim, to je, istovremeno, jedno važno pravilo o kom se mora voditi računa prilikom saslušanja ili obavljanja razgovora sa ženama u cilju prikupljanja potrebnih obaveštenja kao i za ocenu njihovog iskaza od značaja mogu biti neke psihofizičke osobine žena, kao što su emotivnost nasuprot racionalnosti muškaraca,..... a zatim žene poseduju više ili manje naglašenu osetljivost, one brže i oštroumno opažaju afektivnu stranu događaja, njihova zapažanja su motivisana osećanjima, sugestibilne su i manje sklone krivičnom rezonovanju, a dosta često i strasti imaju značajnog uticaja na njihov psihički život. Kada se odluče na davanje lažnog iskaza to čine dosta vešto, smelo, a nekada i bezobzirno. Sem toga, na pojedine od tih osobina mogu imati znatan uticaj i stanje pojačane menstruacije, trudnoće, porođaj, dojenje i klimakterijum. O ovim stanjima se, takođe mora voditi računa. Smisao poznavanja određenih specifičnosti ženske psihe sastoji se u tome da se ta saznanja pravilno psihološki i taktički primene u toku saslušanja žena ili obavljanja razgovora radi prikupljanja obaveštenja. Zbog toga, sa aspekta kriminalistike, poželjno je da se prilikom uspostavljanja kontakta sa ženama, bilo prilikom saslušanja bilo prilikom obavljanja, razgovora radi prikupljanja obaveštenja, postupa pažljivo, sa razumevanjem emotivnih stanja i ubeđenja, a naročito treba apelovati na osećanje materinstvo, saosećanje i porodicu. Takva taktika daje uvek bolje rezultate nego pozivanje na logiku i zdrav razum, Proveravanje iskaza žene treba vršiti kao i kod drugih lica, ali naročito treba što detaljnije proveravati iskaz uvek kada se primate simptomi njene prevelike angažovanosti u konkretnom krivičnom slučaju.*[165]

Dakle, generacije studenata prava odgajane su da postupaju sa ovakvim predrasudama.

Situacija je donekle poboljšana u poslednjih nekoliko godina, pa su ranije elaborirani iskazi u novom udžbeniku iz istog predmeta sada dati u izmenjenom obliku, uz objašnjenje da se u krivičnoj teoriji žene izdvajaju i kao posebna

[165] Aleksić. Ž., Škulić, M. (2004) *Kriminalistika*. Dosije, Beograd, str. 209.

kategorija svedoka, sa određenim karakteristike za koje se smatra da imaju poseban značaj, kao što su povećana emocionalnost, sugestibilnost i sl., pri čemu „na psihičku strukturu žene utiču menstruacija, trudnoća, porođaj, dojenje i menopauza." Autor takođe zaključuje da se čini da ne postoje suštinski razlozi da se žene apriori svrstavaju u posebnu kategoriju svedoka. Međutim, autor prepoznaje potrebu za prilagođenim pristupom u slučajevima kada je žena žrtva nasilnih zločina i/ili zločina protiv seksualne slobode, posebno kako bi se sprečila ili minimizirala sekundarna viktimizacija.[166]

b) Kada je reč o ulozi inicijalne i stalne obuke na Pravosudnoj akademiji, važno je napomenuti da je prema Zakonu o maloletnicima obavezna samo specijalizacija za rad sa maloletnicima u krivičnom postupku, dok je za ostale kategorijama osetljivih žrtava to nije slučaj, ali se obuka organizuje na *ad hoc* osnovi, uglavnom uz podršku različitih projekata finansiranih od strane donatora. Međutim, takva obuka nema univerzalnu pokrivenost u pravosuđu i često ne uključuje advokate, čija je obuka u nadležnosti Advokatske akademije. Konačno, treba primetiti da Pravosudna akademija još uvek nije u statusu „jedinstvene tačke ulaza u sistem" za nosioce pravosudnih funkcija, što znači da u praksi početni nivo njihovog znanja i veština sudija i tužilaca varira u velikoj meri.

b) Ne treba zanemariti ulogu sudskog psihologa/službe za podršku žrtvama, jer njihovo stalno prisustvo doprinosi mnogo ne samo kroz učešće u pojedinačnim slučajevima, već i kroz savetodavnu ulogu u odnosu na sudije.

c) Takođe je važno napomenuti koliko je jak uticaj predrasuda pojedinih sudija i/ili tužilaca u pogledu nekih ličnih karakteristika žrtava i svedoka. Ovo posebno pogađa žrtve seksualnog nasilja, trgovine ljudima i zločina iz mržnje. Za te kategorije žrtava, lični stav/predrasuda onih koji vode intervju u vezi sa npr. seksualna orijentacija ili prethodni seksualni život mogu u značajnoj meri uticati na pristup žrtvi (ne)izlažući je neprikladnim pitanjima.[167]

[166] Škulić, M. (2022) *Kriminalistika*. Pravni fakultet Univerziteta u Beogradu, Beograd, str. 196.

[167] Za više informacija videte studije slučaja prezentovane u: Kolaković-Bojović, M., & Đukanović, A. (2023) *Zločini iz mržnje u Republici Srbiji*. Institut za kriminološka i sociološka istraživanja, Beograd. ISBN 978-86-80756-59-2.

Pod uticajem gore navedenih faktora, moglo bi se reći da ne postoji uniformnost u pogledu upotrebe (ne)odgovarajućih pristupa intervjuisanju posebno osetljivih svedoka na nivou čitavog pravosudnog sistema. Ipak, uočavaju se pozitivni trendovi, posebno u odnosu na sporna pitanja i/ili grupe osetljivih žrtava koje su obrađene kroz sveobuhvatne obuke sudija i tužilaca, poput npr. procesuiranja ratnih zločina.[168]

Slično, praćenje položaja maloletnih oštećenih u krivičnom postupku u Srbiji 2020.[169] godine pokazalo je da u analiziranom uzorku nisu zabeležene primedbe advokata na način postavljanja pitanja ili način unošenja iskaza oštećenog u zapisnik, kao ni intervencije sudije tokom ispitivanja jer je neka pitanja smatrao nebitnim ili neprikladnim. Isto važi i za upozorenja sudije okrivljenom i/ili njegovom advokatu ili intervenciju tužioca jer je smatrao da su neka pitanja nebitna ili neprikladna. To samo po sebi ne znači da nije bilo osnova niti potrebe za ovakvim intervencijama ili upozorenjima, ali u nemogućnosti neposrednog praćenja suđenja, odnosno kroz praćenje sudske prakse, kao njegove zamene, to se ne može sa sigurnošću utvrditi.

Ista analiza je takođe pokazala da je čak u 50% slučajeva maloletna žrtva ispitana u prisustvu okrivljenog, dok suočenje nije primenjeno ni u jednom analiziranom slučaju, što je značajno s obzirom na broj slučajeva maloletnih žrtava koje su imale status posebno osetljivog svedoka.[170]

Iako je polovini saslušanja maloletne žrtve prisustvovalo stručno lice (psiholog ili socijalni radnik PKS), samo 30% saslušanja je obavljeno preko tih stručnjaka, dok su u drugim situacijama prisustvovali samo ispitivanju koje je obavljeno neposredno.

Studija slučaja 4: Slučaj Miroslav Aleksić

Pozadina slučaja: Miroslav Aleksić (72) je poznati reditelj, producent, scenarista, pedagog i glumac koji je nekoliko decenija vodio dramski studio za decu u

[168] Humanitarian Law Center (HLC) (2021) *War crimes trials in Serbia during 2020*, p. 145, dostupno na: https://hlc-rdc.org/wp-content/uploads/2021/05/Report_on_War_Crimes_Trials_in_Serbia_during_2020.pdf, pristupljeno 11. septembra 2024. godine.

[169] Vidi više u: Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, dostupno na: http://institutecsr.iksi.ac.rs/339/.

[170] Vidi više u Poglavlju 3.1.

Beogradu. Prema navodima optužnice, zloupotrebljavao je položaj nastavnika da bi u dužem vremenskom periodu (od 2012. do 2020.) seksualno zlostavljao svoje maloletne učenice, pre nego što se jedna od njih, mlada glumica Milena Radulović, nakon dobijanja neophodne psihološke podrške, dovoljno osnažena da prijavi slučaj, a za njom i druge devojke iz istog studija. Prema optužnici Višeg javnog tužilaštva u Beogradu iz 2021. godine, Aleksić se tereti da je više puta silovao četiri svoje učenice, koje su tada bile maloletne. Takođe, prema optužnici, Aleksić se tereti da je zloupotrebom položaja nastavnika/rukovodioca studija izvršio nedozvoljene polne radnje nad tri devojčice. 16 žrtava koje su podnele prijave danas imaju od 20 do 40 godina. Uhapšen je u januaru 2021. i proveo je osam meseci u pritvoru pre nego što je pušten da se brani sa slobode.

Suđenje: U periodu 2021-2024, od ukupno 25 zakazanih glavnih pretresa u predmetu protiv Aleksića, održano je 15, a 10 odloženo ili otkazano. Od navedenih 10 glavnih pretresa koji nisu održani, čak 8 nije održano zbog bolesti okrivljenog, jedno zbog štrajka advokata i samo jedno zbog ometanja rada suda. Glavne rasprave zakazuju se jednom mesečno, osim za vreme odmora. Zbog učestalih Aleksićevih odlaganja ročišta, sa obrazloženjem da je teško bolestan, izložen intenzivnom lečenju i generalno lošeg zdravstvenog stanja, sudsko veće je tražilo da se osposobljenost optuženog Aleksića da prati i/ili učestvuje u postupku utvrdi lekarskim pregledom. U pomenutom veštačenju se navodi da Aleksić može da prati suđenje osim u jednoj situaciji - kada se leči od maligne bolesti. Obostrano, i odbrana i oštećeni, javno su izrazili nezadovoljstvo ovakvim tokom postupka, pri čemu je odbrana ostala pri stavu da su veštaci medicinskog suda pogrešili u pogledu sposobnosti optuženog da učestvuje u suđenju, dok su oštećeni izrazili zabrinutost da odbrana pokušava da ometa postupak lažnim predstavljanjem stvarnog zdravstvenog stanja optuženog.

Zaštita žrtava: Na zahtev žrtava, ročišta u ovom predmetu su javna, osim ispitivanja jedne žrtve koja je stekla status posebno osetljivog svedoka. Žrtve su bile u pratnji svojih advokata, prijatelja i članova porodice i svedočile su bez zaštitnih mera, direktno odgovarajući na pitanja i tužioca i odbrane, čak i kada je optuženi odlučio da ih sam ispituje nekoliko sati. Obe strane su koristile isti ulaz u sud i istu čekaonicu, što je izazvalo napetost i verbalne incidente među njima.

Način vođenja intervjua: Preovlađujući utisak o načinu na koji su oštećene intervjuisane od strane odbrane (i branioca i optuženog) jeste da se to učinjeno bez

poštovanja, pri čemu je odbrana koristila niz nedozvoljenih i neprimerenih tehnika ispitivanja, uključujući, ali ne ograničavajući se na sugestivna pitanja, uvrede, zastrašivanje, mizogine komentare itd.

Neki od izvoda iz transkripta suđenja su objavljeni čak i u medijima i ilustruju gore opisane pristupe ispitivanju jedne od žrtava, Milene Radulović:

1) Izvod iz transkripta svedočenja žrtve koju je ispitivao optuženi:[171]

Aleksić: Da li sam ja vas pozvao ili nagovarao u dramski studio?

Milena: Ne, sama sam.

Aleksić: Da li sam vas terao?

Milena: Odgovorila sam već.

(Tu je Aleksić glasno ponovio pitanje dva puta i zacrveneo se.)

Aleksić: Jesam li vam objasnio da možete da napustite studio bilo kada?

Milena: Da, pre nego što ste počeli da me silujete. Posle ste pretili. Znala sam da ću snositi posledice jer ste vi to što jeste. Tu gde jeste. Meni niko neće verovati. Bila sam u klopci. Ovo što ste pitali je dok ste bili voljeni predavač, a ne silovatelj i zlostavljač. Molila sam vas da ne radite to.

Aleksić: Da li ste mi ikad uputili primedbu za sedam godina, da li ste se žalili?

Milena: Molila sam vas da ne radite to, gledali ste me kako venem. Kako me uništavate. Velika je razlika prvih šest i po godina, ne možete da me pitate kao celinu.

Aleksić: Da, mogu da vas pitam. Je l' ste davali primedbu? (upitao je iznervirano)

Milena: Odgovorila sam.

[171] Videti: https://www.blic.rs/vesti/hronika/napeto-na-sudjenju-miroslavu-miki-aleksicu-samozvani-profesor-glume-prvi-put/vb8rcyg, pristupljeno 22. oktobra 2024. godine.

Aleksić: Je l sam vam ikada upućivao pretnje? Vama, vašim članovima porodice, sestri?

Milena: Meni jeste, da ne biste voleli da mi se to dogodi sa životom, ako ispričam šta se desilo. Da mi niko ne veruje, da će stati u vašu odbranu. Išamarali ste me pred celim časom, pred 30 svedoka kao da je vežba. Pokazali ste mi da možete da manipulišete. Da me napravite ludom i da manipulišete kao što i dalje radite.

(Na ovo se Aleksić osmehivao i upitao sudiju da li može da "replicira", na šta mu je sudija rekao da može samo da postavlja pitanja. A zatim je i ka sudiji Aleksić viknuo: "Ja nisam učitelj glume, nemojte me tako nazivati!".)

Aleksić: Izbegava da odgovori, je l' to deo probe ili nije?

Milena: To je šamaranje. Šamarali ste me i šapnuli: "Je l' vidiš da je bolje da me slušaš?

.....

2) Neadekvatan pristup je još više koristio branilac koji je u više navrata insinuirao da je maloletna žrtva izazvala seksualni napad ili doprinela da se on dogodi i/ili nastavi:

Jedno od neprikladnih Aleksićevih pitanja oštećenoj bilo je da li je tek naknadno odlučila da je silovana, nakon što ju je pozvao telefonom 2019. godine.

Pitanja koja su dolazila od branioca bila su još gora, pa je tako oštećenu Milenu Radulović upitao da li je na časove dolazila bez hulahopki da bi okrivljeni Aleksić mogao lakše da je siluje.

Ili

Milena: Gurala sam ga rukama dok me je ljubio, a kada je počeo da mi stavlja prste u vaginu propinjala sam se na prste. Bili smo slične visine, ali mi se činilo da sam tada bila viša – naglasila je ona.

Jakovljević: Zašto ste to uradili kada su njegovi pokreti bili napred-nazad i gore-dole?

Milena: To sam radila od bola. On je testirao koliko duboko njegovi prsti mogu da uđu i koliko njih može da stane. Plakala sam. U tim trenucima je prestao da me ljubi.

Jakovljević : Da li ste plakali?

Milena: Jesam. Na kraju mi je rekao: "Dobra si."

Advokat koji zastupa Aleksića nije oklevao da žrtvama odgovori na pitanja koja imaju za cilj da ih ponize. Dakle, postavljao je neprijatna pitanja poput: „Kako si odbila da ti stavi jezik u usta", „Da li je tvoja glava bila viša ili niža od njegovog penisa, da li si ga gledala", „Zašto nisi zatvorila" usta? ...

Procesna disciplina/mere koje je sud preduzeo radi zaštite žrtava:

Pored upotrebe neprimerenih pitanja, i okrivljeni i branilac su takođe u nekoliko navrata podizali glas, davali neprimerene komentare i izjave, ironično se smejali, pa čak i krstili, ali i ulazili u raspravu sa advokatima oštećenih, kao i sa sudijom.

Branilac je to uglavnom činio u situacijama kada su njegova pitanja odbačena od strane suda, pa su se veće i predsednik veća suočili sa neophodnošću primene disciplinskih mera predviđenih ZKP-om. Tako su na više ročišta više puta opominjali i optuženog i branioca. Branilac je takođe bio suočen sa novčanim kaznama u više navrata.

Npr. Milena je u jednom trenutku, nakon neprimerene reakcije branioca, upitala sudiju: „Da li mi se smeje?", što je on demantovao i rekao da se obraća prisutnima. Sudija mu je tada rekao da je "veoma bezobrazan" i kaznio ga sa 100.000 dinara zbog nepoštovanja suda.

Medijska pokrivenost:

Suđenje je privuklo ogromnu pažnju medija, uz aktivno učešće obe strane, kroz davanje medijskih izjava i intervjua, kao i putem društvenih mreža.

Oko 980 novinskih članaka o ovom slučaju objavljeno je u srpskim štampanim medijima ili medijskim portalima u periodu od januara 2021. do oktobra 2024. godine, što znači oko. 40 članaka mesečno![172]

Mnogi od naslova bili su izvodi iz najosetljivijeg dela svedočenja žrtava koji objašnjavaju detalje seksualnog nasilja. Ono po čemu se ovaj slučaj razlikuje od sličnih, medijski interesantnih predmeta je to što se u ovom slučaju ne može govoriti o curenju poverljivih informacija iz postupka jer suđenje, na zahtev oštećenih, teče bez zaštitnih mera. Međutim, gotovo po pravilu, svi medijski naslovi su zasnovani na pitanjima koja odbija veće/predsedavajući sudija, čime se zaštitna mera pretvara u sredstvo za nanošenje štete žrtvama kroz njihovo javno ponižavanje.[173]

4.6.3.1. Mere usmerene na obezbeđivanja procesne discipline i zaštitu osetljivih svedoka:

Kako smo prethodno objasnili normativni okvir koji se primenjuje na izricanje sankcija onima koji krše pravila o prihvatljivom/dozvoljenom/poželjnom načinu intervjuisanja posebno osetljivih žrtava i svedoka, potrebno je sagledati i aspekte praktične primene tih zakonskih rešenja.

Pitanje praktičnih reperkusija primene čl. 370-374 KZ u praksi je pokrenut pre nekoliko godina u kontekstu procene uticaja Strategije iz 2016. godine i izrade Nacionalne strategije za procesuiranje ratnih zločina u Republici Srbiji za period 2021-2026.

Naime, Strategijom za 2016. godinu utvrđena je potreba doslednijeg sprovođenja mera procesne zaštite oštećenih i svedoka u skladu sa odredbama Zakonika o krivičnom postupku, sa akcentom na poštovanje procesne discipline u pogledu zaštite oštećenih i svedoka i posledična reakcija nadležnog tužioca, Državnog veća tužilaca i relevantne advokatske komore. „Analiza podataka dostavljenih od strane Državnog veća tužilaca i Advokatske komore Srbije ukazuje da u periodu sprovođenja Strategije nije primljena nijedna informacija od predsednika veća o

[172] Ova informacija je zasnovana na analizi arhive medijskih objava dostupne na portalu www.naslovi.net koji objedinjuje sve vesti gotovo svih medijskih portala u Srbiji. Pristupljeno 22. oktobra 2024. godine.

