


## **CERTAIN ASPECTS OF THE POSITION AND RIGHTS OF CHILDREN AS VICTIMS OF CRIMINAL OFFENSES<sup>1</sup>**

**ABSTRACT:** Children, as well as minors in general, represent one of the most sensitive social groups, and consequently, criminal acts hit children particularly hard. For this reason, the domestic legislator, like the majority of other legislators, incriminates when the crime is committed against a child as a serious or heaviest form of a specific criminal offense, that is, as a special qualifying circumstance. However, in addition to the fact that, within the framework of criminal material legislation, it prescribes qualified forms of criminal acts when children are the victims, legislator, within the framework of juvenile criminal legislation and other special regulations, also prescribes other measures aimed at improving and protecting the position of the child in criminal proceedings. This is because the protection of children as victims of crime is not only a legal issue, but also a social and moral imperative, which must be taken seriously to ensure that all children receive the protection and support they need to grow and develop. In terms of what has been stated, this paper points to the regulation of the position of the child as a victim of a criminal offense, primarily at a national level, starting from general protection standards, to individual solutions in some of the specific forms of criminality where children often appear as victims – family and sexual violence.

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## 1. Introductory remarks

Abuse of children, in general, in recent years in the Republic of Serbia is an increasingly topical issue that is also the subject of numerous public debates. Just by reviewing the articles in the electronic and written media, on a weekly basis, we become familiar with new criminal acts committed against the youngest members of our society, which, as a rule, are followed by public uproar, and the request for the application of “brutal measures of retaliation against abusers” (Kron, 2010; Petković, Pavlović, & Dimitrijević, 2012). On the other hand, the crimes against children themselves are very serious considering the fact that they can have a decisive effect on the development and personality of the child, and it is certain that long after the critical event, many children will feel mistrust towards the outside world, and children often lack the ability to effectively deal with the event on their own (Lindgren & Nikolić Ristanović, 2011, p. 64).

Therefore, legal, and especially criminal-legal, protection of minors and children as the youngest and most sensitive part of society, from special is important for every modern organized society. In general, the issue of protecting minors from all forms of physical and psychological attacks has been increasingly prevalent in recent years, both at the national level and at the level of international regulation. Thus, normative intervention, both at the international and at the national level, occurs as a necessary and irreplaceable part of the legal protection of children from actions that most severely violate basic social values, those that most deeply harm the child’s interests, and which are identified with the public interest (Janjić Komar & Obretković, 1996, p. 103). Already during the nineteenth century, criminal acts were incorporated into the criminal laws of numerous countries, the main goal of which was the protection of minors. The twentieth century is characterized by the expansion of the criminal zone for the purpose of protecting minors, the introduction of new criminal acts, and in criminal law theory, the concept of criminal law protection of minors is increasingly used (Stevanović, 2015, pp. 8-9).

The development of the protection of minors from abuse, neglect and exploitation, i.e. from all forms of violence that threaten and injure their physical, sexual and psychological integrity, is particularly encouraged and advocated by the movement for children’s rights, which is embodied in a whole series of international documents. Today, it is indisputable that the rights of the

child, as a special part of human rights, have a universal character. However, by separating minors as special subjects of law, and formulating independent rights that protect their personal assets, the classic protective attitude towards these persons is overcome and enables their influence on their own position (Stevanović, 2015, p. 10). However, it should also be emphasized that the state and its organs, and above all the criminal justice system as such, are positioned as the ultimate guarantors of those rights and the protection of children, so that they assume the function of representing those rights in situations where they are threatened, that is, violated by the actions of parents or other persons and strongly react to such violations by sanctioning them.

With that, it can be stated that almost all modern legislation tends to introduce special rules when it comes to legal, and especially criminal-legal protection of minors. The *ratio legis* of this particularity in prescribing and incriminating is based on the social need for a stronger and more effective reaction when persons of the youngest age categories are injured or endangered. This is because minors are in many situations more vulnerable than adults. All this led to the emergence and development of the concept of “justice tailored to the child”, which is increasingly gaining momentum internationally, and especially in European legislation (Samardžić, 2018, p. 18 et seq.).