[173] Za više informacija o vezi između medijskog izveštavanja o svedočenju, zaštiti privatnosti žrtava i sekundarnoj viktimizaciji ranjivih žrtava videti Poglavlje 3.8.

opomenu iz člana 374. Zakonika o krivičnom postupku, zbog neblagovremenog ili neodgovarajuće radnje javnog tužioca ili lica koje ih zamenjuje, što je izazvalo odugovlačenje postupka, niti je Advokatska komora Srbije dobila obaveštenje o v.d. veća da obavesti Udruženje o izrečenom ukoru advokatu za odugovlačenje postupka iz člana 374. stav 3. Zakonika o krivičnom postupku." Ovi podaci mogu ukazivati na to da je stepen procesne zaštite u međuvremenu poboljšan, pa nije bilo potrebe za aktiviranjem mehanizma iz člana 374. ili da se navedeni mehanizam i dalje ne primenjuje uprkos potrebi. Predstavnici institucija sa kojima smo razgovarali tokom sprovođenja monitoringa zauzeli su stav da u posmatranom periodu nije bilo slučajeva kršenja procesne discipline.[174]

Moglo bi se reći da je u ovoj analizi postavljeno pravo pitanje, pa je tim IKSI odlučio da ove podatke još jednom proveri tako što je zahtev za prikupljanje/razmenu podataka o primeni odredaba 370, 372 i 374 ZKP-a u praksi dostavio Advokatskoj komori Srbije, zajedno sa upitnikom posebno razvijenim za te potrebe, a radi prikupljanja sledećih podataka:

Deo I: Prikupljanje podataka i prevencija

1. Da li AKS redovno prikuplja podatke o primeni čl. 370, 372 i 374 ZKP-a od strane advokatskih komora u sastavu AKS?

2. Ukoliko da, za koji period se dostavljaju podaci?

3. Da li advokatske komore u sastavu AKS prikupljaju podatke o primeni ovih odredaba ZKP-a?

4. Da li je AKS stava da bi i u odnosu na ovlašćenja organa postupka iz člana 102, stav 2 trebalo uvesti obavezu obaveštavanja nadležne advokatske komore o izrečenoj opomeni i/ili novčanoj kazni?

5. Da li je AKS u periodu 2017. do danas preduzimala neke od preventivnih mera usmerenih na unapređenje tretmana naročito osetljivih žrtava u procesnoj funkciji oštećenog kao svedoka od strane advokata, kao i jačanje poštovanja

[174] Kolaković-Bojović, M. (2021) *Ex-Ante Analysis of the Situation in the Field of Prosecution of War Crimes in the Republic of Serbia - for the purposes of drafting the National Strategy for War Crimes Prosecution for the period 2021-2026*. Ministry of Justice, Republic of Serbia, Belgrade, p. 23.

procesne discipline od strane advokata, a u kontekstu primene čl. 102, 370, 372 i 374 ZKP (npr. obuke, izrada smernica i sl.)

Deo II: Posebna pitanja

1. Podaci o postupanju nadležne advokatske komore u skladu sa obavezom iz člana 370, stav 3 ZKP-a:

1.1. Broj primljenih obaveštenja o kažnjavanju advokata u skladu sa člana 370, stav 1 i 3 ZKP-a u periodu 1.1.2017-31.12.2023. godine

1.2. U koliko slučajeva od ukupnog broja primljenih obaveštenja je advokat postupao kao punomoćnik oštećenog, a u koliko kao branilac?

1.3. U koliko slučajeva je nadležna advokatska komora obavestila sud o preduzetim merama u skladu sa obavezom iz člana 370, stav 3 ZKP-a? Ukoliko su pored ukupnih, podaci dostupni po nadležnim područnim advokatskim komorama, molimo navedite i te podatke.

1.4. Navedite podatke o merama koje su nadležne advokatske komore preduzele prema advokatima koje je sud kaznio po osnovu člana 370, stav 1 ZKP-a u periodu 1.1.2017-31.12.2023. godine.

2. Podaci o postupanju nadležne advokatske komore u skladu sa odredbom člana 372, stav 1 ZKP-a:

2.1. Broj primljenih obaveštenja o isključenju iz daljeg postupka advokata u skladu sa člana 372, stav 1 ZKP-a u periodu 1.1.2017-21.12.2023. godine

2.2. U koliko slučajeva od ukupnog broja primljenih obaveštenja je advokat postupao kao punomoćnik oštećenog, a u koliko kao branilac?

2.3. Navedite podatke o merama koje su nadležne advokatske komore preduzele prema advokatima koje je sud isključio iz daljeg toka postupka po osnovu člana 372, stav 1 ZKP-a u periodu 1.1.2017-31.12.2023. godine.

3. Podaci o postupanju nadležne advokatske komore u skladu sa obavezom iz člana 374, stav 3 ZKP-a:

3.1. Broj primljenih obaveštenja o izrečenoj opomeni advokatu u skladu sa članom 374, stav 1 i 3 ZKP-a u periodu 1.1.2017-31.12.2023. godine

3.2. U koliko slučajeva od ukupnog broja primljenih obaveštenja je advokat postupao kao punomoćnik oštećenog, a u koliko kao branilac?

3.3. U koliko slučajeva je nadležna advokatska komora obavestila sud o preduzetim merama u skladu sa obavezom iz člana 374, stav 3 ZKP-a? Ukoliko su pored ukupnih, podaci dostupni po nadležnim područnim advokatskim komorama, molimo navedite i te podatke.

3.4. Navedite podatke o merama koje su nadležne advokatske komore preduzele prema advokatima koje je sud kaznio po osnovu člana 374, stav 1 ZKP-a u periodu 1.1.2017-31.12.2023. godine.

* * * *

Iz AKS su zvanično odgovorili Institutu uz objašnjenje da nemaju tražene statističke podatke jer su „disciplinski organi advokatskih komora samostalni". AKS je takođe izrazio stav da ne bi trebalo da postoji obaveza prikupljanja statističkih podataka o preduzetim merama po obaveštenju suda. Oni su takođe IKSI timu dali informaciju da Komora kontinuirano preduzima mere po obaveštenjima suda, ali bez objašnjenja kakve su mere u pitanju, njihovom broju i prirodi, kao i broju advokata na koje te mere utiču.

Sudije uključene u diskusiju koju su organizovali IKSI i OEBS u okviru ovog početnog ciklusa monitoringa izrazile su zabrinutost zbog nedoslednosti prakse njihovih kolega/sudija, jer nisu svi spremni da insistiraju na povratnoj informaciji od advokatskih komora o preduzetim merama protiv advokata, a po obaveštenju suda. Neki od njih su takođe bili jasni da ponašanje advokata često u velikoj meri zavisi od „praga tolerancije sudija". Naime, rekli su da jaka pozicija sudije koji insistira na procesnoj disciplini može sprečiti advokate da se neprimereno ponašaju prema žrtvama i svedocima.

4.6.4. Preporuke za unapređenje

P.17. Usvojiti predložene izmene čl. 103 i 104 ZKP-a usmerene na izričitu zabranu unakrsnog ispitivanja posebno osetljivih svedoka.

P.18. Izmeniti čl. 102 ZKP u cilju uvođenja obaveze suda da obavesti nadležnu advokatsku komoru o novčanoj kazni izrečenoj advokatu zbog neprimerenih radnji prema osetljivom svedoku iz st. 1 te odredbe, kao i obaveza nadležne advokatske komore da po prijemu obaveštenja od suda obavesti sud o preduzetim merama protiv tog advokata.

P.19. Izraditi i usvojiti novi Zakon o maloletnicima koji bi uključio detaljne odredbe o ispitivanju maloletnih žrtava u svojstvu svedoka.

P.20. Ojačati interni mehanizam u nadležnim advokatskim komorama koje vodi Advokatska komora Srbije u cilju uspostavljanja jasnih i održivih mehanizama vođenja evidencija, pripreme statistike i preduzimanja mera po primljenim obaveštenjima suda o izrečenim disciplinskim merama protiv advokata u krivičnom postupku.

P.21. Ojačati sveukupni pristup senzibilizaciji pravnih stručnjaka uključenih u intervjuisanje posebno osetljivih svedoka kroz:

a) Poboljšanje nastavnih planova i programa i udžbenika pravnih fakulteta.

b) Unapređenje početne i kontinuirane obuke za sudije i javne tužioce u Pravosudnoj akademiji, sa fokusom na potrebama osetljivih žrtava i svedoka i veština potrebnih za njihovo pravilno ispitivanje.

c) Unapređenje obuke za advokate u Advokatskoj akademiji.

4.7. Upotreba tehničkih sredstava za prenos slike i zvuka (video linka) i infrastrukturni preduslovi u pravosuđu za zaštitu osetljivih žrtava u funkciji oštećenog kao svedoka

Izbegavanje situacija u kojima se žrtva suočava sa okrivljenim, ali i sa ostalim učesnicima u postupku, jedan je od glavnih zaštitnih mehanizama za posebno osetljive žrtve i svedoke. Imajući to u vidu, nekoliko mehanizama igra važnu ulogu:

a) Svedočenja posredstvom audio i video veze iz drugih sudskih prostorija (osim sudnice);
b) Svedočenja „na daljinu" koristeći audio i video vezu za svedočenja od kuće ili drugih prostorija;
c) Svedočenja „na daljinu" posredstvom tehničkih sredstava za prenos slike i zvuka u kontekstu međunarodne (uglavnom regionalne saradnje);
d) Odvojeni ulazi u sud za žrtve i svedoke i odbranu;
e) Odvojene čekaonice za žrtve i svedoke i odbranu;

4.7.1. Relevantni međunarodni standardi

Direktiva 2012/029/EU, čl. 23(3)a prepoznaje mere za izbegavanje vizuelnog kontakta između žrtava i prestupnika, uključujući i tokom izvođenja dokaza, odgovarajućim sredstvima, uključujući korišćenje komunikacione tehnologije, zajedno sa merama koje obezbeđuju da se žrtva može saslušati u sudnici bez prisustva, posebno korišćenjem odgovarajuće komunikacione tehnologije kao važnog zaštitnog mehanizma.

Direktiva 2011/093/EU u članu 20 priznaje mogućnost da se dete žrtva sasluša u sudnici bez prisustva, posebno korišćenjem odgovarajućih komunikacionih tehnologija kao jednog od najefikasnijih zaštitnih mehanizama.

4.7.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Zakonik o krivičnom postupku prepoznaje upotrebu video linka kao jedan od najefikasnijih zaštitnih mehanizama koji se mogu primeniti na posebno osetljive svedoke. Član 104 ZKP predviđa mogućnost organa postupka da saslušaju

posebno osetljivog svedoka korišćenjem tehničkih sredstava za prenos slike i zvuka, pri čemu svedok treba da bude u posebnoj prostoriji bez prisustva stranaka i drugih učesnika u postupku.

Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica u članu 152 predviđa da, ako s obzirom na osobenosti krivičnog dela i svojstva ličnosti maloletnog lica, oceni da je to potrebno, sudija će narediti da se maloletno lice saslušava upotrebom tehničkih sredstava za prenos slike i zvuka, a saslušanje se sprovodi bez prisustva stranaka i drugih učesnika u postupku, u prostoriji u kojoj se svedok nalazi, tako da mu stranke i lica koja na to imaju pravo, pitanja postavljaju posredstvom sudije, psihologa, pedagoga, socijalnog radnika ili drugog stručnog lica.

Važno je napomenuti da, kada je reč o predmetima ratnih zločina, gde regionalna saradnja igra važnu ulogu u obezbeđivanju prisustva i spremnosti žrtava i svedoka za davanje iskaza, pred organima država u regionu, uključujući i organizaciju i vođenje svedočenja putem video veze bez putovanja u druge države radi davanja iskaza. U cilju podrške tim procesima, pravosudni organi (glavni tužioci i predsednici nadležnih sudova) u regionu potpisali su sporazume o podršci žrtvama ratnih zločina. Najnoviji sporazum potpisan je u decembru 2024. godine između srpskog tužioca za ratne zločine i Vrhovnog državnog tužioca Crne Gore.[175]

4.7.3. Izazovi u praksi

Kada je reč o svedočenjima putem audio i video veze iz sudskih prostorija osim sudnice ili svedočenja na daljinu iz kuće ili drugih prostorija, nema sumnje da tri faktora igraju ključnu ulogu:

a) Svest i spremnost ključnih aktera (uglavnom suda) da koriste ovaj način intervjuisanja posebno osetljivih svedoka.

b) Dostupnost, funkcionalnost i međupovezanost audio-vizuelnih sistema za svedočenja na daljinu.

[175] Vidi više na: https://sudovi.me/vrdt/sadrzaj/6xoQ, pristupljeno 30. decembra 2024. godine.

c) Adekvatna znanja i veštine pravosudnih profesionalaca o tome kako da koriste opremu i/ili dostupnost podrške od strane tehničara kako bi se obezbedilo nesmetano svedočenje na daljinu.

Rezultati prethodno sprovedenog istraživanja pokazali su da postoji otvorenost na strani sudija i tužilaca da koriste audio-video tehniku za ispitivanje posebno osetljivih žrtava kao svedoka. Npr. rezultati praćenja sudske prakse o položaju maloletnih žrtava krivičnih dela pred sudovima u Republici Srbiji u 2020. godini pokazali su da je u oba slučaja u kojima je žrtvama u oba slučaja dodeljen status posebno osetljivog svedoka izvršeno ispitivanje pomoću video linka, oba su prošla bez tehničkih smetnji, a jednom je pomogao tehničar.[176]

Ovo je potvrđeno i kroz istraživanje koje su sproveli Stevanović i Marković 2024. godine[177] u okviru koga su kontaktirani su svi viši sudovi u Srbiji. Razgovori su obavljeni sa sekretarima, sudijama za maloletnike, a u dva slučaja i sa predsednicima suda. Ponovili su prioritete koje svi predstavnici i drugih institucija sistema: policija, tužilaštva i centri za socijalni rad, ističu: unapređenje sopstvenih znanja, unapređenje tehničke opremljenosti svojih institucija i potrebu za uključivanjem adekvatnih stručnjaka u postupku saslušanja deteta.

Kada je u pitanju dolazak u sud i izbegavanje mogućnosti da se oštećeni i svedoci sretnu sa okrivljenima, u nekim sudovima to tehnički nije moguće zbog nedostatka prostora i prenaseljenosti samih zgrada koje dele sa tužilaštvima i drugim sudovima. Ovaj problem prevazilaze tako da se posebno osetljiv svedok poziva nešto ranije od termina saslušanja. Do saslušanja boravi u AV sobi ili u kabinetu namenjenom predstavniku Službe za pomoć i podršku oštećenima i svedocima.

Problem prenaseljenosti sudskih zgrada je prisutan gotovo u svim sudovima. Većina sagovornika iz sudova koji ne poseduju AV sobu, istakli su da je otežavajuća okolnost gde bi u prostoru suda, ona mogla biti instalirana. Problem je i prostorija za smeštaj Službe za pomoć i podršku oštećenima i svedocima. Predstavnici ovih službi veoma često dele prostoriju sa drugim sudijskim pomoćnicima.

[176] Vidi više u: Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, dostupno na: http://institutecsr.iksi.ac.rs/339/.

[177] Stevanović, I., & Marković, Lj. (2024) *The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next.* In: International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024. Institute of Criminological and Sociological Research, Belgrade, pp. 165-182.

U komunikaciji sa predstavnicima viših sudova koji ne poseduju mogućnost saslušanja putem videokonferencijske veze instalirane u AV sobi, jasno se ističe da imaju uvid i potrebu posebne zaštite maloletnih lica kao oštećenih i svedoka. Navode da nastoje da u svakom pojedinačnom slučaju nađu odgovarajući način postupanja. Neki koriste tehnička sredstva za audio-vizuelni prenos javnih tužilaštava koja su u njihovoj zgradi, ukoliko ga ona poseduju. Mnogi koriste druge (priručne) tehničke uređaje za audio-vizuelni prenos i/ili snimanje, a vezu instaliraju *ad hoc.*[178]

Kada su u pitanju svedočenja putem audio i video linka za svedočenja na daljinu u kontekstu međunarodne (uglavnom regionalne saradnje) u srpskom pravosuđu, ona se uglavnom koriste u postupcima za ratne zločine, što je logično s obzirom na regionalni karakter sukoba 1990-ih godina, ali i zbog činjenice da su Tužilaštvo za ratne zločine i Viši sud u Beogradu među prvim institucijama opremljenim neophodnim tehničkim rešenjima. Samo u periodu od 2016. do 2020. godine Služba za pomoć i podršku oštećenima i svedocima je direktno učestvovala u organizaciji 256 video konferencijskih poziva, a podršku Službe dobilo je 313 svedoka koji su svedočili po zamolnicama. Za potrebe sudova i državnih odvjetništava u Republici Hrvatskoj pružena je podrška za 156 svedoka, 142 svedoka po zamolnicama sudova i tužilaštava Bosne i Hercegovine i 15 svedoka po zamolnicama državnih organa Crne Gore.[179]

Međutim, ni postojanje tehničkih preduslova za sprovođenje ispitivanja svedoka putem video linka ne garantuje nužno da će ovako dat iskaz biti dat na odgovarajući način. Tako je monitoring suđenja za ratne zločine tokom 2021. godine pokazao da su u predmetu Sanski Most-Lušci Palanka, glavni pretresi održavani u sudnici u kojoj ne postoje tehnički uslovi da publika koristi slušalice. Stoga je za publiku praćenje iskaza svedoka koji se ispituju putem videokonferencijske veze veoma otežano, s obzirom na to da je kvalitet zvuka veoma loš. Tonsko praćenje iskaza pomoću slušalica omogućeno je samo sudskom veću i učesnicima u postupku.[180]

Naime, prostorije za svedoke u Ustaničkoj 29 su uređene još 2006. godine i

[178] Ibidem.

[179] Kolaković-Bojović, M. (2021) *Ex-Ante Analysis of the Situation in the Field of Prosecution of War Crimes in the Republic of Serbia - for the purposes of drafting the National Strategy for War Crimes Prosecution for the period 2021-2026.* Ministry of Justice, Republic of Serbia, Belgrade, p. 26.

[180] Vidi više u: Humanitarian Law Center (HLC) (2022) *War crimes trials in Serbia during 2021*, p. 137, dostupno na: https://www.hlc-rdc.org/wp-content/uploads/2022/05/Godisnji_izvestaj_2022-en.pdf, pristupljeno 11. septembra 2024.

potrebna im je adaptacija, posebno imajući u vidu broj lica koja su koristila objekte Službe u svojstvu svedoka ili oštećenih, kako iz predmeta ratnih zločina tako i organizovanog kriminala. Oprema za video konferenciju je zastarela i postavljena je pre 20 godina, što stvara poteškoće u ispitivanju svedoka, u vidu čestih prekida i znatno dužeg vremena ispitivanja svedoka nego što je potrebno, kao i prekida toka misli svedoka i oštećenih tokom njihovog svedočenja.[181]

Jedna od inicijativa koja, nažalost, nije uspela da obezbedi održivost, ali je vredna pomena jeste uspostavljanje mobilnih timova za intervjuisanje maloletnika van sudskih prostorija, uglavnom direktno iz njihovih domova. To je urađeno kroz četiri regionalne jedinice, u gradovima u kojima se nalaze apelacioni sudovi, sa mandatom da pokrivaju područja iz nadležnosti tih sudova. Svaka od četiri jedinice za podršku deci žrtvama bila je opremljena mobilnom opremom za snimanje i vozilima u cilju sprovođenja ispitivanja po meri dece van sudova što je više moguće. Stručnjaci za ovu novu uslugu angažovani su iz reda psihologa zaposlenih u javnim ustanovama u okviru sistema socijalne zaštite, sa velikim prethodnim iskustvom u radu sa decom. Prema podacima UNICEF-a, od puštanja u rad nove usluge (od marta 2015. do januara 2016. godine), do septembra 2017. godine, Jedinice su obavile 158 intervjua sa decom u krivičnim postupcima. Tokom intervjua, nisu pripremljeni standardizovani listovi za evidentiranje slučajeva u kojima su jedinice pružile pomoć. Shodno tome, ne postoje detaljni podaci o žrtvama i slučajevima. Nažalost, nakon isteka projekta, pošto nije bilo rešenja da se timovi ugrade u institucionalni sistem (ni pravosudni ili sistem socijalne zaštite), ova mogućnost davanja iskaza više nije dostupna.[182]

4.7.3.1. Audio-vizuelna oprema i infrastrukturni uslovi osim audio i video opreme: Trenutni status

Iako je i nabavka audio-vizuelne opreme u srpskom pravosuđu počela na *ad hoc* osnovi pre oko 20 godina, sistemski pristup ovom pitanju uveden je 2020. godine kroz Strategiju za žrtve koja je prepoznala potrebu za nabavkom opreme za sve više

[181] Kolaković-Bojović, M. (2021) *Ex-Ante Analysis of the Situation in the Field of Prosecution of War Crimes in the Republic of Serbia: for the purposes of drafting the National Strategy for War Crimes Prosecution for the period 2021-2026.* Ministry of Justice, Republic of Serbia, Belgrade, dostupno na: http://institutecsr.iksi.ac.rs/345/1/War%20crimes%20ex-ante%20analysis.pdf, pristupljeno 10. septembra 2024. godine.

[182] Kolaković-Bojović, M. (2018) *Child Victims in Serbia - Normative Framework, Reform Steps and EU Standards.* In: Pravda po meri deteta - međunarodni naučni tematski skup, 6-7. jun 2018, Palić. Institut za kriminološka i sociološka istraživanja, Beograd, str. 171-183.

sudove i/ili tužilaštva i postavila jasne indikatore u tom pogledu u AP 2023-2025.

Kada je reč o trenutnom stanju tehničke opreme,[183] kroz projekat i donaciju OEBS-a (IPA 2016 projekat) u partnerstvu sa Ministarstvom pravde Republike Srbije, ubrzan je proces nabavke opreme, zajedno sa renoviranjem/adaptacijom posebnih prostorija za žrtve i svedoke.

Četiri dodatna suda opremljena su AV sobama u periodu od 2021. do 2023. godine: Viši sud u Kragujevcu, Viši sud u Kruševcu, Viši sud u Novom Pazaru i Viši sud u Šapcu. Pored ova četiri viša suda, u Višem sudu u Beogradu ponovo je instalirana i AV sala jer je dotadašnja tehnička oprema bila nekompatibilna sa novim elektronskim sistemom nakon renoviranja zgrade Suda, odnosno Palate pravde. Na Pravosudnoj akademiji instaliran je elektronski sistemski server koji se koristi u ovim video konferencijskim vezama u sudovima. Pored ovoga, kroz isti projekat je najavljeno da se tokom 2024. godine planira opremanje dodatnih pet sudova sa posebnim prostorijama za uzimanje izjava dece i posebno ugroženih svedoka (opremljene video konferencijskim linkovima za audio-vizuelni prenos do sudnica, poznatije kao „AV sobe“) i drugi sudovi biće opremljeni i narednih godina. Ministarstvo pravde utvrđuje listu prioriteta na osnovu broja predmeta u kojima su maloletne žrtve.

U sledećoj tabeli su prikazani podaci o tehničkim mogućnostima viših sudova da sprovode ispitivanje putem video konferencije sa decom ili maloletnicima kao žrtvama ili svedocima van sudnice:

Tabela 1: Viši sudovi u Srbiji, tehnička opremljenost za primenu čl. 152 Zakona o maloletnicima, april 2024.godine

	Viši sudovi	Posebna prostorija za uzimanje iskaza od dece i drugih posebno osetljivih svedoka	Instalirana audio-vizuelna oprema
1	Beograd	Da	Da
2	Valjevo	Da	Da (Ali ističu da je oprema je zastarela i bez mogućnosti veze sa prostorijama izvan suda)

[183] Stevanović, I., & Marković, Lj. (2024) *The Position of Juvenile Victims and Witnesses in Criminal Proceedings: Where are We now and What is Next.* In: International scientific thematic conference The Position of Victims in the Republic of Serbia, Palić, 12-13 June 2024. Institute of Criminological and Sociological Research, Belgrade, pp. 165-182.

3	**Vranje**	**Da**	**Da**
4	Zaječar	Ne	Ne
5	Zrenjanin	Ne	Ne
6	Jagodina	Ne	Ne
7	**Kragujevac**	**Da**	**Da**
8	Kraljevo	Ne	Ne
9	**Kruševac**	**Da**	**Da**
10	Leskovac	Ne	Ne
11	Negotin	Ne	Ne
12	**Niš**	**Da**	**Da**
13	**Novi Pazar**	**Da**	**Da**
14	**Novi Sad**	**Da**	**Da**
15	Pančevo	Ne	Ne
16	Pirot	Ne	Ne
17	Požarevac	Ne	Ne
18	Prokuplje	Ne	Ne
19	Smederevo	Ne	Ne
20	Sombor	Ne	Ne
21	Sremska Mitrovica	Ne	Ne
22	Subotica	Ne	Ne
23	Užice	Ne	Ne
24	Čačak	Ne	Ne
25	**Šabac**	**Da**	**Da**
	Ukupno	**9 ima AV sobu** **16 ne poseduje AV sobu**	**9 ima instaliranu A.V. opremu** **Od 16 sudova koji nemaju AV tehniku, većina navodi da koristi neki oblik pomoćne tehnike ili AV tehniku VJT sa kojima deli zgradu**

Kada su u pitanju **infrastrukturni uslovi osim AV opreme**, u nekim sudovima je tehnički teško izvodljivo izbeći mogućnost da žrtve i svedoci naiđu na optuženog, zbog ograničenosti prostora i prenaseljenost u zgradama koje dele sa tužilaštvima i drugim sudovima. Intervjuisani profesionalci su potvrdili da žrtve čekaju do saslušanja u AV sobi ili određenoj kancelariji za predstavnike Službe za pomoć i podršku žrtvama i svedocima. Međutim, problem prenaseljenosti sudskih zgrada postoji u skoro svim sudovima. Većina ispitanika iz sudova bez AV prostorija istakla je poteškoće u pronalaženju odgovarajućeg prostora za instalaciju AV sobe

unutar suda. Drugi izazov je pronalaženje odgovarajućih prostorija za smeštaj Službe za pomoć i podršku žrtvama i svedocima. Predstavnici ove službe često dele poslovni prostor sa drugim sudijskim pomoćnicima [184](gde postoje).

U većini novoizgrađenih ili sveobuhvatno renoviranih sudskih zgrada postoje tehničke mogućnosti podele ulaza. Međutim, čak i ovo pitanje je prepoznato kao neophodnost, još uvek ne postoji katalog infrastrukturnih zahteva za obezbeđivanje pristupa pravdi u skladu sa relevantnim međunarodnim standardima za žrtve. Ovo treba prepoznati i kao razlog da je čak i u nekoj sveobuhvatnoj (re)konstrukciji pravosudne infrastrukture propuštena mogućnost adaptacije posebnih prostorija za žrtve.

4.7.4. Preporuke za unapređenje

P.22. Razviti katalog infrastrukturnih zahteva usmerenih na obezbeđivanje pristupa pravdi u skladu sa relevantnim međunarodnim standardima za žrtve.

P.23. Nastaviti tekući proces nabavke audio i video opreme za sudove i javna tužilaštva sa ciljem dostizanja targeta definisanih Strategijom za žrtve 2020-2025.

P.24. Sprovoditi obuke za pravne stručnjake u sudovima i tužilaštvima kako bi se osigurala adekvatna upotreba novonabavljene audio i video opreme.

P.25. Osigurati da sve tekuće ili planirane rekonstrukcije pravosudne infrastrukture budu u skladu sa potrebama žrtava.

[184] Ibidem.

4.8. Zaštita privatnosti žrtava i medijsko izveštavanje o suđenjima

U eri rastućeg uticaja medija, kao i ekspanzije njihovih novih i hibridnih formata poput društvenih mreža, podkasta (*podcasts*), blogova, vlogova i sl, sve je kraći period između događaja u realnom životu i dostupnosti informacija o njima u različitim medijima. Ovo samim tim povećava stepen štetnih posledica ukoliko se u medijima obelodanjuju informacije o (posebno ranjivim) žrtvama. Ozbiljnost takve prakse je najvidljivija kada su u pitanju deca žrtve.

Imajući ovo na umu, neosporna je potreba ne samo da nacionalno zakonodavstvo prepozna najviše međunarodne standarde u oblasti pravosuđa po meri dece i prava žrtava, već i da profesionalci u kontaktu sa decom i žrtvama budu adekvatno obučeni za njihovu primenu. Najzad, možda je ključni korak u neophodnosti kontinuirane saradnje i razmene iskustava između profesionalaca u institucijama pravosuđa, socijalne zaštite, zdravstva i obrazovanja, s jedne strane, i predstavnika medija s druge strane.[185]

Uzimajući u obzir obuhvat ove analize, u ovom poglavlju nećemo se baviti svim aspektima medijskog tretmana žrtava, već onima koji su usko povezani sa zaštitom privatnosti u procesu ispitivanja žrtava i (ne)isključenja javnosti, kao i izveštavanjem medija o tim postupcima.

4.8.1. Relevantni međunarodni standardi

Član 21. Direktive 2012/029/EU predviđa obavezu da se osigura da nadležni organi tokom krivičnog postupka mogu preduzeti odgovarajuće mere za zaštitu privatnosti, uključujući lične karakteristike žrtve uzete u obzir u individualnoj proceni, i slike žrtava i njihovih članovi porodice. Štaviše, države članice će obezbediti da nadležni organi mogu preduzeti sve zakonske mere da spreče javno širenje bilo koje informacije koja bi mogla da dovede do identifikacije deteta žrtve.

[185] Kolaković-Bojović, M. (2022) *Child victims and media: Manual and curriculum for the training of professionals in contact with child victims of criminal offences*. Child Rights in Serbia (CRIS), Belgrade.

Da bi zaštitile privatnost, lični integritet i lične podatke žrtava, države članice će, uz poštovanje slobode izražavanja i informisanja i slobode i pluralizma medija, podsticati medije da preduzmu mere samoregulacije.

Zaštita privatnosti i identiteta žrtava trgovine ljudima, propisana članom 6. Palermo protokola i članom 11. Konvencije Saveta Evrope o borbi protiv trgovine ljudima, jedan je od osnovnih uslova za zaštitu žrtava trgovine ljudima u sudskim postupcima.

Direktiva 2011/093/EU, član 20 predviđa obavezu država članica da preduzmu neophodne mere da obezbede da se saslušanje održi bez prisustva javnosti; da se dete žrtva sasluša u sudnici bez prisustva, posebno korišćenjem odgovarajućih komunikacionih tehnologija. Države članice će preduzeti neophodne mere, kada je u interesu dece žrtava i uzimajući u obzir druge preovlađujuće interese, da zaštite privatnost, identitet i imidž dece žrtava, i da spreče javno širenje bilo kakvih informacija koje bi mogle da dovedu do njihove identifikacije.

4.8.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Relevantni zakonodavni okvir po ovom pitanju je veoma složen i uključuje, ne samo Ustav i ZKP, već i pravila postupka u sudu i javnom tužilaštvu, kao i medijsko zakonodavstvo:

Ustav Republike Srbije predviđa u članu 32 da se javnost može isključiti tokom čitavog postupka koji se vodi pred sudom ili u delu postupka, samo radi zaštite interesa nacionalne bezbednosti, javnog reda i morala u demokratskom društvu, kao i radi zaštite interesa maloletnika ili privatnosti učesnika u postupku, u skladu sa zakonom.[186]

Zakonik o krivičnom postupku (čl. 362-365) detaljno uređuje važenje načela javnosti na glavnom pretresu, kao i mogućnosti za njeno isključenje, uzimajući u obzir *inter alia* i potrebu zaštite žrtava, i to kroz više osnova koji se tiču interesa maloletnika, privatnosti učesnika u postupku i drugih opravdanih interesa u demokratskom društvu. Istovremeno, ZKP precizira krug lica koja mogu prisustvovati glavnom pretresu i kada je javnost isključena, čime se dodatno

[186] Ustav Republike Srbije („Sl. glasnik RS“ br. 98/2006 i 115/2021).

„kanališe“ tok i eventualno širenje informacija o žrtvama i samom postupku. Pored toga, član 104 ZKP omogućava ispitivanje svedoka bez prisustva stranaka, u zasebnoj prostoriji, korišćenjem tehničkih sredstava za prenos slike i zvuka.[187]

Da je problem ali i važnost komunikacije sudova sa medijima odavno prepoznat, pokazuju i odredbe Sudskog poslovnika[188] koji u članu 57, u cilju obezbeđivanja objektivnog, pravovremenog i tačnog obaveštavanja javnosti o radu suda i sudskim postupcima, obavezuje predsednika suda, sudije i sudsko osoblje da obezbede potrebne uslove, kao i odgovarajući pristup medijima u pogledu aktuelnih informacija i postupaka koji se vode u sudu, vodeći računa o interesima postupka, privatnosti, kao i bezbednosti učesnika u postupku. „Informacije o pravnosnažno okončanim postupcima pred sudom obavezno se objavljuju kada je zakonom, ili posebnim propisom predviđeno, kao i u slučajevima za koje je javnost posebno zainteresovana. Informacije i podaci koji se dostavljaju javnosti moraju biti tačni i potpuni. Podaci koji prema posebnim propisima predstavljaju tajnu i zaštićeni podaci čije objavljivanje je isključeno ili ograničeno zakonom se ne saopštavaju. “

Dakle, već propisivanjem ove obaveze, precizirano je da je njen obim uslovljen, između ostalog, potrebom da se zaštiti bezbednost i privatnost učesnika u postupku. Pored toga, sudski poslovnik konkretizuje načine izvršenja ove obaveze, predviđajući da se:

- Vreme, mesto i predmet suđenja svakodnevno objavljuju na vidnom mestu ispred prostorije u kojoj će se suđenje održati, info tabli u elektronskom obliku ili na drugi pogodan način.
- Za suđenje za koje postoji veće interesovanje javnosti sudska uprava će obezbediti prostoriju koja može primiti veći broj lica. Sudsko veće je dužno da po nalogu predsednika održi suđenje u većoj prostoriji koja je obezbeđena.[189]

[187] Vidi više u: ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, dostupno na: https://drive.google.com/file/d/1l6aCZGbtc2VDg3V1hcJbtuQ40lARmufE/view.

[188] Sudski Poslovnik ("Sl. glasnik RS", br. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 - ispr., 39/2016, 56/2016, 77/2016, 16/2018, 78/2018, 43/2019 i 93/2019).

[189] Pored navedenog, sud najmanje jedanput godišnje, a najkasnije do 1. februara tekuće godine za prethodnu godinu, izrađuje informator sa osnovnim podacima o radu, koji su propisani posebnim zakonom i ovim poslovnikom, a od značaja su za ostvarivanje prava građana i prezentaciju

U članu 58, Sudski poslovnik se posebno bavi pitanjem komunikacije sa medijima u vezi sa pojedinačnim predmetima i poverava ovlašćenje za to:

- predsedniku suda
- licu zaduženom za informisanje javnosti (portparol)
- posebnoj službi za informisanje javnosti

Članom 58. Sudskog poslovnika predviđeno je i da prilikom kontakta sa javnošću i medijima, sudovi koriste sredstva savremene komunikacije u skladu sa materijalno-tehničkim mogućnostima suda (prostorija za pres konferencije - medija centar, izveštavanje putem internet-stranica i sl.).

Sudski poslovnik posebno uređuje i uslove pod kojima se u zgradi suda može odobriti fotografisanje i audio/video snimanje (čl. 59-60)[190] Prilikom davanja odobrenja za fotografisanje i snimanje vodiće se računa o interesovanju javnosti, interesu postupka, privatnosti i bezbednosti učesnika u postupku.

I pored pomenutih slabosti sudskog sistema, važno je napomenuti da su problemi u praksi još izraženiji u fazi predistražnog postupka i istrage kojima rukovodi javni tužilac, a važnu ulogu ima policija.

U tom smislu, od velikog značaja su odredbe Pravilnika o upravi u javnim tužilaštvima (Pravilnik)[191], koji u čl. 66-71 uređuje obaveštavanje javnosti, odnosno

organizacije rada suda javnosti. Informator sadrži: naziv i sedište suda; godišnji raspored poslova; kontakt informacije (telefon, faks, internet-stranicu i adresu elektronske pošte), imena rukovodilaca sudske uprave, podatke o radnom vremenu suda i njegovih službi, imena i kontakte lica ovlašćenih za prijem, obaveštavanje stranaka i postupanje po pritužbama, imena i kontakte lica ovlašćenih za izdavanje uverenja i overu potpisa; imena i kontakte lica ovlašćenih za omogućavanje razgledanja, prepisivanja i kopiranja spisa.
Informator iz stava 1. ovog člana, zbirke odluka i pravnih stavova, sud može objavljivati u štampanom ili elektronskom obliku. (član 61. Sudskog poslovnika).

[190] Fotografisanje, audio i video snimanje u zgradi suda može se obaviti samo uz prethodno pribavljeno pisano odobrenje predsednika, u skladu sa posebnim zakonom. Fotografisanje, audio i video snimanje na ročištima u cilju javnog prikazivanja snimka obavlja se po odobrenju predsednika, uz prethodno pribavljenu saglasnost predsednika veća, sudije i pisanog pristanka stranaka i učesnika snimljene radnje. Fotografisanje, audio i video snimanje u sudnici, nakon pribavljenog odobrenja, obavljaće se pod nadzorom sudije, na način koji obezbeđuje nesmetan tok suđenja i red u sudnici.

[191] Pravilnik o upravi u javnim tužilaštvima ("Sl. glasnik RS", br. 110/2009, 87/2010, 5/2012, 54/2017, 14/2018 i 57/2019).

pristup informacijama od javnog značaja. Interesantno je da Pravilnik u navedenim članovima prepoznaje tri kategorije pitanja o kojima obaveštava javnost:

- stanje kriminaliteta i „druge pojave koje zapazi u radu“
- rad javnog tužilaštva (pod uslovom da time ne šteti interesima postupka ili ne ugrožava privatnost učesnika postupka)
- pitanja „iz nadležnosti javnog tužilaštva“

Iako prepoznaju potrebu zaštite privatnosti učesnika postupka, već na prvi pogled jasno je da su odredbe Pravilnika uopštene, neprecizne i u neku ruku arhaične, odnosno starovremenske, neprilagođene savremenim potrebama demokratskog društva.