In the light of the above, this paper will point to the normative framework of regulation of the position and rights of the child in the Republic of Serbia. Finally, the paper tries to provide an overview of the (legal) position of children as victims of domestic and sexual violence, but also procedural and legal elements of the appearance of a child in criminal proceedings as an injured person.

## **2. National normative framework Regulations on children’s rights and children’s position as victims of certain criminal offenses**

Proceeding from and respecting the assumed international legal obligations, the domestic constitution-maker and legislator, adopting or following the set international legal standards, strongly intervened in the field of children’s rights prescribing and regulating general issues of children’s rights, but also the position of children as victims of crime, and as victims of specific criminal acts. Thus, in addition to the general qualified incriminations contained in the Criminal Code of the RS, the legislator regulated the position of the child with special regulations of the criminal legislation, both substantive and procedural.

As the rights and position of the child in the national legislation are regulated by over 80 legal texts (Analysis, 2011, pp. 5-9), this chapter will refer only to the constitutional legal framework regulating the rights of the child, and will present the relevant criminal law regulation.

### ***2.1. Constitutional regulation of the rights and position of the child***

The Constitution of the Republic of Serbia, as the highest legal act, establishes the foundations of our legal system and guarantees basic human rights and freedoms in the most general way. By guaranteeing human rights, the state in fact guarantees a limit that it must not cross, if it rests on democracy, because even though democracy is not reduced to human rights, without them there is no democracy (Marković, 2013, p. 460). The second part of the Constitution is devoted to human rights, which is precisely called human and minority rights and freedoms. Within this part of the Constitution, human rights that fall within the domain of family law belong to the group of social rights, which are otherwise considered new rights (Marković, 2013, pp. 483-484).

Although, essentially, the Constitution of the Republic of Serbia from 2006 contains only one provision that explicitly refers to children's rights, it can be said that the Constitution from 2006 sets a broad normative framework for the special protection of children in the overall legal order. Thus, for the first time in the constitutional and legal history of Serbia, the Constitution explicitly talks about the rights of the child in Article 64, which bears the title "Child's Rights" (Analysis, 2011, p. 10). The Constitution guarantees children "the right to enjoy human rights appropriate to their age and mental maturity" (The Constitution of the Republic of Serbia, 2006). Also, in this article, the Constitution stipulates that the rights of the child are regulated by law and guarantees the child a number of individual rights, e.g. the right to a personal name, registration in the register of births, the right to know one's origin, the right to preserve one's identity, protection from psychological, physical, economic and any other exploitation or abuse, equal rights of children born in marriage and out of wedlock. Article 65 of the Constitution prescribes the special protection of the family, mother, and single parent, and in this sense special protection is guaranteed for children who are not cared for by their parents and children with disabilities in mental and physical development, as well as the protection of children from child labor, i.e. prohibition of work for children under 15 years of age and prohibition of work for children under 18 years of age in jobs that are harmful to children's morals or their health.

Although the Constitution does not recognize the basic principles of the Convention on the Rights of the Child, one should keep in mind the constitutional provisions of Articles 16 and 18 of the Constitution that ratified international treaties are part of the internal legal order and are directly applicable, and that, in accordance with the provisions of Article 18, paragraph 3 of the Constitution, on human and minority rights are interpreted in favor of improving the values of a democratic society, in accordance with valid international standards of human and minority rights, as well as the practice of international institutions that supervise their implementation. With that, it can be said that the Constitution, implicitly, leaves the door open for the influence and immediate application of international standards regarding the rights of the child, setting, at the same time, the basis and normative framework for the legal regulation and protection of the child in the legal order.

## ***2.2 Criminal-legal protection of the position of the child as a victim of certain criminal acts***

Guided by everything previously stated, and starting from the standards and rules contained in international legal documents, as well as the provisions of the Constitution, the domestic legislator implements the concretization of the proclaimed protection of children, first of all, through criminal legislation, by prescribing more than 30 actions in the Criminal Code of the RS in which the property of the injured party as a minor is an important characteristic of the nature of the criminal offense (compare with Petković & Pavlović, 2016, p. 188), and it is mostly about crimes against life and limb (such as aggravated murder from Article 114 of the CC, murder of a child during childbirth from Article 116 of the CC, etc.), against sexual freedom (such as rape from Article 178 of the CC, adultery with a child from Article 180 of the CC, etc.), and against marriage and family (such as domestic violence from Article 194 of the CC).