U istom maniru pisane su odredbe člana 67. Pravilnika, koje uređuju način obaveštavanja javnosti. Ipak, u ovom segmentu, Pravilnik prepoznaje potrebu dodatne zaštite interesa deteta i predviđa da javni tužilac obaveštava javnost na način koji neće dovesti do odavanja tajnih podataka, vodeći računa o interesima morala, javnog poretka, nacionalne bezbednosti, zaštiti maloletnih lica, privatnog života i nacionalnim osećanjima.[192]

Ovlašćenja za obaveštavanje javnosti uređena su na sličan način kao u sudovima, pa tako obaveštavanje javnosti vrši javni tužilac ili zamenik javnog tužioca koga on odredi, odnosno portparol javnog tužilaštva. Ipak, u pogledu konkretizovanja načina na koji ovlašćena lica obaveštavaju javnost, kao modaliteti obaveštavanja predviđeni su usmena ili pismena saopštenja i izjave[193] ili putem javnih glasila ili na drugi pogodan način, o pokretanju postupka u slučajevima za koje se interesuje šira javnost, vodeći pri tom računa o interesima pravilnog vođenja postupka i opravdanoj zaštiti ličnosti na koje se podaci odnose.

Pravilnik o upravi u javnim tužilaštvima ne predviđa eksplicitno obavezu (ni mogućnost) javnog tužilaštva da organizuje konferencije za medije, već jednostrano obaveštavanje javnosti putem izjava i saopštenja.

[192] Sličnu formulaciju sadrži i Poglavlje 4. Komunikacione strategije tužilaštva.

[193] Pismene izjave ili saopštenja sačiniće se u najmanje dva primerka, od kojih se jedan čuva u javnom tužilaštvu. O usmenim izjavama ili saopštenjima sačiniće se službena beleška u kojoj će se navesti kada je i kome data izjava ili saopštenje, kao i njihova sadržina (član 69. Pravilnika).

Pravilnik predviđa obavezu da se javnim glasilima omogućava pristup javnom tužiocu, zameniku javnog tužioca zaduženom za obaveštavanje javnosti ili portparolu javnog tužilaštva, ali ne predviđa šta ovo znači u praksi, odnosno da li se ovaj pristup ostvaruje ličnim kontaktom, telefonom ili e-mailom. Takođe, Pravilnik obavezuje lica ovlašćeno za kontakt sa medijima da, ukoliko nisu u mogućnosti da daju izjavu ili saopštenje, da o tome saopšte razloge ili da saopšte vreme, mesto i način davanja izjave ili saopštenja.[194]

Vodič za komunikaciju javnog tužilaštva, medija i javnosti[195], koji je Državno veće tužilaca usvojilo 26. januara 2015. godine, da bi u praksi olakšalo primenu Komunikacione strategije tužilaštva, saopštavanju podataka o maloletnicima u krivičnom postupku posvećuje jedva pola stranice, ograničavajući se samo na navođenje zakonskog teksta, bez ijedne napomene o važnosti i razlozima zaštite privatnosti maloletnika, a naročito maloletnih žrtava u krivičnom postupku.

Važno je istaći da se rad na izradi novih podzakonskih akata – kako Pravilnika o upravi u javnim tužilaštvima, tako i Sudskog poslovnika, odvija u dužem vremenskom periodu (od donošenja novog Zakona o javnom tužilaštvu i Zakon o uređenju sudova).[196] U ovom procesu, dužnu pažnju treba posvetiti unapređenju gore navedenih odredbi koje se odnose na transparentnost krivičnog postupka i komunikaciju sa medijima.

Paralelno, veliki uticaj na izbegavanje sekundarne viktimizacije i zaštitu posebno osetljivih žrtava ima Zakon o javnom informisanju i medijima (u daljem tekstu: ZJIM) koji su relevantni za ovo pitanje.[197]

ZJIM u članu 85. predviđa da se informacije iz krivičnog postupka koji je u toku mogu objaviti ako su iznete na glavnom pretresu ili ako su pribavljene ili ako su mogle biti dobijene od organa javne vlasti na osnovu zakona kojim se uređuje pristup informacijama od javnog značaja. Pored navedenog, u članu 88. je predviđeno da se, u cilju zaštite slobodnog razvoja ličnosti maloletnika, posebno

[194] Javni tužilac, zamenik javnog tužioca i zaposleni, kada u svoje ime govore ili pišu u javnim glasilima o pravnim, društvenim ili pojedinim pitanjima javnotužilačke i sudske prakse, dužni su da objasne da ne istupaju u ime javnog tužilaštva. (član 70. Pravilnika).

[195] Vodič za komunikaciju javnog tužilaštva, medija i javnosti, dostupno na: http://rjt.gov.rs/upload/Document/File__ci/2016-03/Vodic_Za_Komunikaciju.pdf, pristupljeno 4. januara 2022. godine.

[196] Ovo je razlog zašto se fokusiramo na odredbe ranijih pravilnika koji koriste stara imena institucija i funkcija koje su bile u upotrebi pre ustavnih amandmana.

[197] Zakon o javnom informisanju i medijima ("Sl. glasnik RS", br. 192/2023).

mora voditi računa da sadržaj medija i način distribucije medija ne naškode moralnom, intelektualnom, emotivnom ili socijalnom razvoju maloletnika. ZJIM insistira na zaštiti dostojanstva ličnosti lica na koje se odnosi informacija, definišući dostojanstvo ličnosti kao čast, ugled, odnosno pijetet. Zakon predviđa da se prikazom ili opisom scene nasilja u mediju ili medijskom sadržaju ne sme povrediti dostojanstvo žrtve nasilja. (član 90. ZJIM) Zakon detaljno reguliše i pitanje zaštite informacija iz privatnog života i ličnih zapisa, uslovljavajući njihovo objavljivanje pristankom lica na koje se odnose, odnosno drugih lica, propisujući i čitav niz situacija kada je objavljivanje moguće i bez pristanka, od kojih su, u pogledu prava žrtava najznačajnije one koje se odnose na situaciju u kojoj je to lice informaciju, odnosno zapis namenilo javnosti, odnosno dostavilo mediju u cilju objavljivanja, ili ako se lice nije protivilo pribavljanju informacije, odnosno pravljenju zapisa, iako je znalo da se to čini radi objavljivanja. Istim zakonom uređuju se i mehanizmi koji se odnose na pravo lica čije je pravo povređeno da korektivne mere i/ili obeštećenje.

Imajući u vidu nivo konkretizacije odredaba, ključni značaj za adekvatnu primenu odredaba ZJIM i odgovarajući medijski tretman dece žrtava imaju odredbe Kodeksa novinara Srbije (u daljem tekstu: Kodeks)[198] kao temelj uspostavljanja samoregulatornih mehanizama štampanih medija u Srbiji, počev od 2009. godine, Saveta za štampu (Saveta za štampu i njegove Komisije za žalbe).

Iako Kodeks pravo javnosti, odnosno dužnost medija da interes javnosti za potpunim, blagovremenim i istinitim informisanjem, stave iznad svih drugih interesa, proklamuje kao osnovno načelo, precipirajući da, u kontekstu Kodeksa, interes javnosti podrazumeva objavljivanje svih važnih informacija koje su čitaocu/slušaocu/gledaocu od pomoći pri formiranju vlastitog suda/mišljenja o pojavama i događajima, sadrži i brojne odredbe koje formiraju okvir i granice ovog prava i dužnosti, a u kontekstu zaštite interesa pojedinih kategorija građana.

Kodeks uspostavlja i jasan lanac odgovornosti, koji podrazumeva da su novinari, odnosno urednici profesionalno odgovorni javnosti (čitaocima/gledaocima/slušaocima), a ne izdavaču/vlasniku (državi i interesnim grupama) i njihovim privatnim, ekonomskim, političkim i drugim interesima.

[198] Kodeks novinara Srbije, dostupno na: https://savetzastampu.rs/lat/wp-content/uploads/2020/11/Kodeks-novinara-Srbije.pdf, pristupljeno 16. juna 2020. godine.

Kodeks značajno precizira odredbe o privatnosti, dostojanstvu i integritetu lica na koje se odnosi objavljena informacija, dajući konkretne smernice za izveštavanje o nesrećama i krivičnim delima, pri čemu nije dozvoljeno objavljivanje imena i fotografija žrtava i počinilaca koje ih jasno identifikuju. Takođe, nije dozvoljeno ni objavljivanje bilo kakvih podataka koji bi indirektno mogli da otkriju identitet bilo žrtve, bilo počinioca, pre nego što nadležni organ to zvanično saopšti. „Novinar mora da ima svest o moći medija, odnosno o mogućim posledicama po žrtvu ili počinioca ukoliko se otkrije njihov identitet. Posebno mora da ima u vidu težinu mogućih posledica u slučaju eventualne greške/pogrešne pretpostavke u izveštavanju. Čak i ukoliko nadležni državni organi objave podatke koji spadaju u domen privatnosti počinioca ili žrtve, mediji tu informaciju ne smeju da prenose. Greška državnih organa ne podrazumeva „dozvolu" za kršenje etičkih principa profesije."[199] Kodeks posebno skreće pažnju na specifičnost stanja kome je prethodila viktimizacija, navodeći da je, u izveštavanju o događajima koji uključuju lični bol i šok, novinar dužan da svoja pitanja prilagodi tako da odražavaju duh saosećanja i diskrecije, dok su fotografi i snimatelji dužni da se, prilikom fotografisanja žrtava nesreća i zločina, ophode sa obzirom i saosećanjem.

Posebnu napomenu Kodeks sadrži u pogledu obaveze novinara da osiguraju da dete ne bude ugroženo ili izloženo riziku zbog objavljivanja njegovog imena, fotografije ili snimka sa njegovim likom, kućom, zajednicom u kojoj živi ili prepoznatljivom okolinom. Kodeks ovde prepoznaje problem manjka znanja o uticaju medija na strani predstavnika državnih i javnih institucija koje se bave zaštitom dece, koji ponekad nisu svesni uticaja medija i načina njihovog rada. „Podaci koje zbog toga pružaju novinarima često podrazumevaju otkrivanje identiteta maloletnika. Novinar ne sme da zloupotrebi njihovu dobronamernost ili neznanje. Informacije dobijene od lekara, socijalnih radnika, vaspitača, i tako dalje, a koje direktno ili indirektno upućuju na identitet maloletnika, ne smeju da budu objavljene."[200]

Kako je razvoj informacionih tehnologija bacio sasvim novo svetlo na položaj žrtava u medijima, Savet za štampu doneo je Smernice za primenu kodeksa novinara

[199] Ibidem.
[200] Ibidem.

Srbije u onlajn okruženju (u daljem tekstu: Smernice)[201], napominjući da, iako je Kodeks novinara Srbije podjednako primenljiv na sve medije, bez obzira na način njihovog plasiranja, neophodno je dati odgovarajuće tumačenje i smernice radi uspešne i pravilne primene profesionalnih standarda i u onlajn okruženju. Ovaj dokument je prevashodno namenjen novinarima i medijima koji su dostupni onlajn, ali je primenljiv i na druge forme izražavanja na internetu, gde se na različitim platformama plasiraju uredнички oblikovani medijski sadržaji. U tom smislu, od naročitog značaja su odredbe Smernica koje se tiču moderacije sadržaja koje kreiraju sami korisnici (komentari na vesti), kako kroz uputstva korisnicima, tako i kroz prethodnu i *ex post* moderaciju komentara čija je sadržina suprotna principima Kodeksa. Savet je ispravno prepoznao potrebu da sadržinom Smernica odgovori na dinamiku onlajn okruženja, pa je u decembru 2021. objavio nove Smernice, pet godina nakon prvobitnih. U Srbiji postoji više od hiljadu onlajn medija i za njih su smernice od izuzetnog značaja, ali su takođe važne i za one delove redakcija koji su zaduženi za društvene mreže, kao i za sve one građane koji preko društvenih mreža prikupljaju određenu publiku i objavljuju sadržaj (nazivamo ih influenserima). Odredbe Smernica zapravo su preporuke kako primenjivati pojedine odredbe Kodeksa.

4.8.3. Izazovi u praksi

Kada je reč o problemima koji se javljaju u praksi, treba posmatrati tri grupe pitanja:

- Isključenje javnosti sa pretresa

- Komunikacija nadležnih sa medijima u vezi sa sadržajem predmeta i curenjem informacija

- Medijski tretman informacija o sadržaju predmeta

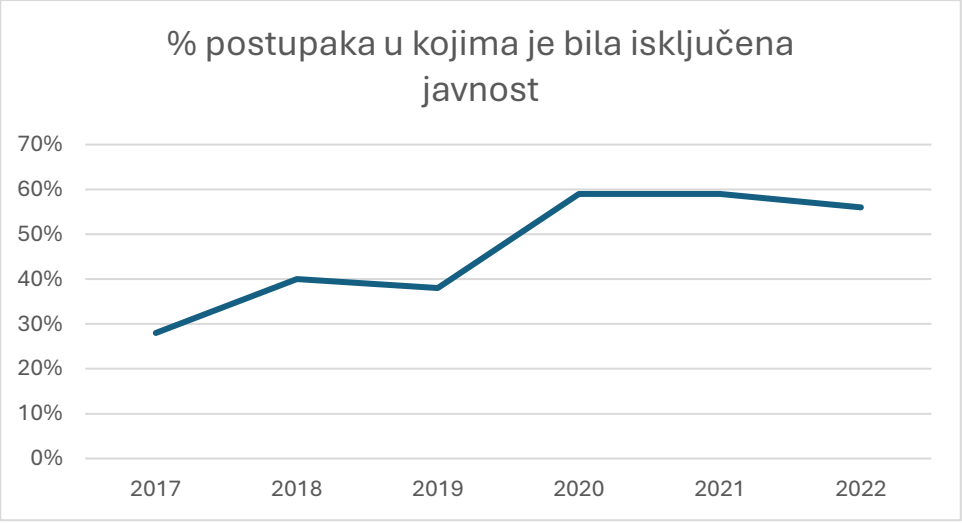
Kada je reč o isključenju javnosti sa pretresa, podaci monitoringa položaja maloletnih žrtava pokazuju da su glavni pretresi uglavnom (80%) bili javni, a sud je prihvatao sve zahteve za isključenje javnosti koje je postavljao javni tužilac. Svi javni pretresi održani su bez prisustva medija, a samo u jednom predmetu sud je

[201] Smernice za primenu Kodeksa novinara Srbije u onlajn okruženju, dostupno na: https://savetzastampu.rs/wp-content/uploads/2020/11/smernice-za-primenu-kodeksa-novinara-srbije-u-onlajn-okruzenju.pdf, pristupljeno 16. juna 2020. godine.

konstatovao da su predstavnici medija pokušali da prisustvuju pretresu ali da im to nije dopušteno jer glavni pretres nije bio javan.[202]

Monitoring položaja žrtava u postupcima za trgovinu ljudima pred sudovima u Republici Srbiji pokazuje pozivne trendove u pogledu isključivanja javnosti u toku ispitivanja žrtava.

Grafikon 5: Isključenje javnosti u postupcima za trgovinu ljudima



Zaštita privatnosti žrtve i dalje u velikoj meri je ugrožena pojedinim dokazima koji se tokom postupka izvode i unose se u presudu, kao što su sudsko-medicinska veštačenja oštećenih od strane psihologa ili psihijatra ili komisije veštaka. Psihološka i psihijatrijska veštačenja oštećenih, koja se u postupku vrše prvenstveno u cilju utvrđivanja verodostojnosti iskaza oštećenih lica, iako su nužna dokazna sredstva u postupku u pogledu sposobnosti svedoka da svedoči ili utvrđivanja elemenata krivičnog dela, često su suviše detaljni i mogu ugroziti privatnost žrtve. Zakonik o krivičnom postupku (član 131. stav 2.) propisuje da se psihijatrijsko veštačenje svedoka određuje ukoliko se pojavi sumnja u sposobnost svedoka da prenese svoja saznanja i opažanja u vezi sa predmetom svedočenja, a zadatak veštaka je da ustanovi da li kod svedoka postoje duševne smetnje i da mišljenje da

[202] Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, dostupno na: http://institutecsr.iksi.ac.rs/339/.

li je svedok sposoban da svedoči (član 132. stav 3.). Narušavanje privatnosti žrtve na ovaj način može se i dalje konstatovani u određenom broju presuda u kojima se navode izveštaji veštaka koji sadrže podatke koji često nisu neophodni kao što su detaljne porodične i privatne prilike oštećenih, bolesti zavisnosti, psihička oboljenja, te ostali podaci o zdravstvenom stanju oštećenih.[203]

Kada je reč o komunikaciji između sudova i medija, uprkos dobro razrađenim, prethodno razrađenim odredbama Sudskog poslovnika o kanalima komunikacije između sudova i medija, ove odredbe Sudskog poslovnika predviđaju i obavezu da sudovi republičkog ranga, apelacioni sudovi i sudovi sa posebnim odeljenjima ili većim brojem sudija određuju lice zaduženo za informisanje javnosti (portparol). Ovo u praksi dovodi to toga da nemaju svi sudovi portparole, kao i da portparoli ovo zaduženje obavljaju paralelno sa svojim redovnim poslovima. Kada se na to doda potreba da svako saopštenje bude odobreno od strane predsednika suda, u praksi se javlja problem „presporog odziva" portparola, mereno po standardima modernog izveštavanja koje zahteva odgovor institucije u veoma kratkom roku. Kao dalju posledicu, ovo ima praksu pronalaženja „alternativnih izvora", najčešće u licima koja jesu zaposlena u instituciji ali nisu ovlašćena da daju informacije, a u njihovom odsustvu, čak i do fingiranja „izvora bliskih policiji i tužilaštvu".

Pored nedostataka u pogledu ljudskih resursa, dodatno ograničenje predstavljaju i neadekvatni infrastrukturni kapaciteti. Kako većina sudova nema adekvatne prostore za pres konferencije a obim posla ne dozvoljava da portparoli odgovaraju na pojedinačne upite novinara, najčešći vid izveštavanja svodi se na saopštenja, kao modalitet jednostrane komunikacije koji sobom nosi opasnost pogrešnog tumačenja saopštenog (u odsustvu mogućnosti pojašnjenja), kao i onemogućavanje predstavnika medija da postave dodatna pitanja (makar njihov ishod bio i odgovor da saopštavanje te vrste informacija zakonom nije dozvoljeno).

Pored navedenih slabosti sudskog sistema, važno je napomenuti da su problemi u praksi još izraženiji u fazi predistražnog postupka i istrage kojom rukovodi javni tužilac, a značajnu ulogu ima i policija.

[203] Vidi više u: ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, dostupno na: https://drive.google.com/file/d/1l6aCZGbtc2VDg3V1hcJbtuQ40lARmufE/view.