The domestic legislator tried to regulate the issue of improving the rights and protection of the child's position in criminal law with both general and special criminal legislation.

On the other hand, the protection of the procedural position of the child in criminal proceedings as an injured party is provided by the Law on juvenile offenders and the criminal protection of minors.

### **3. Protection of children as victims of sexual abuse and sexual offenses**

The criminal law protection of minors in the area of sexual relations was implemented in our law by prescribing and applying the provisions of chapter XVIII of the Criminal Code, which is entitled “Criminal offenses against sexual freedom”. Some of these crimes can be committed against both adults and minors, with the fact that the passive subject is a minor will be a qualifying circumstance. However, in this group there are also crimes in which this circumstance is a feature of the crime, so they can only be committed against a minor (Đorđević & Simeunović Patić, 2015, p. 236). Therefore, we can see that the internal systematization of the Criminal Code does not specifically single out, as a separate entity, the protection of minors from sexual offenses, but sexual violence against minors, that is, children, is a qualifying circumstance in most criminal offenses (Pavlović, 2013, p. 237). Thus, following the systematics of the Criminal Code from chapter XVIII, where all criminal offenses against sexual freedom are listed, among them, as criminal offenses of sexual abuse and exploitation of a child, we can define : 1. child abuse (Article 180), 2. mediation in prostitution (Article 184, paragraph 2), 3. displaying, obtaining and possessing pornographic material and exploiting a minor for pornography (Article 185), 4. inducing a child to attend sexual acts (Article 185a), 5. using a computer network or communication by other technical means to commit criminal acts against sexual freedom towards a minor (Article 185b), (Criminal Code of the RS, 2005).

From the presented incriminations, we can conclude that the domestic legislator, from the aspect of substantive legal criminal incriminations, acted in accordance with the assumed international obligations and in the spirit of the international legal standards.

Also, with the changes to the criminal legislation from 2019, more precisely, according to the provisions of Article 43 of the Criminal Code, life imprisonment is prescribed as a type of punishment, stating: “For the most serious crimes and the most serious forms of serious crimes, life imprisonment can exceptionally be prescribed in addition to the prison sentence”, such as: aggravated murder, rape, sexual act on a child, a weak person, etc. Certain limitations were also set when it comes to the sentence of life imprisonment: that it cannot be imposed on a person who at the time of the commission of the criminal offense did not reach the age of 21, and in cases where the possibility of mitigating the sentence or the existence of some grounds for exemption from penalties. These amendments are known to the public as “Tijana’s Law”,

emphasizing stricter punishments for all perpetrators of crimes in which children are the victims (Ikanović & Vasić, 2020, p. 180).

The position of children “as victims of criminal offenses is also regulated by special laws from different areas, in the effort of the domestic legislator to prevent the commission of criminal offenses against minors and, in the case of a committed criminal offense against a minor, to improve the position of that person as a victim in criminal proceedings. These laws are, by nature of the matter they regulate, special laws” (Dragojlović, 2022, p. 87). It should be pointed out that, when it comes to this group of criminal offenses against minors and children, the Law on Special Measures for the Prevention of the of criminal offenses against sexual freedom against minors (hereinafter: ZPM) adopted in 2013 (Pavlović, 2013, p. 237; Đorđević & Simeunović Patić, p. 236), which is also known as “Maria’s Law” (Pavlović, 2013, p. 286).<sup>2</sup>