Kada je reč o medijskom izveštavanju o krivičnim postupcima koji se odnose na posebno ranjive žrtve, raširena je praksa objavljivanja podataka o krivičnom delu, detaljima krivičnog postupka ili detetu žrtvi i njegovim bliskim srodnicima, što otvara put sekundarnoj viktimizaciji, ali i u velikoj meri otežava rehabilitaciju i reintegraciju žrtve i opstruiše pravo žrtve na zaborav.

Novinari i pružaoci medijskih usluga u Srbiji često, svesno ili ne, odstupaju od medijskih propisa kojima se uređuje kategorizacija medijskih sadržaja, kao i uslovi i način prikazivanja maloletnika u medijskim sadržajima, te emituju sporne sadržaje koji vređaju dostojanstvo i privatnost žrtava i članova njihovih porodica. Jedan od najvećih problema je način pribavljanja informacija od institucija, samih žrtava i njima bliskih osoba.

Neke od često korišćenih taktika i praksi koje narušavaju privatnost žrtava odnose se na izveštavanje kojim se formalno izbegava otkrivanje identiteta žrtve dok se otkriva identitet članova porodice, prijatelja, komšija, adresa ili drugi deskriptori, a samim tim, indirektno, identitet žrtve.

Osim toga, samim žrtvama ili članovima porodice ponekad se obraćaju novinari koji ih ubeđuju da obelodane detalje i/ili sadržaj krivičnog postupka ili lične podatke uz objašnjenje da im medijsko izveštavanje može pomoći da dobiju povoljniju sudsku odluku. Ogromno curenje informacija prisutno je na strani gotovo svih aktera krivičnog postupka, u sudovima, javnom tužilaštvu, policiji, socijalnoj i zdravstvenoj zaštiti, praćeno nedostatkom odgovornosti, ne samo profesionalaca, već i takođe administrativnog/pomoćnog osoblja koje dolazi u kontakt sa poverljivim informacijama. Odsustvo kazni ili njihova nesrazmernost posledicama vidljiva je na obe strane: u institucijama iz kojih cure informacije i u medijima, gde samoregulatorna tela ne uspostavljaju nadležnost nad svim medijima i ne prate i propisno ne kažnjavaju prakse koje krše medijsko zakonodavstvo i Kodeks ponašanja za novinare.

Imajući sve navedeno u vidu, adekvatan medijski tretman žrtava u medijskom prostoru Srbije zahteva ispunjenje nekoliko preduslova:

- adekvatne odredbe krivičnog, sudsko-organizacionog, kao i tog zakonodavstva koje reguliše funkcionisanje policije i sektora socijalne zaštite, koje regulišu postupanje (pre svega) policije, sudstva i advokata, ali i drugih aktera krivičnog

postupka, kao što su veštaci, stručnjaci centara za socijalni rad i administrativno osoblje u krivičnom postupku – čime se obezbeđuje poverljivost postupka, odnosno selekcija/filtriranje informacija koje mediji dobijaju od institucija/profesionalaca u kontaktu sa žrtvom.

- Unapređenje funkcionisanja samoregulatornih mehanizama, odnosno normativnog i institucionalnog okvira koji reguliše i prati sprovođenje propisa koji regulišu rad zaposlenih u medijima - čime se utiče na sadržaj objavljenih vesti, odnosno obezbeđuje zaštita privatnosti i dostojanstva žrtve u medijskom prostoru. U idealnom slučaju, ovi mehanizmi služe kao sekundarni filter ukoliko opisani kontrolni mehanizmi unutar institucija/aktera postupka zakažu. Istovremeno, oni su i primarni filter informacija koje mediji dobijaju iz drugih izvora (od žrtava, njihovih porodica, poznanika itd.)

- Efikasno funkcionisanje mehanizama odgovornosti obe grupe aktera u slučaju kršenja odredaba koje regulišu poverljivost postupka i delatnosti medijskih agenata.

4.8.4. Preporuke za unapređenje

P.26. Organizovati zajedničke obuke za novinare, sudije, javne tužioce, policijske službenike i advokate na temu zaštite žrtava u kontekstu medijskog izveštavanja o krivičnim postupcima.

P.27. Ojačati samoregulatorne mehanizme za medije da bi se povećao nivo odgovornosti u slučajevima izveštavanja koje šteti žrtvama.

P.28. Ojačati interne disciplinske mehanizme u pravosuđu da bi se osigurala odgovornost u slučajevima ponašanja koje šteti (posebno osetljivim) žrtvama.

4.9. Imovinskopravni zahtev i zaštita žrtava

Brojne analize sprovedene poslednjih godina ukazuju na potrebu za značajnijim intervencijama u pogledu poboljšanja prakse odlučivanja o imovinskopravnom zahtevu. Čak iako verovatno nije tako vidljiva na prvi pogled, postoji snažna veza između položaja posebno osetljivih žrtava u svojstvu oštećenog kao svedoka i prava na kompenzaciju.[204] Naime, njihove svedočenja su jedan od glavnih mehanizama za dobijanje informacija i prikupljanje dokaza potrebnih za donošenje odluke o imovinskopravnom zahtevu u krivičnom postupku bez upućivanja žrtava da zahtev ostvare u parničnom postupku.

4.9.1. Relevantni međunarodni standardi[205]

Pravo na naknadu žrtvama krivičnih dela, kao opšti standard koji se primenjuje za sve žrtve, priznato je i ugrađeno u brojne univerzalne i regionalne instrumente o ljudskim pravima, počevši od Deklaracije o osnovnim principima pravde za žrtve krivičnih dela i zloupotrebe moći[206] koja predviđa obavezu učinioca ili trećih lica odgovornih za njegovo ponašanje, gde je to potrebno, izvrše restituciju žrtvama, njihovim porodicama ili licima koja od njih zavise. Takva restitucija treba da uključi povraćaj imovine ili isplatu naknade za štetu ili pretrpljeni gubitak, nadoknadu troškova nastalih kao rezultat viktimizacije, pružanje usluga i obnavljanje prava. (st. 8)

Ista obaveza je sadržana u članu 16 Direktive 2012/029/EU koji zahteva da države članice da osiguraju da, tokom krivičnog postupka žrtve imaju pravo da dobiju odluku o naknadi od strane učinioca, u razumnom roku, osim gde je nacionalno

[204] Ovom prilikom nećemo isticati razlike između koncepta kompenzacije i reparacije, već ćemo se fokusirati samo na pojam kompenzacije. Za više videti: Kolaković-Bojović, M., & Džumhur, J. (2025) Enforced Disappearances and the Right to Reparation in Western Balkans, In: Baranowska, G., & Kolaković-Bojović, M. (eds.) *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon*. Cambridge University Press (in publishing); Kolaković-Bojović, M. (2023) *Víctimas de desaparición forzada y derecho a la reparación*. In: *Desaparición forzada: Colección en temas de derechos humanos*, Tomo I. Centro Internacional para la Promoción de los Derechos Humanos bajo los auspicios de UNESCO (CIPDH), Buenos Aires, pp. 196-226.

[205] Deo nalaza prezentovanih u Glavi 4.9. prihvaćeni su 1.5.2025. godine za prezentaciju na 5. međuanrodnoj naučnoj konferenciji Udruženja za međunarodno krivično na Paliću od 13-16. Juna 2025. godine pod naslovom konferenciji "Crime victims and the right to compensation: International standards and challenges in Serbia". i objavljivanje u časopisu Crimen br. 1 za 2025. godinu.

[206] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on 29 November 1985 by General Assembly resolution 40/34.

predvidelo donošenje takve odluke u drugim postupcima. Države članice su takođe obavezane da promovišu mere za podsticanje prestupnika da obezbede adekvatnu nadoknadu žrtvama.

Direktiva 2004/80/EU zahteva da države članice da osiguraju da "njihova nacionalna pravila predviđaju postojanje kompenzacione šeme za žrtve nasilnih krivičnih dela izvršenih na njihovoj teritoriji, što garantuje fer i odgovarajuću nadoknadu žrtvama" (član 12).[207]

Direktiva 2011/036/EU, u članu 17, takođe zahteva države članice da osiguraju da žrtve trgovine ljudima imaju pristup postojećim šemama naknade žrtvama umišljajnih nasilnih krivičnih dela.

Direktiva 2011/093/EU dotiče se ovog prava kroz pravo na pravno zastupanje dece žrtava seksualne eksploatacije i u čl. 20 ističe važnost pravne pomoći u ostvarivanju prava na naknadu.

Najopsežniji pravni okvir o naknadi štete nalazi u pravnim instrumentima koji se bave pravima žrtvama ratnih zločina i zločina protiv čovečnosti. Naime, reference na naknadu mogu se naći u članu 3. Haške konvencija iz 1907 IV, formulacija koja se ponavlja i u članu 91 Dodatnog protokola I Ženevske konvencije iz 1949. godine.[208] Ovaj član navodi da "strana u sukobu koja krši odredbe konvencija ili ovog protokola, u slučaju postojanja zahteva, imati obavezu da plati naknadu. Biće odgovorna za sve akte koje su počinili pripadnici njenih oružanih snaga ".

Prema članu 75 Rimskog statuta, Međunarodni krivični sud može dodeliti reparacije žrtvama od strane osuđenog lica. Ove reparacije mogu uključivati restituciju, kompenzaciju i rehabilitaciju. Kada proceni da je potrebno, Sud može

[207] In 2016 the Grand Chamber of the CJEU[i] interpreted the provisions of the 2004 Directive as for each Member State to provide a scheme on compensation for victims of violent intentional crimes without limiting "*the scope of the compensation scheme for victims to only certain violent intentional crimes"* [...] *but guaranteeing compensation for victims of any violent intentional crime on its territory"*. In 2020, the CJEU[ii] clarified the interpretation of the Directive providing that a "*fixed rate of compensation*" cannot constitute a "*fair and appropriate compensation*" for victims of violent crimes "*if it is fixed without taking into account the seriousness of the consequences of the crime for the victims".* The Court emphasises that the compensation has to be an *"appropriate contribution to the reparation of the material and non-material harm suffered".*

[208] Protocol additional to the Geneva Convention of 12 August, 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 art 91. Vidi takođe: Gillard, C. (2003) *Reparation for Violations of International Humanitarian Law*. International Review of the Red Cross, 85(851), pp. 529-553.

direktno da naredi naredno od osuđenog lica koja određuje odgovarajuće reparacije ili u odnosu na žrtve, uključujući restituciju, nadoknadu i rehabilitaciju (75 (2) i gde je to prikladno, sud može da odredi reparacije kroz Fond za žrtve samog Suda (članu 79 (75 (3)).

Međunarodna konvencija o zaštiti svih lica od prisilnih nestanaka[209] (ICPPED), od stupanja na snagu 2010. godine pruža sveobuhvatan doprinos međunarodnom pravu i u članu 24 definiše pravo na reparaciju: „Svaka država ugovornica obezbeđuje u svom pravnom sistemu da žrtve prisilnog nestanka imaju pravo na odštetu i brzu, pravičnu i adekvatnu nadoknadu. 5. Pravo na odštetu iz stava 4. ovog člana pokriva materijalnu i moralnu štetu i, ukoliko to odgovara, druge oblike odštete kao što su: (a) povraćaj; (b) rehabilitacija; (v) zadovoljenje, uključujući povraćaj dostojanstva i ugleda; (g) garancije da se to neće ponoviti."

Međutim, najdetaljniji instrument u ovoj oblasti su Osnovni principi i smernice o pravu na pravni lek i odštetu za žrtve teških kršenja međunarodnog prava ljudskih prava i teških kršenja međunarodnog humanitarnog prava.[210]

Kao što je očigledno iz gore pojašnjenih odredaba, ovi instrumenti predviđaju pravo žrtve na naknadu od učinioca ili od države kada postoji njena odgovornost. Međutim, postoji nekoliko instrumenata koji izlaze iz ovog okvira i koji prepoznaju važnost obezbeđivanja naknade za najugroženije žrtve bez obzira na mogućnost da dobiju nadoknadu štete od učinioca. Ova inicijativa ima korene u čl. 12-13 Osnovnih principa UN-a koji predviđaju uspostavljanje, jačanje i širenje nacionalnih mehanizama za nadoknadu žrtvama. Ako je to prikladno, takođe se mogu uspostaviti i posebni fondovi iz kojih bi se žrtvama nadoknadila šteta kada nije moguća kompenzacija od učinioca.

Konvencija Saveta Evrope o naknadi žrtvama nasilnih krivičnih dela (1983)[211] (član 2) određuje da kada nadoknada nije u potpunosti dostupna iz drugih izvora, država

[209] International Convention for the Protection of all Persons from Enforced Disappearance, adopted on 20 December 2006 during the sixty-first session of the General Assembly in resolution A/RES/61/177.

[210] UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Preamble, adopted by the UN Commission on Human Rights in 2005, UN Doc. E/CN.4/RES/2005/35 and adopted by the General Assembly on 16 December 2005, UN Doc. A/RES/60/147.

[211] Council of Europe, European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24 November 1983.

će doprineti nadoknadi: onih koji su direktno pretrpeli teške telesne povrede ili oštećenja zdravlja nastala umišljajnim krivičnim delima sa elementom nasilja ili ako su lica smrtno stradala kao rezultat takvog krivičnog dela. Nadoknada se dodeljuje u gore navedenim slučajevima, čak i ako učinilac ne može biti procesuiran ili kažnjen. Takođe definiše koji vidovi pretrpljene štete ili izgubljene dobiti treba da budu nadoknađeni.[212]

Član 30 Istanbulske konvencije koja je posvećena suzbijanju rodno zasnovanog i porodičnog nasilja, predviđa obavezu države da preduzme mere da osigura pravo žrtve na naknadu u razumnom roku, čak i kada ne postoji mogućnost naknade iz drugih izvora.[213]

4.9.2. Pozitivno zakonodavstvo, uočeni nedostaci, planirane i tekuće izmene

Zakonik o krivičnom postupku (član 252-260) predviđa obavezu suda i tužilaštva da prikupe dokaze od značaja za odlučivanje o imovinskopravnom zahtevu i pre nego što je zahtev istaknut. Sud je dužan da odluči o imovinskopravnom zahtevu u krivičnom postupku, osim ako to ne bi dovelo do značajnog odugovlačenja postupka.

4.9.3. Izazovi u praksi

Sud bi navedene odredbe ZKP-a trebalo da ima na umu i iz ugla izbegavanja višestrukih ispitivanja žrtve u krivičnom postupku, ali i u pogledu potencijalnog budućeg položaja te žrtve u parničnom postupku za naknadu štete koji bi bio pokrenut ako sud takvu odluku ne donese u krivičnom postupku. Naime, u takvom parničnom postupku žrtvi nisu dostupne nikakve zaštitne mere tokom svog

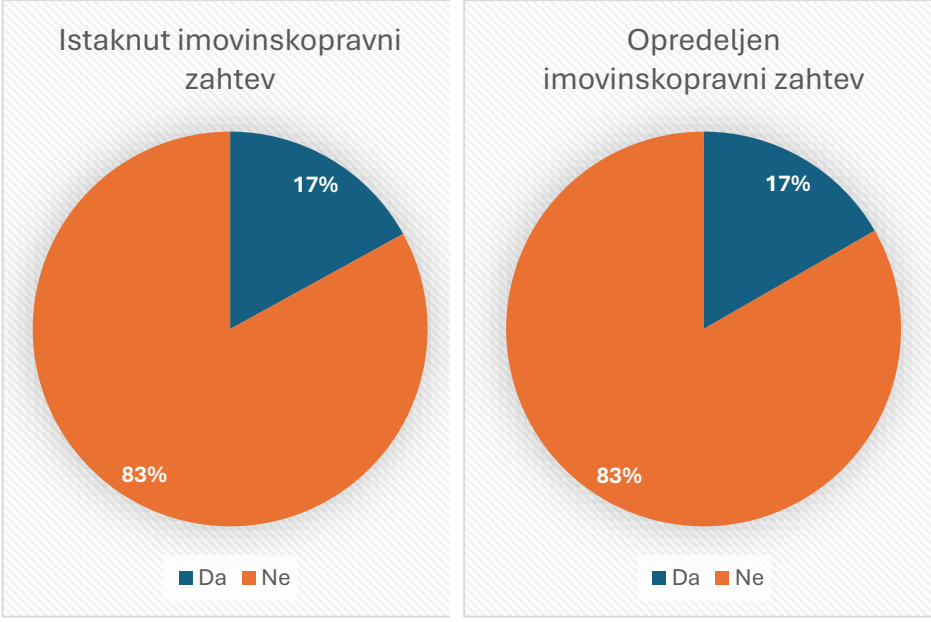
[212] Prema članu 4 Konvencije, kompenzacija treba da pokrije barem sledeće stavke: gubitak zarade, medicinske i troškove hospitalizacije i troškova sahrane i gubitak izdržavanja. Prema članu 5, kompenzaciona šema može, ako je potrebno, postaviti i minimalne i maksimalne pragove nadoknade, ukupno ili po elementima. Član 6 predviđa i mogućnost da se kompenzacionom šemom precizira period u kojem se mora izvršiti svaka prijava za nadoknadu. Članom 7 se zabranjuje ograničenje ili uskraćivanje ovih prava na bazi materijalnog stanja podnosioca predstavke. Najzad, član 9 obavezuje države da, sa ciljem izbegavanja dvostruke kompenzacije, oduzmu deo već isplaćene nadoknade iz drugih izvora, a po istom osnovu od ukupnog iznosa.

[213] Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011.

svedočenja. Stoga bi donošenje ove odluke u krivičnom postupku trebalo da bude imperativ za krivični sud.

Nalazi monitoringa položaja dece žrtava pred sudovima u Republici Srbiji[214] u pogledu ostvarivanja prava oštećenog na imovinskopravni zahtev, pokazali su da je samo 17% oštećenih istaklo imovinskopravni zahtev. U okviru tih 17% koji su se odlučili na ovaj korak, ponovo samo 17% njih je svoj imovinskopravni zahtev i opredelilo.

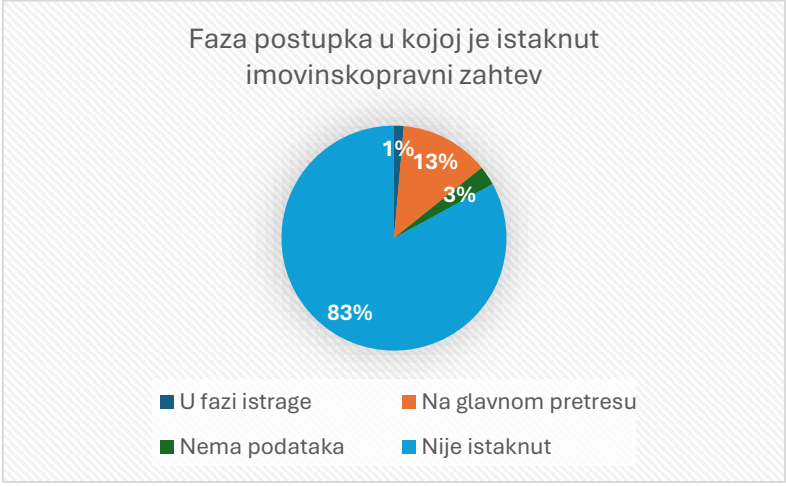
Grafikon 6: Da li je oštećeni istakao imovinskopravni zahtev?



Kada je reč o **fazi isticanja imovinskopravnog zahteva**, oštećeni koji su uopšte istakli zahtev su to pretežno činili tek na glavnom pretresu.

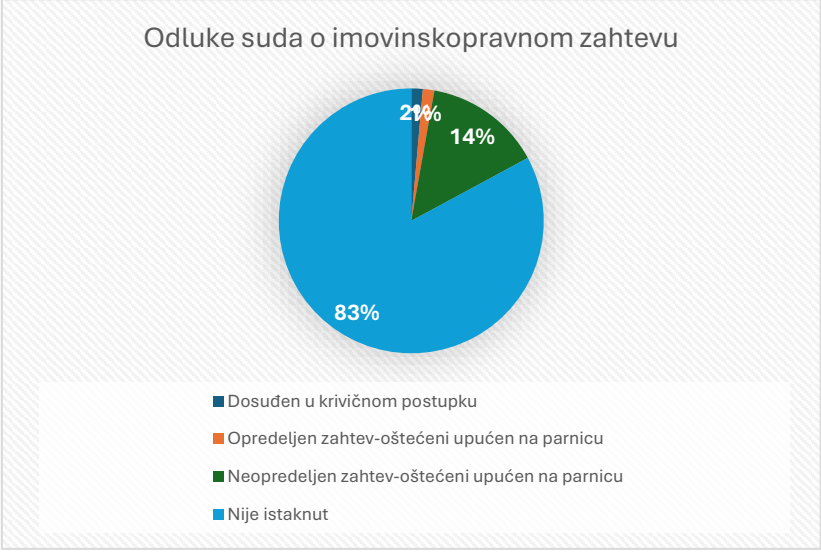
[214] Kolaković-Bojović, M. (2022) *Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*. Institute of Criminological and Sociological Research, Belgrade, available at: http://institutecsr.iksi.ac.rs/339/.

Grafikon 7: Faza postupka u kojoj je istaknut imovinskopravni zahtev



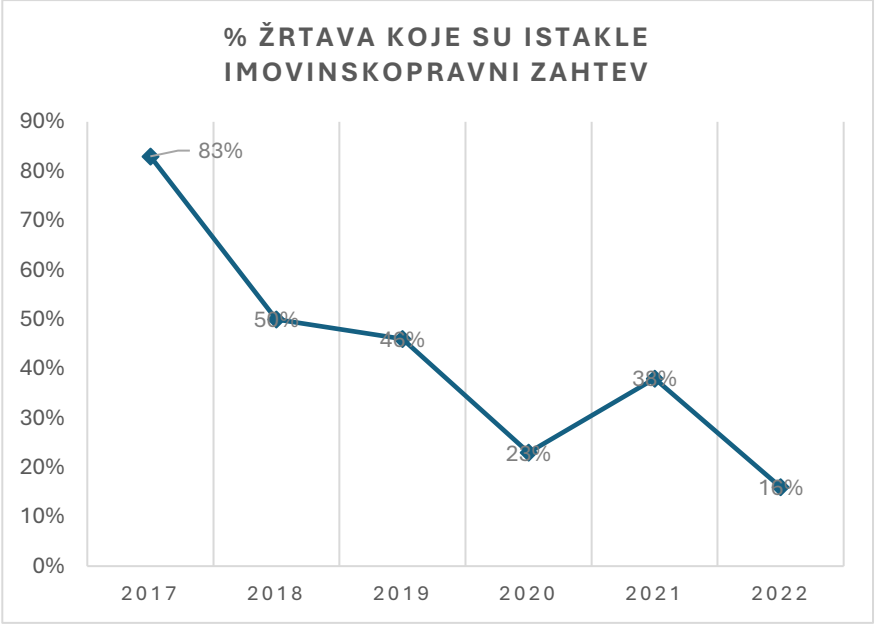
U pogledu odluka suda o imovinskopravnom zahtevu, poražavajući je podatak da je samo jednom od 70 oštećenih dosuđen imovinskopravni zahtev u krivično postupku. Ključni razlog tome je svakako činjenica da je samo 17% njih istaklo, a samo dvoje opredelilo zahtev, što ne menja ukupnu sliku o potpunoj nedelotvornosti mehanizma propisanog čl. 252-260. ZKP.

Grafikon 8: Odluke suda o imovinskopravnom zahtevu



Slični trendovi se mogu videti i u krivičnim postupcima koji se vode za krivično delo trgovine ljudima. Naime, NVO ASTRA je uspostavila godišnje praćenje tih slučajeva koji između ostalog uključuje pristup naknadi štete za žrtve.[215]

Grafikon 9: Naknada štete: žrtve trgovine ljudima

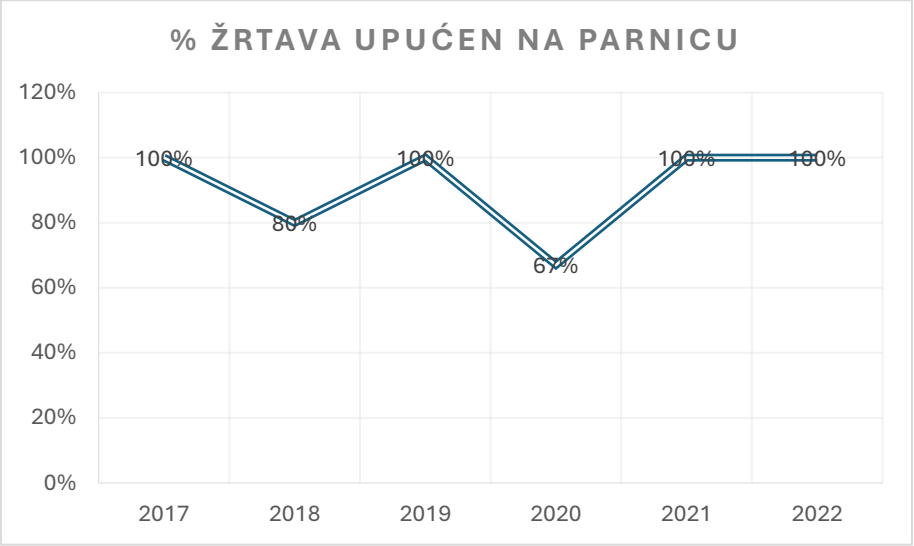


Iz podataka predstavljenih u grafikonu 9 očigledno je da u petogodišnjem periodu postoji negativan trend u kome je procenat žrtava trgovine ljudima koji su istakli imovinskopravni zahtev sa 83% u 2017. pao na 10% u 2022. godini.

Razlozi za takvu trend mogu se naći u podacima predstavljenim u grafikonu 10 koji pokazuju da je Sud skoro nikada (osim 2018. i 2020. godine) odlučio o zahtevu za nadoknadu u krivičnom postupku.

[215] Vidi više na: https://astra.rs/en/astras-publications/, pristupljeno 28. oktobra 2024. Grafikoni 9 i 10 su pripremljeni na bazi podataka iz godišnjih izveštaja o praćenju suđenja za trgovinu ljudima u periodu 2017-2022. godine.

Grafikon 10: Sudske odluke o imovinskopravnom zahtevu kojima je oštećeni upućen da zahtev ostvari u parnici



Uprkos tim razočaravajućim trendovima postoje neki pozitivni primeri na osnovu individualnog angažmana / entuzijazma sudija / sudskih veća.

Studija slučaja 5: [216]

Oštećena kojoj je dosuđen imovinsko pravni zahtev, oštećena je krivičnim delom trgovina ljudima. U presudi na osnovu sporazuma o priznanju krivičnog dela se navodi da je oštećenoj je na osnovu čl. 358 ZKP dosuđen imovinsko pravni zahtev, te da je okrivljeni obavezan da joj na ime naknade materijalne i nematerijalne štete isplati 1.117.000 dinara u roku od 8 dana od dana pravnosnažnosti presude, u skladu sa sporazumom o načinu izmirenja imovinsko pravnog zahteva za oštećenu, pri čemu su sredstva na njegovom računu bila blokirana privremenom merom Višeg suda. Oštećena je imala punomoćnika.

Pored toga, žrtva je bila podvrgnuta tri forenzička ispitivanja tokom suđenja i nakon toga je upućena da imovinskopravni zahtev ostvari u parničnom postupku.

[216] ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2020. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, str. 27.

Studija slučaja 6:

Takođe je vredan pomena nedavni pozitivan primer u predmetu seksualnog nasilja nad dve devojčice koje je izvršio otac, gde je u septembru 2024. godine Viši sud u Novom Sadu odlučio o imovinskopravnom zahtevu u krivičnom postupku. Sudsko veće je osudilo optuženog za silovanje izvršeno na štetu jedne ćerke, navođenje deteta na prisustvo polnim radnjama na štetu tog deteta (protiv druge ćerke), kao i tri krivična dela porodičnog nasilja nad svojim ćerkama i suprugom. Dvema devojčicama je dosuđen imovinskopravni zahtev u iznosu od 1.100.000 dinara (približno 9.400EUR) i 150.000 dinara (1.200EUR), dok je njihova majka upućena na ostvarivanje imovinskopravnog zahteva u parničnom postupku.

Pored gore opisanih primera dobre prakse, važno je i napomenuti da su i na državnom nivou preduzete neke inicijative za adresiranje ovih ozbiljnih izazova. Vrhovni kasacioni sud[217] usvojio je 2019. godine Smernice za unapređenje sudske prakse u postupcima naknade štete žrtvama teških krivičnih dela u krivičnom postupku[218]. Od usvajanja Smernica, Sud u saradnji sa Pravosudnom akademijom, a uz podršku misije OEBS-a u Srbiji, organizovao je više jednodnevnih obuka za primenu Smernica, namenjenih sudijama viših sudova i javnim tužiocima.

Sistem za kontinuirani monitoring ostvarivanja prava na naknadu štete u praksi još nije uspostavljen. Međutim, preovladava utisak koji proizilazi iz gore predstavljene statistike kao i od kvalitativne analize da je pozitivna praksa i dalje zasnovana na entuzijazmu malog broja nosilaca pravosudnih funkcija koji pokušavaju da promene postojeću lošu praksu. Takođe, vrlo je uočljiva razlika u praksama postupanja među sudovima u Republici Srbiji, što govori u prilog činjenici da problem ne leži u normativnom okviru, već u nedostatku edukacije i/ili spremnosti nosilaca pravosudnih funkcija da preduzmu neophodne mere kojima bi se osiguralo donošenje odluke u krivičnom postupku.

[217] Sada Vrhovni sud.

[218] Vrhovni kasacioni sud (2019) *Smernice za unapređenje sudske prakse u postupcima naknade štete žrtvama teških krivičnih dela u krivičnom postupku*, dostupno na: https://www.podrskazrtvama.rs/en//posts/presentation-of-guidelines-for-damage-compensation-87.php, pristupljeno 30. jula 2024. godine.

Tokom pandemije COVID 19, bilo je napora da se razvije jedinstveni obrazac za podnošenje imovinskopravnog zahteva. Glavna ideja koja stoji iza toga bila je da se takvim obrascem omogući žrtvama da preciziraju/opredele zahteve, kao u pogledu vrste pretrpljene štete, tako i u pogledu iznosa zahtevane odštete. U ovom procesu, podršku žrtvi može da pruži stručno lice iz službe podrške žrtvama ili njen advokat. Paralelno, podaci iz potpuno popunjenog zahteva olakšali tužiocima i sudijama planiranje i sprovođenje procesnih radnji usmerenih na prikupljanje dokaza potrebnih za odlučivanje o imovinskopravnom zahtevu u krivičnom postupku.

Interesantno je, ipak, da su profesionalci uključeni u debatu koju je IKSI organizovao sa Misijom OEBS-a u Srbiji u procesu monitoringa izrazili skepsu po pitanju potencijalnih koristi od primene ovih obrazaca. U osnovi, oni objašnjavaju takvu poziciju upravo činjenicom da motivisani nosioci pravosudnih funkcija mogu da postupe i odluče o zahtevu i bez takvih obrazaca.

Dodatni problemi u praksi se javljaju u odnosu na dve činjenice:

- pasivno i / ili neetično ponašanje advokata.

- nedostatak pravnih i institucionalnih mehanizama kako bi se osigurala nadoknada u slučajevima kada žrtva ne može refundirati od učinioca.

Uloga pravnog zastupnika / punomoćnika u postupku za isticanje imovinskopravnog zahteva i odlučivanja o njemu izuzetno je važna. Naime, uprkos obavezi nadležnih organa da informišu oštećenog da ima ovo pravo, uloga njegovog punomoćnika je da objasni sve relevantne detalje o postupku i uslovima da pravo bude i ostvareno, kao i da pomogne u definisanju zahteva. Međutim, među advokatima je široko rasprostranjena praksa demotivisanja oštećenih da se bore za ostvarenje ovog prava u krivičnom postupku, neretko, iz čisto lukrativnih razloga. Naime, umesto da pomognu oštećenima da opredele imovinskopravni zahtev, upućuju ih da samo istaknu zahtev bez opredeljivanja, čime otvaraju put budućem angažmanu/zastupanju žrtve u parničnom postupku.

Konačno, čak i nakon donete pozitivne odluke o imovinskopravnom zahtevu, postoji velika šansa da se ona u praksi ne može izvršiti jer okrivljeni nema primanja i imovinu ili je naknadno preminuo. U tim slučajevima, neophodno je obezbediti mogućnost kompenzacije iz državnog fonda, nakon čega bi država nastavila sa

naporima da se refundira od prestupnika, ako je to uopšte moguće. Dodatna svrha takvih fondova je da se osigura brza materijalna podršku žrtvama u situaciji potrebe i pre odluke suda, što je od velikog značaja za posebno ranjive žrtve koje moraju da plate medicinske tretmane, popravljaju različite vrste oštećenja.

Obeshrabrene praksom redovnog upućivanja u parnični postupku, u sadejstvu sa nedostatkom pravne pomoći u procesu zahtevanja odštete ili čak obeshrabrene od strane punomoćnika koji ih zastupaju, žrtve nisu dovoljno vešte, osnažene i / ili podržane da istaknu i opredele imovinskopravni zahtev u krivičnom postupku gde bi im bile na raspolaganju brojne zaštitne mere koje pripadaju žrtvama u krivičnom postupku.

Ne postoje pravni i institucionalni mehanizmi kompenzacije u situacijama kada je nemoguće dobiti naknadu štete od učinioca (preminuo je, nema sredstva). Isto važi i za situacije u kojima je učinilac nepoznat i zbog čega se ne može sprovesti krivični postupak.

4.9.4. Preporuke za unapređenje

P.29. Izmeniti Zakon o parničnom postupku na način koji obezbeđuje da su posebno osetljive žrtve zaštićene u parničnim postupcima koji se vode za ostvarivanje imovinskopravnog zahteva žrtava teških krivičnih dela.

P.30. Intenzivno i kontinuirano raditi na diseminaciji, obukama za primenu i praćenje primene Smernica za unapređenje sudske prakse u postupcima za naknadu štete žrtvama teških krivičnih dela u krivičnom postupku.

P.31. Finalizovati izradu, usvojiti i započeti upotrebu uniformnog obrasca za isticanje i opredeljivanje imovinskopravnog zahteva i osigurati da službe podrške žrtvama pomažu žrtvama kojima je potrebna pomoć u popunjavanju ovih obrazaca.

P.32. Redovno analizirati objavljivati primere (dobre) prakse u krivičnim postupcima u pogledu odlučivanja o imovinskopravnom zahtevu.

Lista preporuka

P.1.	Kontinuirano koristiti standardizovanu strukturu izveštaja o monitoringu čime bi se omogućilo državnim organima da prate napredak i izazove u svakom od segmenata obuhvaćenih monitoringom između ciklusa izveštavanja, i u skladu sa tim razviju korektivne mere.
P.2.	Sudijama i tužiocima, kao i advokatima koji postupaju u svojstvu zakonskih zastupnika/punomoćnika žrtava, potrebno je obezbediti adekvatnu obuku za bolje razumevanje novousvojenog koncepta žrtve u srpskom krivičnom postupku, posebno u kontekstu zaštite njihovih prava koja su nedavno ugrađena u ZKP.
P.3.	Usvojiti predlog izmena i dopuna čl. 103 ZKP-a uključujući mogućnost da se preciznije definišu nadležni organi za sprovođenje individualne procene potreba žrtava koji prethode sudskoj odluci o dodeli statusa posebno osetljivog svedoka, isključujući uvođenje prava optuženog na žalbu na odluku o dodeli statusa posebno osetljivog svedoka.
P.4.	Osigurati brzo uspostavljanje službi podrške žrtvama u svim višim sudovima.
P.5.	Obezbediti pridruživanje i finansiranje službi podrške žrtvama osnovanim pri NVO u okviru Nacionalne mreže službi podrške žrtvama.
P.6.	Povećati broj psihologa zaposlenih u višim sudovima.
P.7.	Izmeniti Zakon o besplatnoj pravnoj pomoći sa ciljem proširivanja njegovog obuhvata primene na način da osigura pristup besplatnoj pravnoj pomoći za (naročito osetljive) kategorije žrtava.
P.8.	Unaprediti pristup informacijama o dostupnoj besplatnoj pravnoj pomoći za žrtve.
P.9.	Razviti održive trening programe za advokate da bi se osiguralo da prepoznaju specifične potrebe posebno ranjivih žrtava.