This law applies to perpetrators who have committed any of the following crimes against minors: rape (Article 178, paragraphs 3 and 4 CC); abuse of an incapacitated person (Art. 179, paragraphs 2 and 3 CC); adultery with a child (Art. 180 CC); abuse of position (Art. 181 CC); illicit sexual acts (Art. 182 CC); pimping and facilitating sexual intercourse (Art. 183 CC); mediation in the practice of prostitution (Art. 184, paragraph 2 CC); showing, obtaining and possessing pornographic material and exploiting a minor for pornography (Art. 185 CC); inducing a minor to attend sexual acts (Art. 185a CC); the use of a computer network or communication by other technical means to commit crimes against sexual freedom against a minor (Art. 185b CC), which practically represents all crimes from Chapter XVIII of the Criminal Code, i.e. those forms of these crimes committed against a minor (Dragojlović, 2022, p. 88). The separation of these criminal acts and their placement in a special regime is motivated by the desire to treat the perpetrators of these

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<sup>2</sup> Dragojlović (2022, p. 88) points out that “as decisive reasons for the adoption of this law, Article 37 of the Convention of the Council of Europe on the Protection of Children from Sexual Exploitation and Sexual Abuse, which was confirmed by the National Assembly in May 2010, obliges member states of this convention. that in order to prevent and prosecute criminal offenses established in accordance with this convention, take all necessary legislative or other measures to collect data related to the identity and genetic profile (DNA) of persons convicted of criminal offenses established in accordance with this convention. In addition, bearing in mind the increased number of crimes against sexual freedom committed against minors, it is necessary that, in addition to the existing system of criminal sanctions, which have not been fully proven to be effective, special measures should be introduced to eliminate the conditions that can be from the influence that the perpetrators of these criminal acts commit these acts in the future. For the aforementioned reasons, it is proposed to adopt a special law that would prescribe additional measures to be implemented against persons convicted of crimes against sexual freedom committed against minors, after serving a prison sentence, and also to establish a special criminal record for these convicted persons”.

criminal acts in a way that would prevent the perpetrator from repeating the crime later, after the punishment has been served, and in this way to ensure enhanced protection of minors from this type of crime, while the criteria for distinguishing these crimes is completely clear – namely, they are crimes against sexual freedom with the condition that they were committed against a minor (Đorđević & Simeunović Patić, p. 237) .

ZPM, as a special-preventive legal mechanism (Pavlović, 2013, p. 296), foresees that certain institutes of the general part of the Criminal Code, such as mitigation of punishment, parole and statute of limitations, cannot be applied to the perpetrators of the aforementioned criminal acts against minors. In addition, the commission of one of these criminal acts entails the occurrence of certain legal consequences of the conviction, the application of special measures against the perpetrator and the keeping of prescribed records of the perpetrators of these criminal acts. However, the provisions of the ZPM “will not be automatically applied to all perpetrators of the criminal acts listed in Article 3 of the ZPM” (Dragojlović, 2022, p. 89). In order “for the provisions of this law to be applied, it is necessary that the qualifying circumstance be met during the execution of the criminal act: that the act was committed against a minor, that is, that the minor was harmed by the criminal act” (Dragojlović, 2022, p. 89).

It seems that the most dilemma, at least as far as the professional public is concerned, is caused by the provision of Article 5 of this law entitled “Prohibition of mitigation of punishment and parole and non-statutory limitation of criminal prosecution and execution of punishment”. It prohibits the application of the three general institutes of criminal law to the perpetrators of any of these crimes. The biggest problem is created by the first of the mentioned three prohibitions, the prohibition on mitigation of punishment. It further complicates the situation regarding the already existing ban on mitigation of punishment from Article 57, paragraph 2, which was introduced in the Criminal Code, which refers to the following criminal acts, i.e. some of their forms: kidnapping (Article 134, paragraphs 2 and 3), rape (Art. 178), adultery of a helpless person (Art. 179), sexual act with a child (Art. 180), extortion (Art. 214, paragraphs 2 and 3), unauthorized production and distribution of narcotic drugs (Art. 246, paragraphs 1 and 3), illegal crossing of state borders and people smuggling (Art. 350, paragraphs 3 and 4) and human trafficking (Art. 388). It is observed that some of the mentioned criminal offenses are from the Criminal Code (rape, Article 178, paragraphs 3 and 4 of the CC; rape of a helpless person, Article 179, paragraphs 2 and 3 of the CC and rape of a child, Article 180 CC) already contained in this



provision of the CC, so listing them in that context in this law was superfluous (Ristivojević, 2013, p. 331).