P.10.	Usvojiti predložene izmene člana 50. ZKP-a čime bi se uspostavio pravni osnov za prisustvo osobe od poverenja i unaprediti predloženi tekst izmena ZKP-a u pogledu potencijalnog sukoba interesa između žrtve i osobe od poverenja.
P.11.	Unaprediti mehanizme koordinacije u pravosuđu kako bi se bolje iskoristio rad sudskih psihologa da bi se izbeglo višestruko i/ispitivanje ranjivih žrtava bez odgovarajuće pripreme i/ili podrške psihologa.
P.12.	Redovno vršiti procenu da li postoji sukob interesa u vezi sa prisustvom „osobe od poverenja“ tokom ispitivanja žrtava, posebno u slučajevima koji se tiču dece žrtava.
P.13.	Kontinuirano raditi na razvoju Nacionalne mreže službi za podršku žrtvama kako bi se obezbedili adekvatni stručni resursi za pratnju žrtava i svedoka tamo gde je to potrebno.
P.14.	Kontinuirano raditi na razvoju baza podataka i statistike usmerenih na žrtve u pravosuđu kako bi se osigurala bolja koordinacija u slučajevima kada se ista žrtva pojavljuje u više od jednog sudskog postupka i/ili u više procesnih svojstava.
P.15.	Usvojiti predložene izmene člana 50. ZKP-a čime bi se uspostavio pravni osnov za ograničavanje broja ispitivanja žrtve.
P.16.	Obratiti više pažnje na procenu stvarnih razloga za promene iskaza žrtve i uključiti stručnu podršku u ovim slučajevima.
P.17.	Usvojiti predložene izmene čl. 103 i 104 ZKP-a usmerene na izričitu zabranu unakrsnog ispitivanja posebno osetljivih svedoka.
P.18.	Izmeniti čl. 102 ZKP u cilju uvođenja obaveze suda da obavesti nadležnu advokatsku komoru o novčanoj kazni izrečenoj advokatu zbog neprimerenih radnji prema osetljivom svedoku iz st. 1 te odredbe, kao i obaveza nadležne advokatske komore da po prijemu obaveštenja od suda obavesti sud o preduzetim merama protiv tog advokata.
P.19.	Izraditi i usvojiti novi Zakon o maloletnicima koji bi uključio detaljne odredbe o ispitivanju maloletnih žrtava u svojstvu svedoka.
P.20.	Ojačati interni mehanizam u nadležnim advokatskim komorama koje vodi Advokatska komora Srbije u cilju uspostavljanja jasnih i održivih

	mehanizama vođenja evidencija, pripreme statistike i preduzimanja mera po primljenim obaveštenjima suda o izrečenim disciplinskim merama protiv advokata u krivičnom postupku.
P.21.	Ojačati sveukupni pristup senzibilizaciji pravnih stručnjaka uključenih u intervjuisanje posebno osetljivih svedoka kroz: a) Poboljšanje nastavnih planova i programa i udžbenika pravnih fakulteta. b) Unapređenje početne i kontinuirane obuke za sudije i javne tužioce u Pravosudnoj akademiji, sa fokusom na potrebama osetljivih žrtava i svedoka i veština potrebnih za njihovo pravilno ispitivanje. c) Unapređenje obuke za advokate u Advokatskoj akademiji.
P.22.	Razviti katalog infrastrukturnih zahteva usmerenih na obezbeđivanje pristupa pravdi u skladu sa relevantnim međunarodnim standardima za žrtve.
P.23.	Nastaviti tekući proces nabavke audio i video opreme za sudove i javna tužilaštva sa ciljem dostizanja targeta definisanih Strategijom za žrtve 2020-2025.
P.24.	Sprovoditi obuke za pravne stručnjake u sudovima i tužilaštvima kako bi se osigurala adekvatna upotreba novonabavljene audio i video opreme.
P.25.	Osigurati da sve tekuće ili planirane rekonstrukcije pravosudne infrastrukture budu u skladu sa potrebama žrtava.
P.26.	Organizovati zajedničke obuke za novinare, sudije, javne tužioce, policijske službenike i advokate na temu zaštite žrtava u kontekstu medijskog izveštavanja o krivičnim postupcima.
P.27.	Ojačati samoregulatorne mehanizme za medije da bi se povećao nivo odgovornosti u slučajevima izveštavanja koje šteti žrtvama.
P.28.	Ojačati interne disciplinske mehanizme u pravosuđu da bi se osigurala odgovornost u slučajevima ponašanja koje šteti (posebno osetljivim) žrtvama.

P.29.	Izmeniti Zakon o parničnom postupku na način koji obezbeđuje da su posebno osetljive žrtve zaštićene u parničnim postupcima koji se vode za ostvarivanje imovinskopravnog zahteva žrtava teških krivičnih dela.
P.30.	Intenzivno i kontinuirano raditi na diseminaciji, obukama za primenu i praćenje primene Smernica za unapređenje sudske prakse u postupcima za naknadu štete žrtvama teških krivičnih dela u krivičnom postupku.
P.31.	Finalizovati izradu, usvojiti i započeti upotrebu uniformnog obrasca za isticanje i opredeljivanje imovinskopravnog zahteva i osigurati da službe podrške žrtvama pomažu žrtvama kojima je potrebna pomoć u popunjavanju ovih obrazaca.
P.32.	Redovno analizirati objavljivati primere (dobre) prakse u krivičnim postupcima u pogledu odlučivanja o imovinskopravnom zahtevu.

Aneks I: Upitnik za potrebe prikupljanja podataka o krivičnim postupcima/predmetima

Napomena: U predmetima kojima je obuhvaćeno više okrivljenih i/ili više oštećenih, potrebno je za svakog okrivljenog, odnosno oštećenog odgovoriti na sva pitanja iz upitnika, tako što se u svakom poglavlju upitnika kopira blok redova tabele onoliko puta Koliko ima okrivljenih, odnosno oštećenih.

UPITNIK ZA ANALIZU SUDSKE PRAKSE	
Ime, prezime i afilijacija istraživača:	
1. INFORMACIJE O PREDMETU	
Grad	
Sud	
Krivično delo (prema optužnici)	
Trajanje prvostepenog postupka	o) Do 3 meseca p) 3-6 meseci q) 6-12 meseci r) 1-2 godina s) 2-3 godina t) Preko 3 godine
2. INFORMACIJE O OKRIVLJENOM	
Da li je u postupku bilo više okrivljenih?	e) DA f) NE (Ako DA, preciziraj broj)
Pol okrivljenog	i) M j) Ž
Starost okrivljenog u vreme izvršenja dela	t) 14-18 u) 18-21 v) 21-65 w) Preko 65
Ranija osuđivanost	f) DA g) NE

	Višestruki povrat DA/NE
	Istovrsno delo DA/NE
Veza sa oštećenim	a) DA b) NE Vrsta:
Broj identifikovanih oštećenih u postupku	
Drugi komentar:	
3. PODACI O OŠTEĆENOM/ŽRTVI	
Pol	e) M f) Ž
Starost žrtve u vreme izvršenja krivičnog dela:	x) Ispod 14 y) 14-18 z) 18-21 aa) 21-65 bb) preko 65
Prebivalište	e) urbana f) ruralna
Prethodna viktimizacija	g) DA h) NE i) Nema podataka Ako da, pojasni:
Da li je oštećeni imao status posebno osetljivog svedoka? Ako da, na čiji predlog i koji organ mu je dodelio taj status?	a) DA b) NE Pojasni:
4. PRAVNA POMOĆ I ZASTUPANJE	
Da li je oštećeni imao punomoćnika?	g) DA h) NE i) Nema podataka Ako da, punomoćnik je: a) Izabran

	b) Postavljen *ex officio*
Prisustvo pravnog zastupnika/staratelja maloletnog oštećenog (roditelj, staratelj, predstavnik CSR)	e) DA f) NE Ako da, navedi vrstu zastupnika
Drugi komentar:	
5. PODRŠKA ŽRTVAMA	
Da li je oštećeni tokom suđenja imao pratnju psihologa, socijalnog radnika ili drugog stručnjaka?	e) DA f) NE Ako da, koga?
Da li je oštećeni tokom suđenja imao pratnju službe podrške žrtvama?	a) DA b) NE Ako da, koja vrsta službe podrške je bila u pitanju? a) Služba uspostavljena pri sudu ili javnom tužilaštvu b) Služba pri Centru za podršku žrtvama trgovine ljudima c) Služba uspostavljena pri NVO
Da li je oštećeni imao pratnju člana porodice, prijatelja i/ili druge osobe od poverenja tokom glavnog pretresa?	a) DA b) NE Ako da, koga?
Drugi komentar:	
6. INFORMACIJE PRUŽENE OŠTEĆENOM	
Da li je oštećeni informisan o pravima koja mu pripadaju u krivičnom postupku u skladu sa odredbama ZKP-a i Zakona o maloletnicima?	e) DA f) NE Kada: Od strane koga:
Drugi komentar:	
7. BEZBEDNOST ŽRTAVA	
Da li su preduzete neke od zaštitnih mera u odnosu na oštećenog? Ako da,	e) DA f) NE Na čiji predlog?

koje mere i na čiji zahtev? Kakva je bila odluka suda?	Koje mere?
Da li je oštećeni pokazao strah ili zabrinutost po svoju bezbednost tokom suđenja i ako da, kakva je bila reakcija suda.	a) DA b) NE Ako da, kakva je bila reakcija suda?
Da li je okrivljenom određen pritvor?	a) DA b) NE Ako da, u kojoj fazi postupka? Koliko vremena je okrivljeni proveo u pritvoru i kada mu je pritvor ukinut (u kojoj fazi postupka)?
Drugi komentar:	
8. ISPITIVANJE OŠTEĆENOG KAO SVEDOKA	
Da li je oštećeni prethodno ispitan u istom predmetu i ako da, koliko puta i red kojim organom?	a) DA b) NE Ako DA, koliko puta? Javni tužilac/sud:
Da li je okrivljeni promenio iskaz u odnosu na prethodno dat?	a) DA b) NE
Da li je pročitan prethodno dat iskaz oštećenog umesto ponovnog ispitivanja?	a) DA b) NE
Da li je oštećeni ispitan u prisustvu okrivljenog?	f) DA g) NE h) Nema podataka
Da li je bilo suočenja?	a) DA b) NE c) Nema podataka Ako da, preciziraj sa kim?

Da li je ispitivanje sprovedeno posredstvom psihologa, socijalnog radnika ili drugog stručnjaka?	a) DA b) NE c) Nema podataka Ako da, od strane koga?
9. NEDOZVOLJENE ILI NEPRIKLADNE TEHNIKE ISPITIVANJA	
Da li su oštećenom kao svedoku postavljana sugestibilna pitanja?	a) DA b) NE c) Nema podataka Ako da, od strane koga?
Da li su oštećenom kao svedoku postavljana neprikladna i/ili irelevantna pitanja o privatnom i/ili seksualnom životu?	a) DA b) NE c) Nema podataka Ako da, kakva i od strane koga?
Da li je oštećeni kao svedok dobijao komentare kojima se sugeriše da je izazvao i/ili doprineo viktimizaciji?	a) DA b) NE c) Nema podataka Ako da, kakva i od strane koga?
Da li je oštećeni bio izložen pretnjama, pritiscima i/ili uvredama	a) DA b) NE c) Nema podataka Ako da, kakva i od strane koga?
10. UPOTREBA VIDEO LINKA, PRAVOSUDNA INFRASTRUKTURA I ZAŠTITA ŽRTAVA	
Da li je ispitivanje sprovedeno uz pomoć tehničkih sredstava za prenos slike i zvuka? Ako da, gde se oštećeni nalazio za vreme ispitivanja (npr. druga prostorija u sudu, u sopstvenom stanu, CSR, službi podrške žrtvama)?	a) DA b) NE c) Nema podataka Ako DA, gde se oštećeni nalazio za vreme ispitivanja? Preciziraj:
Da li je ispitivanju prisustvovao tehničar zadužen za nesmetano funkcionisanje uređaja za prenos sike i zvuka?	a) DA b) NE c) Nema podataka

Da li je bilo tehničkih smetnji prilikom ispitivanja?	a) DA b) NE c) Nema podataka
11. PRIMENA DISCIPLINSKIH MERA USMERENIH NA ZAŠTITU ŽRTAVA TOKOM ISPITIVANJA	
Da li je punomoćnik oštećenog ili sam oštećeni imao bilo kakve primedbe na način na koji su postavljana pitanja tokom ispitivanja oštećenog?	a) DA b) NE Komentar:
Da li je sudija/predsednik veća odlučio da ne dozvoli neka od pitanja?	a) DA b) NE Ako da, da li se ovo dogodilo jednom ili više puta tokom ispitivanja? Ako da, čije pitanje je zabranjeno? e) Okrivljenog f) Branioca g) Drugo
Da li je sudija intervenisao tokom ispitivanja jer je smatrao da je način na koji su postavljena neka pitanja neprikladan? Opiši šta se desilo?	Intervencija sudije: Opis:
Da li je sudija izrekao opomenu okrivljenom ili braniocu?	a) DA b) NE
Da li je tužilac intervenisao tokom ispitivanja jer je smatrao da je način na koji su postavljena neka pitanja neprikladan? Opiši šta se desilo?	Intervencija tužioca: Opis:
Šta se desilo nakon opomene sudije?	g) Način ispitivanja je promenjen h) Neprikladan tretman oštećenog je nastavljen i) Neprikladan tretman oštećenog je nastavljen ali je licu izrečena novčana kazna Opiši:

Drugi komentar:	
12. ZAŠTITA PRIVATNOSTI	
Da li je bilo zahteva da se suđenje održi uz delimično ili potpuno isključenje javnosti?	a) DA b) NE Ako da, od koga je došao ovakav zahtev i koji razlozi su navedeni? Koji delovi suđenja nisu bili otvoreni za javnost? Objasni:
Da li je sud prihvatio zahtev za isključenje javnosti? Ako ne, koji su bili razlozi?	g) DA h) NE i) Razlozi
Da li je sud/tužilaštvo izdalo saopštenje o krivičnom postupku?	k) DA l) NE m) Nema podataka
Da li su mediji pratili suđenje u ovom predmetu?	a) DA b) NE c) Nema podataka Ako da, da li im je bilo dozvoljeno prisustvo na pretresu? DA/NE Objašnjenje:
Da li su mediji objavljivali vesti o ovom krivičnom postupku?	a) DA b) NE c) Nema podataka Ako da, da li su vesti sadržale neprikladne elemente poput objavljivanja ličnih podataka žrtve, detalje izvršenja krivičnog dela, pitanja koja predsednik veća nije dozvolio i sl? d) DA e) NE f) Nema podataka Objasni:
Drugi komentari:	
13. IMOVINSKOPRAVNI ZAHTEV	

Da li je oštećeni istakao imovinskopravni zahtev?	a) DA b) NE
U kojoj fazi postupka je istaknut imovinskopravni zahtev?	
Da li je oštećeni opredelio imovinskopravni zahtev?	a) DA b) NE
Na šta se odnosio Imovinskopravni zahtev?	a) Naknada štete _____ (traženi iznos) b) Povraćaj stvari c) Poništaj pravnog posla
Koja je bila odluka suda po zahtevu?	a) Usvojen u celosti b) Usvojen delimično (objasni)
Drugi komentar:	
14. DODATNE NAPOMENE:	

Aneks II: Upitnik za intervjue sa stručnjacima

UPITNIK ZA INTERVJUE SA STRUČNJACIMA	
Ime, prezime i afilijacija istraživača:	
PODACI O STRUČNJAKU	
Ime i prezime	
Afilijacija	
Obrazovanje	
Prebivalište/boravište	
Godine iskustva u relevantnoj oblasti	e) Manje od 3 godine f) 3-5 godina g) 5-10 godina h) preko 10 godina
Tema 1: Status posebno osetljivog svedoka (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)	
Odgovori:	
Tema 2: Pravna pomoć/zastupanje (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)	
Odgovori:	
Tema 3: Prisustvo psihologa i/ili osobe od poverenja (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)	
Odgovori:	
Tema 4: Višestruko ispitivanje (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)	
Odgovori:	
Tema 5: Nedozvoljene ili neprikladne tehnike ispitivanja (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)	
Odgovori:	

Tema 6: Disciplinske mere usmerene na zaštitu žrtava u funkciji oštećenih kao svedoka (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Odgovori:
Tema 7: Upotreba video linka, pravosudna infrastruktura i zaštita žrtava (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Odgovori:
Tema 8: Zaštita privatnosti (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Odgovori:
Tema 9: Imovinskopravni zahtev i zaštita žrtava (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Odgovori:

Aneks III: Fokus grupa sa stručnjacima

Veličina grupe: do 15 učesnika

Sastav fokus grupe: sudije koje postupaju u krivičnim i prekršajnim predmetima, javni tužioci, advokati (bilo da postupaju kao branioci ili punomoćnici oštećenih), sudski psiholozi, sudski veštaci (psiholozi, psihijatri), stručnjaci iz službi podrške žrtvama (uspostavljenih pri institucijama i u okviru NVO), stručnjaci iz CSR, novinari koji izveštavaju o suđenjima i/ili kriminalitetu, NVO aktivisti koji prate suđenja ili zagovaraju prava naročito osetljivih žrtava.

Trajanje sastanka: 90-180 minuta

Modaliteti rada: studije slučaja, diskusija, definisanje preporuka

Teme za diskusiju:

Tema 1: Status posebno osetljivog svedoka (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: **Preporuke:**
Tema 2: Pravna pomoć/zastupanje (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: **Preporuke:**
Tema 3: Prisustvo psihologa i/ili osobe od poverenja (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: **Preporuke:**

Tema 4: Višestruko ispitivanje (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: Preporuke:
Tema 5: Nedozvoljene ili neprikladne tehnike ispitivanja (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: Preporuke:
Tema 6: Disciplinske mere usmerene na zaštitu žrtava u funkciji oštećenih kao svedoka (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: Preporuke:
Tema 7: Upotreba video linka, pravosudna infrastruktura i zaštita žrtava (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: Preporuke:
Tema 8: Zaštita privatnosti (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: Preporuke:
Tema 9: Imovinskopravni zahtev i zaštita žrtava (iskustva, nedostaci normativnog okvira, izazovi u praksi, preporučene korektivne mere)
Zapažanja/zaključci: Preporuke:

Pitanja za podsticanje debate:

1) Možete li objasniti svoju ulogu / prethodno iskustvo u ovoj oblasti. Ako se vaše iskustvo zasniva na više uloga, da li možete da objasnite razlike u percepciji istih pitanja kroz različite uloge?

2) Da li mislite da su trenutne praznine i izazovi u praksi povezani sa relevantnim normativnim okvirom? Imate li predloge za njegove izmene?

3) Da li mislite da su trenutne praznine i izazovi u praksi povezani sa kvalitetom obrazovanja / obuke stručnjaka o tom pitanju? Kako ocenjujete kvalitet profesionalnog obrazovanja u ovoj oblasti: oboje, na univerzitetima i za profesionalce, kroz kontinuiranu obuku?

4) Da li smatrate da postoje adekvatni disciplinski mehanizmi za odgovornost onih koji zloupotrebljavaju svoj profesionalni položaj / funkciju u krivičnom postupku tako što krše prava žrtve / svedoka?

5) Kako doživljavate ulogu medija u zaštiti ranjivih žrtava / svedoka? Kako ocenjujete odnos između pravosuđa i medija u tom pogledu?

6) Kako ocenjujete praktične, uključujući digitalne veštine profesionalaca u kontekstu primene zaštitnih mera povezanih sa tim tehnologijama?