However, the other crimes from this law were not in the regime of the prohibition of mitigation of punishment until its adoption, and thus the circle of criminal offenses for which it is no longer possible to mitigate the punishment has been expanded. With these provisions of the CC and ZPM on the prohibition of mitigation of punishment for certain criminal acts, mitigation of punishment has ceased to be a general institution in our criminal law because it is not applied to all, but only to some (albeit a much larger number) of criminal offenses (Delić, 2010, p. 137).

Such solutions on the mitigation of punishment from the Criminal Code and the Law on Special Measures for the Prevention of Criminal Offenses Against Sexual Freedom against Minors not only reduce the court's room for maneuver in certain situations, but also disrupt the existing relationships between the prescribed punishments for certain criminal offenses, leading to illogical and unfair situations. Thus, the perpetrator of the criminal act of rape, when the victim is a minor (Art. 178, paragraph 3), can be sentenced to a minimum of five years in prison, even if the crime was attempted or the perpetrator was significantly impaired (no mitigation), and if the same perpetrator killed the same minor, he could (with the mitigation allowed here) be punished for at least three years (Đorđević & Simeunović Patić, 2015, p. 238). The illogical situations that can lead to the application of provisions on the prohibition of mitigation of punishment for certain criminal offenses can sometimes in practice lead the court to, guided by the principle of fairness, look for a way out of the situation in changing the legal qualification of the offense (Stojanović, 2012, p. 10), standing to the point of view that it is more acceptable to unjustifiably determine a milder legal qualification of the act, than to impose an unfairly high sentence on the perpetrator for the act he actually committed. Such provisions directly disavow certain institutes of the general part of the CC and cancel the difference between, for example, attempted and completed criminal offense, complicity and execution, significantly reduced sanity and insanity, etc. (Ristivojević, 2013, p. 326).

The main "operational provisions of this law are contained in Articles 6 and 7. Thus, Article 6 of the Law on Special Measures regulates the legal consequences of a conviction. Namely, a conviction for a criminal offense specified in Article 3 of this law necessarily entails the following legal consequences: 1) termination of public office; 2) termination of employment, i.e. termination of calling or profession related to work with minors; 3) prohibition of acquiring public positions; 4) prohibition of establishing an

employment relationship, i.e. performing a calling or occupation related to work with minors” (Law on Special Measures for the Prevention of the of criminal offenses against sexual freedom against minors, 2013). Paragraph 2 of this provision stipulates that “the legal consequences of the conviction from paragraph 1 of this article shall take effect on the day the judgment becomes final. Regarding the duration of these legal consequences of a conviction, it is prescribed that the legal consequences of a conviction from paragraph 1 point 3) and 4) of this law last for 20 years, and, according to an express provision, the time spent serving a prison sentence is not included in the duration of the legal consequences of a conviction. The judgment from paragraph 2 of this article must also be delivered to the convicted person’s employer”.

Therefore, “a clear conclusion can be drawn that with regard to points 3 and 4, i.e. the ban on acquiring public positions and the ban on establishing an employment relationship, i.e. performing a calling or occupation related to working with minors, their duration is precisely determined in advance to a duration of 20 years, and there is no possibility of a shorter duration of these legal consequences of conviction in these cases. This type of prescription can only be justified from the perspective of the legislator’s effort to be particularly punitive. However, looking at it from the aspect of criminal sanctioning, setting a fixed duration of legal consequences in advance and for such a long period of time, cannot be fully accepted” (Dragojlović, 2022, p. 91).

Moreover, Article 7 of the ZPM foresees special measures “that are imposed on a convicted person, which represent the main motive for the adoption of this special law. Thus, according to the perpetrator of the criminal offense referred to in Article 3 of this law, after serving the prison sentence, the following special measures are implemented: 1) mandatory reporting to the competent authority of the police and the Administration for the Execution of Criminal Sanctions; 2) prohibition of visiting places where minors gather (kindergartens, schools, etc.); 3) mandatory visit to professional counseling centers and institutions; 4) mandatory notification of change of residence, place of residence or workplace and 5) mandatory notification of travel abroad”.

Paragraph 2 of the same article prescribes that “the measures from paragraph 1 of this article shall be implemented 20 years after the prison sentence has been served, and paragraph 3, that after the expiration of every four years from the beginning of the application of the special measures from paragraph 1 of this article, the court that issued the first-instance judgement, ex officio decides on the need for their further implementation. A request for reconsideration of the need for further implementation of special measures

from paragraph 1 of this article can be submitted by the person to whom these measures refer, and the request from can be submitted to the court that issued the first-instance verdict after the expiration of every two years from the beginning of the application of special measures”.

In addition, Article 13-15 of the ZPM stipulates that “the ministry responsible for judicial affairs keeps special records on persons convicted of criminal offenses from Article 3 of the Law. This is the de facto registry of sex offenders against minors” (Dragojlović, 2022, p. 93), which is referred to in the SE Convention, i.e. in its Article 37. From this, it can be concluded that, from a normative point of view, Serbia has assimilated its criminal legislation for international legal obligations. However, according to Dragojlović (2022, p. 87 et seq.), even after 10 years since its adoption, the ZPM has not yet started to be applied in its entirety, so as a first step it would be necessary to start with the full implementation of this law.

#### **4. Domestic violence and protection of the child as a victim**

Violence against children is a phenomenon as old as human civilization, which leaves multiple and long-lasting consequences on the development of the child as a person, and often ends in death. Due to the child’s specific biopsychological status, which is accompanied by helplessness, dependence and vulnerability, there is a danger and risk of the child’s victimization by various forms of violence. A child can be victimized directly, when he is a direct victim of violence, or indirectly, when he witnesses violence against other family members. Violence against children represents the most difficult form of family violence and violence in general, considering the physical and psychological characteristics of the victims, the relationship of trust, emotional connection and the duty of care by those to whom children are entrusted (Puhača, 2021, p. 24).

Broader understandings of the term “abused child” include a child whose normal growth and development is prevented and threatened. According to these explanations, abuse includes not only brutal physical punishment of children, which can lead to severe physical injuries and even death, but also gross neglect of the child’s physical and psychological needs (Radovanović, 2002, p. 99). In one of the broadest definitions of abuse, it is especially emphasized that it is a continuum – long-term behavior that has taken the form of a pattern that violates or threatens the child’s right to life and development and that includes physical abuse, sexual abuse and child neglect (Obretković, 1997, p. 9).

The General Protocol for the Protection of Children from Abuse and Neglect, under neglect, is the concession of the care provider – the parent, i.e. another person who has assumed parental responsibility or the obligation to care for the child, even for a short time, to ensure the child's development in all areas: health, education, emotional development, nutrition, housing, and safe living conditions, within the reasonably available means of the family, or care provider, which causes or is likely to impair the child's health, or physical, mental, spiritual, moral or social development (Bjelajac & Merdović, 2019, pp. 196–197). Physical abuse of children, according to the General Protocol, is that which leads to actual or potential physical injury to a child, as a result of an act or omission, which can reasonably be considered to be within the domain of control by a parent, or a person in a position of responsibility, power or trust in relation to the child (Puhača, 2021, p. 25). Under psychological abuse of children, which can occur independently, or accompanied by some other form of abuse, is meant such a relationship or behavior of the parents that neglects, endangers, underestimates, insults or verbally attacks the child's personality and manifests negative feelings, or deprives the child of support (Milosavljević, 1998, p. 43), the most common forms of psychological abuse of children are: locking them in a dark basement, leaving the child alone in the apartment, insults, cursing, alcoholism of the father or mother, killing a beloved animal and the like.