7) Gde vidite najveće izazove i najveće uspehe u pogledu poboljšanja sudske infrastrukture u oblasti zaštite žrtava i svedoka? Šta bi se moglo učiniti kao sledeći korak u ovoj oblasti)

Aneks IV: Upitnik za intervjue sa žrtvama

UPITNIK ZA INTERVJUE SA ŽRTVAMA	
Ime, prezime i afilijacija istraživača:	
1. INFORMACIJE O PREDMETU	
Grad	
Sud	
Krivično delo (prema optužnici)	
Trajanje prvostepenog postupka	a) Do 3 meseca b) 3-6 meseci c) 6-12 meseci d) 1-2 godina e) 2-3 godina f) Preko 3 godine g) Žrtva nije sigurna ali misli da postupak dobro napreduje h) Žrtva nije sigurna ali misli da postupak ne napreduje dobro
2. INFORMACIJE O OKRIVLJENOM	
Da li je u postupku bilo više okrivljenih?	a) DA b) NE (Ako DA, preciziraj broj)
Pol okrivljenog	a) M b) Ž
Starost okrivljenog u vreme izvršenja dela	a) 14-18 b) 18-21 c) 21-65 d) Preko 65
Ranija osuđivanost	a) DA b) NE

	Višestruki povrat DA/NE
	Istovrsno delo DA/NE
Veza sa oštećenim	a) DA b) NE Vrsta:
3. PODACI O OŠTEĆENOM/ŽRTVI	
Pol	a) M b) Ž
Starost žrtve u vreme izvršenja krivičnog dela:	a) ispod 14 b) 14-18 c) 18-21 d) 21-65 e) preko 65
Prebivalište	a) urbana b) ruralna
Prethodna viktimizacija	a) DA b) NE c) Nema podataka Ako da, pojasni:
Da li je oštećeni imao status posebno osetljivog svedoka? Ako da, na čiji predlog i koji organ mu je dodelio taj status?	a) DA b) NE c) Pojasni:
Pol	a) M b) Ž
Starost žrtve u vreme izvršenja krivičnog dela:	a) Ispod 14 b) 14-18 c) 18-21 d) 21-65 e) preko 65
Prebivalište	a) urbana b) ruralna

4. PRAVNA POMOĆ/ZASTUPANJE	
Da li je oštećeni imao punomoćnika?	a) DA b) NE c) Nema podataka Ako da, da li je punomoćnik: a) Izabran b) Postavljen *ex officio*
Dozvolite žrtvi da objasni da li je bila pravilno informisana o pravu na pravno zastupanje i o modalitetima da ga ostvari. Da li je on/ona razumeo ovu informaciju? Da li se on/ona osećao slobodnim da traži pojašnjenje i ako nije, zašto? Da li žrtva smatra da je ovo pravo dovoljno dostupno?	Uneti objašnjenje:
Prisustvo punomoćnika oštećenog/ zastupnika maloletnog oštećenog (roditelj, staratelj, predstavnik CSR)	g) DA h) NE i) Vrsta/status zastupnika
Drugi komentar:	
5. PODRŠKA ŽRTVAMA	
Da li je oštećeni imao pratnju /podršku psihologa, socijalnog radnika ili drugog stručnjaka?	g) DA h) NE Ako da, koga?
Da li je oštećeni imao pratnju/ podršku službe podrške žrtvama?	c) DA d) NE Ako da, koja vrsta službe podrške je bila u pitanju? a) Služba uspostavljena pri sudu ili javnom tužilaštvu b) Služba pri Centru za podršku žrtvama trgovine ljudima c) Služba uspostavljena pri NVO

Dozvolite žrtvi da objasni kako je saznala za pravo na podršku? Kakav je bio prvi kontakt sa službom podrške? Kako se on/ona osećao kada je bio u pratnji psihologa, socijalnog radnika ili drugog stručnjaka tokom saslušanja i/ili u drugim fazama postupka?	Unesi objašnjenje:
Da li je oštećeni imao podršku /pratnju člana porodice i/ili osobe od poverenja tokom glavnog pretresa?	a) DA b) NE Čiju?
Dozvolite žrtvi da objasni kako je saznala za pravo da bude u pratnji osobe od poverenja? Kako se on/ona osećao kada je bio u pratnji osobe od poverenja, socijalnog radnika ili drugog stručnjaka tokom saslušanja i/ili u drugim fazama postupka?	Unesi objašnjenje:
Drugi komentar:	
6. INFORMACIJE PRUŽENE OŠTEĆENOM	
Da li je oštećeni informisan o pravima koja mu pripadaju u skladu sa ZKP-om i Zakonom o maloletnicima?	a) DA b) NE Kada: Od strane koga?
Dozvolite žrtvi da se izloži svoje iskustvo u tom pogledu. Dozvolite žrtvi da objasni da li je pravilno informisana o svojim pravima. Da li je on/ona razumeo ovu informaciju? Da li se on/ona osećao slobodnim da traži pojašnjenje i ako nije, zašto?	Unesi objašnjenje:
7. BEZBEDNOST ŽRTAVA	
Da li su preduzete neke od zaštitnih mera u odnosu na oštećenog? Ako da,	g) DA h) NE Na čiji predlog?

koje mere i na čiji zahtev? Kakva je bila odluka suda?	Koje mere?
Da li je oštećeni pokazao strah ili zabrinutost po svoju bezbednost tokom suđenja i ako da, kakva je bila reakcija suda.	c) DA d) NE Ako da, kakva je bila reakcija suda?
Dozvolite žrtvi da objasni svoje razloge za strah i kako se osećala u vezi sa reakcijom suda na njegovu/njenu zabrinutost. Da li je oklevala da izrazi svoju zabrinutost i ako jeste, zašto?	Unesi objašnjenje:
Da li je okrivljenom određen pritvor?	c) DA d) NE Ako da, u kojoj fazi postupka? Koliko vremena je okrivljeni proveo u pritvoru i kada mu je pritvor ukinut (u kojoj fazi postupka)?
Drugi komentar:	
8. ISPITIVANJE OŠTEĆENOG KAO SVEDOKA	
Da li je oštećeni prethodno ispitan u istom predmetu i ako da, koliko puta i red kojim organom?	c) DA d) NE Ako DA, koliko puta? Javni tužilac/sud:
Dozvolite oštećenom da objasni kako se osećao/osećala povodom potrebe da ponavlja svoj iskaz.	Unesi objašnjenje:
Da li je okrivljeni promenio iskaz u odnosu na prethodno dat?	c) DA d) NE
Dozvolite žrtvi da objasni svoje razloge za to. Da li je to rezultat produženog trajanja postupka/nedostatak sećanja ili	Unesi objašnjenje:

strah da neće biti zaštićen(a) od strane vlasti? Drugi razlozi?	
Da li je pročitan prethodno dat iskaz oštećenog umesto ponovnog ispitivanja?	a) DA b) NE
Da li je oštećeni ispitan u prisustvu okrivljenog?	a) DA b) NE
Dozvolite oštećenom da objasni kako se osećao/osećala tim povodom.	Unesi objašnjenje:
Da li je bilo suočenja?	a) DA b) NE c) Nema podataka Ako da, preciziraj sa kim?
Dozvolite oštećenom da objasni kako se osećao/osećala tim povodom.	Unesi objašnjenje:
Da li je ispitivanje sprovedeno posredstvom psihologa, socijalnog radnika ili drugog stručnjaka?	a) DA b) NE c) Nema podataka Ako da, od strane koga?
Dozvolite oštećenom da objasni kako se osećao/osećala tim povodom.	Unesi objašnjenje:
9. NEDOZVOLJENE ILI NEPRIMERENE TEHNIKE ISPITIVANJA	
Da li su oštećenom kao svedoku postavljana sugestibilna pitanja?	a) DA b) NE c) Nema podataka Ako da, od strane koga?
Dozvolite žrtvi da objasni kako se osećala zbog ovoga. Da li je on/ona bila svesna da je način intervjuisanja pogrešan? Da li je očekivao(la) da će sudija nešto preduzeti u tom pogledu?	Unesi objašnjenje:
Da li su oštećenom kao svedoku postavljana neprikladna i/ili irelevantna	a) DA b) NE

pitanja o privatnom i/ili seksualnom životu?	c) Nema podataka Ako da, kakva i od strane koga?
Dozvolite žrtvi da objasni kako se osećala zbog ovoga. Da li je on/ona bila svesna da je način intervjuisanja pogrešan? Da li je očekivao(la) da će sudija nešto preduzeti u tom pogledu?	Unesi objašnjenje:
Da li je oštećeni kao svedok dobijao komentare kojima se sugeriše da je izazvao i/ili doprineo viktimizaciji?	a) DA b) NE c) Nema podataka Ako da, kakva i od strane koga?
Dozvolite žrtvi da objasni kako se osećala zbog ovoga. Da li je on/ona bila svesna da je način intervjuisanja pogrešan? Da li je očekivao(la) da će sudija nešto preduzeti u tom pogledu?	Unesi objašnjenje:
Da li je oštećeni bio izložen pretnjama, pritiscima i/ili uvredama	d) DA e) NE f) Nema podataka g) Ako da, kakva i od strane koga?
Dozvolite žrtvi da objasni kako se osećala zbog ovoga. Da li je on/ona bila svesna da je način intervjuisanja pogrešan? Da li je očekivao(la) da će sudija nešto preduzeti u tom pogledu?	Unesi objašnjenje:
10. PRIMENA DISCIPLINSKIH MERA USMERENIH NA ZAŠTITU ŽRTAVA TOKOM ISPITIVANJA	
Da li je punomoćnik oštećenog ili sam oštećeni imao bilo kakve primedbe na način na koji su postavljana pitanja tokom ispitivanja oštećenog?	a) DA b) NE Komentar:
Da li je sudija/predsednik veća odlučio da ne dozvoli neka od pitanja?	a) DA b) NE

	Ako da, da li se ovo dogodilo jednom ili više puta tokom ispitivanja? Ako da, čije pitanje je zabranjeno? a) Okrivljenog b) Branioca c) Drugo
Da li je sudija intervenisao tokom ispitivanja jer je smatrao da je način na koji su postavljena neka pitanja neprikladan? Opiši šta se desilo?	Intervencija sudije: Opis:
Da li je sudija izrekao opomenu okrivljenom ili braniocu?	a) DA b) NE
Da li je tužilac intervenisao tokom ispitivanja jer je smatrao da je način na koji su postavljena neka pitanja neprikladan? Opiši šta se desilo?	Intervencija tužioca: Opis:
Šta se desilo nakon opomene sudije?	a) Način ispitivanja je promenjen b) Neprikladan tretman oštećenog je nastavljen c) Neprikladan tretman oštećenog je nastavljen ali je licu izrečena novčana kazna Opiši:
Dozvolite žrtvi da objasni da li smatra da je reakcija sudija dovoljna i/ili odgovarajuća? Da li se zbog ove reakcije osećala dovoljno bezbedno i osnaženo da nastavi sa svedočenjem?	Unesi objašnjenje:
Drugi komentar:	
11. UPOTREBA VIDEO LINKA, PRAVOSUDNA INFRASTRUKTURA I ZAŠTITA ŽRTAVA	

Da li je ispitivanje sprovedeno uz pomoć tehničkih sredstava za prenos slike i zvuka? Ako da, gde se oštećeni nalazio za vreme ispitivanja (npr. druga prostorija u sudu, u sopstvenom stanu, CSR, službi podrške žrtvama)?	a) DA b) NE c) Nema podataka Ako DA, gde se oštećeni nalazio za vreme ispitivanja? Preciziraj:
Da li je ispitivanju prisustvovao tehničar zadužen za nesmetano funkcionisanje uređaja za prenos sike i zvuka?	a) DA b) NE c) Ne znam
Da li je bilo tehničkih smetnji prilikom ispitivanja?	a) DA b) NE c) Ne znam
Dozvoliti žrtvi da objasni kako se osećala u vezi sa ovim načinom intervjuisanja? Da li je dobio/la odgovarajuće informacije o koracima i proceduri? Da li je on/ona razumeo ovu informaciju? Da li se on/ona osećao slobodnim da traži pojašnjenje i ako nije, zašto?	Unesi objašnjenje:
12. ZAŠTITA PRIVATNOSTI	
Da li je bilo zahteva da se suđenje održi uz delimično ili potpuno isključenje javnosti?	a) DA b) NE Ako da, od koga je došao ovakav zahtev i koji razlozi su navedeni? Koji delovi suđenja nisu bili otvoreni za javnost? Objasni:
Da li je sud prihvatio zahtev za isključenje javnosti? Ako ne, koji su bili razlozi?	a) DA b) NE c) Razlozi
Da li je sud/tužilaštvo izdalo saopštenje o krivičnom postupku?	a) DA b) NE c) Ne znam
Da li su mediji pratili suđenje u ovom predmetu?	a) DA b) NE c) Ne znam

	Ako da, da li im je bilo dozvoljeno prisustvo na pretresu? DA/NE Objašnjenje:
Da li su mediji objavljivali vesti o ovom krivičnom postupku?	a) DA b) NE c) Ne znam Objasni:
13. IMOVINSKOPRAVNI ZAHTEV	
Da li je oštećeni istakao imovinskopravni zahtev?	a) DA b) NE
U kojoj fazi postupka je istaknut imovinskopravni zahtev?	
Da li je oštećeni opredelio imovinskopravni zahtev?	a) DA b) NE
Na šta se odnosio Imovinskopravni zahtev?	a) Naknada štete _____ (traženi iznos) b) Povraćaj stvari c) Poništaj pravnog posla
Koja je bila odluka suda po zahtevu?	a) Usvojen u celosti b) Usvojen delimično (objasni)
Dozvolite žrtvi da izrazi svoj stav o tome da li je pravilno informisana o pravu na odštetu (imovinskopravni zahtev). Da li je on/ona mogao da se nosi sa ovim pitanjem bez stručne podrške? Ako je upućena da zahtev ostvari u parničnom postupku, kako se on/ona osećao povodom činjenice da to zahteva dodatno vreme i resurse, ali i da u tom postupku ne postoje zaštitni mehanizmi? Da li se on/ona osećao dovoljno jakim da se bori za to? Unesi objašnjenje:	
14. DODATNA ZAPAŽANJA:	

Aneks V: Standardizovana struktura (obrazac) Izveštaja o praćenju (monitoringu)

Podaci prikupljeni primenom prethodno izložene metodologije u svakom izveštaju treba da budu prikazani na osnovu osnovnih elemenata/pitanja koja određuju položaj posebno osetljivih žrtava u procesnom statusu/funkciji oštećenog kao svedoka u krivičnom postupku:

1. Pravo žrtve da se njen glas čuje, odnosno da aktivno učestvuje u krivičnom postupku
2. Status posebno osetljivog svedoka/individualna procena potreba
3. Pravo na pravnu pomoć i zastupanje
4. Prisustvo psihologa i/ili osobe od poverenja saslušanju
5. Ograničenje višestrukog ispitivanja
6. Nedozvoljene ili neprikladne tehnike ispitivanja
7. Disciplinske mere u slučaju pritisaka i/ili odmazde prema osetljivim žrtvama
8. Upotreba tehničkih sredstava za prenos slike i zvuka (video linka) i infrastrukturni preduslovi u pravosuđu za zaštitu osetljivih žrtava u funkciji oštećenog kao svedoka
9. Zaštita privatnosti žrtava i medijsko izveštavanje o suđenjima
10. Imovinskopravni zahtev i zaštita žrtava

Za svako od ovih pitanja, nalazi treba da budu prezentovani u odnosu na sledeće tačke:

5. Relevantni međunarodni standardi
6. Pozitivno zakonodavstvo, nedostaci zakonodavstva i tekuće/planirane izmene zakonodavstva
7. Izazovi u praksi
8. Preporuke za unapređenje

Takođe, svako od navedenih pitanja treba da bude analizirano iz ugla specifičnih potreba i izazova sa kojima se suočavaju različite, naročito osetljive kategorije žrtava u procesnoj funkciji oštećenog kao svedoka.

- Deca žrtve
- Žene, žrtve porodičnog i rodno zasnovanog nasilja

- Žrtve trgovine ljudima
- Žrtve ratnih zločina
- Žrtve zločina iz mržnje

Svaki izveštaj treba da sadrži kratak sažetak nalaza i objedinjenu listu preporuka koji olakšavaju diseminaciju i komunikaciju.

Aneks VI: Upitnik za potrebe prikupljanja informacija o primeni čl. 102, 370, 372 i 374 ZKP-a

Deo I: Prikupljanje podataka i prevencija

1. Da li AKS redovno prikuplja podatke o primeni čl. 370, 372 i 374 ZKP-a od strane advokatskih komora u sastavu AKS?

2. Ukoliko da, za koji period se dostavljaju podaci?

3. Da li advokatske komore u sastavu AKS prikupljaju podatke o primeni ovih odredaba ZKP-a?

4. Da li je AKS stava da bi i u odnosu na ovlašćenja organa postupka iz člana 102, stav 2 trebalo uvesti obavezu obaveštavanja nadležne advokatske komore o izrečenoj opomeni i/ili novčanoj kazni?

5. Da li je AKS u periodu 2017. do danas preduzimala neke od preventivnih mera usmerenih na unapređenje tretmana naročito osetljivih žrtava u procesnoj funkciji oštećenog kao svedoka od strane advokata, kao i jačanje poštovanja procesne discipline od strane advokata, a u kontekstu primene čl. 102, 370, 372 i 374 ZKP (npr. obuke, izrada smernica i sl.)

Deo II: Posebna pitanja

1. Podaci o postupanju nadležne advokatske komore u skladu sa obavezom iz člana 370, stav 3 ZKP-a:

1.1. Broj primljenih obaveštenja o kažnjavanju advokata u skladu sa člana 370, stav 1 i 3 ZKP-a u periodu 1.1.2017-31.12.2023. godine

1.2. U koliko slučajeva od ukupnog broja primljenih obaveštenja je advokat postupao kao punomoćnik oštećenog, a u koliko kao branilac?

1.3. U koliko slučajeva je nadležna advokatska komora obavestila sud o preduzetim merama u skladu sa obavezom iz člana 370, stav 3 ZKP-a? Ukoliko su

pored ukupnih, podaci dostupni po nadležnim područnim advokatskim komorama, molimo navedite i te podatke.

1.4. Navedite podatke o merama koje su nadležne advokatske komore preduzele prema advokatima koje je sud kaznio po osnovu člana 370, stav 1 ZKP-a u periodu 1.1.2017-31.12.2023. godine.

2. Podaci o postupanju nadležne advokatske komore u skladu sa odredbom člana 372, stav 1 ZKP-a:

2.1. Broj primljenih obaveštenja o isključenju iz daljeg postupka advokata u skladu sa člana 372, stav 1 ZKP-a u periodu 1.1.2017-21.12.2023. godine

2.2. U koliko slučajeva od ukupnog broja primljenih obaveštenja je advokat postupao kao punomoćnik oštećenog, a u koliko kao branilac?

2.3. Navedite podatke o merama koje su nadležne advokatske komore preduzele prema advokatima koje je sud isključio iz daljeg toka postupka po osnovu člana 372, stav 1 ZKP-a u periodu 1.1.2017-31.12.2023. godine.

3. Podaci o postupanju nadležne advokatske komore u skladu sa obavezom iz člana 374, stav 3 ZKP-a:

3.1. Broj primljenih obaveštenja o izrečenoj opomeni advokatu u skladu sa članom 374, stav 1 i 3 ZKP-a u periodu 1.1.2017-31.12.2023. godine

3.2. U koliko slučajeva od ukupnog broja primljenih obaveštenja je advokat postupao kao punomoćnik oštećenog, a u koliko kao branilac?

3.3. U koliko slučajeva je nadležna advokatska komora obavestila sud o preduzetim merama u skladu sa obavezom iz člana 374, stav 3 ZKP-a? Ukoliko su pored ukupnih, podaci dostupni po nadležnim područnim advokatskim komorama, molimo navedite i te podatke.

3.4. Navedite podatke o merama koje su nadležne advokatske komore preduzele prema advokatima koje je sud kaznio po osnovu člana 374, stav 1 ZKP-a u periodu 1.1.2017-31.12.2023. godine.

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