And in protecting the family, that is, family members from violence, the domestic legislator intervened with the instruments of criminal legislation and provided, as a special offense from Article 194 of the CC, the criminal offense of domestic violence.<sup>3</sup>

In the light of Article 194 of the CC, the term domestic violence means behavior by which one family member endangers the physical integrity,

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<sup>3</sup> Article 194 of the CC: (1) Whoever, by using violence, by threatening to attack life or body, by insolent or reckless behavior endangers the tranquility, physical integrity or mental state of a member of his family, shall be punished by a fine or imprisonment of up to one year (three months to three years) (2) If during the execution of the offense referred to in paragraph 1 of this article, a weapon, dangerous tool or other means suitable for seriously injuring the body or seriously impairing health was used, the perpetrator will be punished with imprisonment from three months to three years (six months to five years). (3) If, as a result of the acts referred to in paragraphs 1 and 2 of this article, serious bodily injury or severe health impairment occurred, or were committed against a minor, the perpetrator shall be punished by imprisonment from one to eight years (two to ten years). (4) If, as a result of the acts referred to in paragraphs 1, 2 and 3 of this article, the death of a family member has occurred, the perpetrator shall be punished with imprisonment of three to twelve years (three to fifteen years) (5) Whoever violates the protection measures against domestic violence determined by the court on the basis of the law, shall be punished by a fine or imprisonment of up to six months (three months to three years and a fine).

mental health and tranquility of another family member. This includes in particular: inflicting or attempting to inflict bodily harm, causing fear by threatening to kill or causing bodily harm, forcing sexual intercourse, inducing sexual intercourse or sexual intercourse with a person under the age of 14 or a disabled person, restricting freedom of movement or communication with third parties, insults, as well as any other insolent, reckless and malicious behavior.

However, looking at the incrimination from the Criminal Code, we can conclude that special protection is provided to a child only by the fact that an attack directed against a child (that is, a minor) is qualified as a more serious form of this criminal offense, while special protections and incriminations, or special measures, such as there are no acts against sexual freedom.

The main regulation that contains criminal material and procedural provisions on the position of minors in criminal proceedings is the Law on Juvenile Offenders and Criminal Protection of Minors (ZOM), which entered into force on January 1, 2006. In this way, “juvenile criminal law was formally separated from the Criminal Code, that is, the Code of Criminal Procedure and the Law on Execution of Criminal Sanctions. Today, in the Republic of Serbia, the ZOM is the basic, direct source of juvenile criminal law, which, as a special regulation, has primacy in application to juvenile perpetrators of criminal acts, and under certain legal conditions also to adults” (Jovašević, 2008, p. 468). Thus, therefore, ZOM represents the *lex specialis* in relation to the Criminal Procedure Code, while the provisions of the CPC, as well as other regulations in the field of criminal law, pursuant to Article 4 of the ZOM, are applied subsidiarily to those issues that remain outside the ZOM regulations, i.e. they will be applied when they do not contradict the provisions ZOM.

When “conducting proceedings for criminal acts committed to the detriment of minors, all persons participating in the proceedings, especially the public prosecutor and judges in the panel, shall treat the injured party with particular care, while taking into account his age, personality characteristics, education and the circumstances in which lives, and all in order to prevent possible harmful consequences of the procedure on his personality and development” (Škulić, 2009, p. 56).

It is extremely important to point out that, in accordance with the provisions of Article 157 (The Law on Juvenile Offenders and Criminal Protection of Minors, 2005), criminal proceedings for criminal offenses from Article 150 of this law are urgent. This provision is particularly important in order to shorten the period of uncertainty, fear and discomfort experienced by a minor injured person, and to enable a trial in the shortest possible time,

without violating the defense rights, and so that the child's recovery and social reintegration in society.<sup>4</sup>

## 5. Concluding considerations

The importance of protecting the rights and position of the child is exceptional. This is particularly evidenced by the intensive and extensive activity of the international community in terms of regulating the rights, position and status of children when it comes to certain negative social phenomena such as crimes against sexual freedom, prostitution, child trafficking and the like.

As we could see, as a result of extensive normative activity at the international level, both universal and regional, high standards have been set regarding the material and procedural position of the child in proceedings for various crimes. Contracting states are generally required to prescribe certain minimums, criminalize certain actions and ensure respect for the best interests of the child. These efforts are particularly embodied in the UN Convention on the Rights of the Child from 1989 and the so-called Lanzarote Convention of the Council of Europe.

Acting in accordance with international legal obligations, our country has included in its legal texts certain incriminations of criminogenic actions where women appear as persons injured by a criminal act. Also, Serbia has passed special punitive-preventive laws, which aim to deter from committing criminal acts against the sexual freedom of minors, but also to impose particularly heavy sanctions on those who commit such acts.

In the field of child protection from domestic violence, however, the domestic legislator has not yet developed its normative activity to the full extent, from the aspect of criminal law protection. Observing *de lege ferenda*,

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<sup>4</sup> Aggravated murder (Art. 114), inducing suicide and assisting in suicide (Art. 119), grievous bodily harm (Art. 121), kidnapping (Art. 134), rape (Art. 178), sexual abuse of a helpless person (Art. 179), sexual abuse of a child (Art. 180), sexual abuse of position (Art. 181), illicit sexual acts (Art. 182), pimping and facilitating sexual intercourse (Article 183), intermediation in prostitution (Art. 184), showing pornographic material and exploiting children for pornography (Art. 185), extramarital union with a minor (Art. 190), taking of a minor (Art. 191), change of family status (Art. 192), neglect and abuse of a minor (Art. 193); domestic violence (Art. 194), failure to provide maintenance ( Art. 195 ), incest (Art. 197), robbery (Art. 205), aggravated robbery (Art. 206), extortion (Art. 214), enabling the consumption of narcotic drugs (Art. 247), war crimes against the civilian population (Art. 372), human trafficking (Art. 388), trafficking in children for adoption (Art. 389), establishing a slave relationship and transporting persons in a slave relationship (Art. 390).

the domestic legislator would be justified in passing a special preventive-punitive law like the Law on Special Measures when it comes to criminal acts against the sexual freedom of minors.

Phenomena such as attacks on the sexual freedom of children and minors in general, as well as domestic violence where children often appear as victims, whether direct or indirect, cannot be eradicated by mere normative prescriptions. It is only a necessary but not sufficient step in the fight against these phenomena. Therefore, it would be desirable to start applying the existing laws in their entirety, first of all by forming a register in terms of the Law on Special Measures, and further consistent and full implementation of these laws, but also deeper cooperation of national and international police agencies, which will be managed only by one principle: the best interest of the child.

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## **POJEDINI ASPEKTI POLOŽAJA I PRAVA DETETA KAO ŽRTVE KRIVIČNIH DELA**

**REZIME:** Deca, kao i maloletnici uopšte, predstavljaju jednu od najosetljivijih društvenih grupa, te, sledstveno, krivična dela naročito teško pogađaju decu. Iz ovog razloga, domaći zakonodavac, kao i većina drugih, kao teži ili najteži oblik određenog krivičnog dela, odnosno kao kvalifikatornu okolnost inkriminiše kada je delo učinjeno prema detetu. Međutim, pored toga što u okviru krivičnog materijalnog zakonodavstva propisuje kvalifikovane oblike krivičnih dela kada se kao žrtva javljaju deca, zakonodavac, u okviru maloletničkog krivičnog zakonodavstva, ali i drugih specijalnih propisa, propisuje i druge mere uperene prema poboljšanju i zaštiti položaja deteta u krivičnom postupku. Ovo zbog toga što zaštita dece, kao žrtava krivičnih dela, nije samo pravno pitanje, već ono predstavlja društveni i moralni imperativ koji se mora shvatiti ozbiljno kako bi se osiguralo da sva deca dobiju neophodnu zaštitu koja je potrebna za njihov rast i razvoj. U smislu iznetog, ovaj rad ukazuje na regulisanje

položaja deteta kao žrtve krivičnog dela, prvenstveno na nacionalnom nivou, polazeći od opštih standarda zaštite, do pojedinih rešenja u nekim od specifičnih pojava oblika kriminaliteta gde se deca često javljaju kao žrtve – porodično i seksualno nasilje.

**Ključne reči:** zaštita dece, krivičnopravna zaštita, nasilje u porodici, seksualno nasilje.

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