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Building a Europe for and with children

Draft Law on Barnahus for the Republic of Slovenia:

CHILD PROTECTION IN CRIMINAL PROCEEDINGS AND COMPREHENSIVE TREATMENT OF CHILDREN IN THE CHILDREN 'S HOUSE ACT

(1 June 2020)

The original Slovenian version of the Draft Law on Barnahus was launched for public consultation procedure on 4 June 2020 by the Ministry of Justice of the Republic of Slovenia.[1]

This English translation (1 July 2020) is an informal translation provided by the joint EU DG Reform – Council of Europe project Supporting the implementation of Barnahus in Slovenia (2019-2021)[2].

The information contained in the draft Law, including in its informal English translation, does not necessarily reflect the official policy of the Council of Europe.

[1] Available at : https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11379

[2] The project supports Slovenia in establishing and operating their first Barnahus for child victims of sexual abuse in line with international standards and promising European practices. In close cooperation with the Ministry of justice of the Republic of Slovenia, this will be achieved through a series of activities aimed at reviewing relevant laws and policies, developing interagency strategies, tools and procedures, training professionals working with children and raising public awareness of child sexual abuse in Slovenia. The project is a second phase to the joint EU DG REFORM-CoE project "Feasibility Study for setting up Barnahus" (2018-2019) and builds on its results. See more at: https://www.coe.int/en/web/children/barnahus-project-in-slovenia.

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CHILD PROTECTION IN CRIMINAL PROCEEDINGS AND COMPREHENSIVE TREATMENT OF CHILDREN IN THE CHILDREN 'S HOUSE ACT

I. INTRODUCTION

Slovenia has a generally well-developed system of child protection, which is harmonised with international standards and ensures a high level of safeguarding of the rights and well-being of all children. International comparisons in this area give Slovenia a high ranking, often at the very top of various scales, metrics and indicators.[3]

The competent institutions in the Republic of Slovenia have also adopted a number of decisions in recent years, ensuring the implementation of activities aimed at further improving the situation and life of children. First and foremost, we must point out the adoption and entry into force of the Family Code, the basic principle of which is to assert the fundamental interests of the child, as well as the amendment of the Human Rights Ombudsman Act, which governs the area of child advocacy and ensures that every child is heard in proceedings that concern him or her. Last but not least, the Resolution on Family Policy 2018-2028, which provides guidelines and measures for the realisation of children's rights in key areas, was adopted in 2018.

The bill derives from the awareness that the area of protection and quality of life of children needs to be constantly improved as numerous violations of rights are still being registered in Slovenia.[4] The bill refers to the adequate protection of children involved in criminal

[3] See: https://www.gov.si/novice/30-let-konvencije-o-otrokovih-pravicah/ (30 May 2020

[4] The violations observed in Slovenia mainly concern poverty, unequal opportunities for education, abuse and violence, poor access to paediatric psychiatric care, dramatic drop-outs of Roma children in primary schools and the inadequate protection and care for migrant children, especially unaccompanied children. Ibid.

proceedings, either as juvenile injured parties (victims) or witnesses, but also as juvenile offenders, and it governs their comprehensive treatment in the Children's House based on the Barnahus model, which refers primarily to the comprehensive treatment of child victims or witnesses of crimes against sexual integrity.

The Children's House (Barnahus) project has been supported by the Government of the Republic of Slovenia in its decision dated 8 June 2017, whereby it instructed the Ministry of Justice to appoint an inter-ministerial working group to implement the project. In view of all the calls and findings, in early 2018 the Ministry of Justice agreed with representatives of the European Commission and the Council of Europe (the joint EU SRSS-CoE project) to ensure co-financing the implementation of the Children's House (Barnahus) project, modelled on the Icelandic and Scandinavian concept, in order to provide all children affected by abuse with a prompt and effective process of identifying all the circumstances of the abuse and with appropriate therapy. The Minister of Justice presented the Children's House project to the public in June 2018.[5]

1. ASSESSMENT OF THE SITUATION AND REASONS FOR ADOPTING THE BILL

1. 1. Applicable regulation

Under the existing regulation, the treatment of juvenile victims or witnesses of crime, especially sexual and other violent criminal offences, is not regulated in a way that would treat child victims or witnesses in a comprehensive manner. Nor do the existing laws provide adequate child-friendly regulations that would also provide comprehensive support and successfully prevent secondary victimisation. This area is currently governed to a certain extent by the Criminal Procedure Act (hereinafter: ZKP),[6] which provides certain legal options for the appropriate treatment of child victims or witnesses of certain criminal offences.

This section presents a general overview of prosecution of criminal offences in which children or minors are victims; the current regulations in criminal proceedings and the treatment of juvenile victims or witnesses of crime; the relevant international conventions that are in effect in the Republic of Slovenia and are part of its acquis; and the relevant Council of Europe and

[5] See more about this at http://www.varuh-rs.si/sporocila-za-javnost/novica/hisa-za-otroke-predstavljena-javnosti/ (30 May 2020

[6] Official Gazette of the RS, No. 32/12 – official consolidated version, 47/13, 87/14, 8/16 – Constitutional Court decision, 64/16 – Constitutional Court decision and 65/16 – Constitutional Court decision.

national guidelines. Numerous calls for changes to the existing regulations in this area are also presented at the end of this section.

1.1.1. Prosecution of crimes the victims of which are children and minors

In 2019, the district state prosecutors' offices received criminal complaints for a total of 1,793 criminal offences (1,791 in 2018, 1,603 in 2017 and 1,258 in 2016) committed to the detriment of children – persons under 18 years of age. At the level of the entire country, such crimes continued to show a rising trend, but the increase was minimal (two more criminal offences) compared to the steep rise in the previous year.[7] The number of complaints received decreased from 2013 to 2015, remained the same in 2016, then increased by as much as 27.4% in 2017, and by an additional 11.7% in 2018.[8] With the transfer of unresolved complaints from previous years (904 criminal offences), state prosecutors decided on criminal complaints for a total of 2,697 criminal offences in 2019, a 47% rise compared to the periods before 2017.[9] The table below shows the increase in prosecutorial decisions on criminal complaints for crimes with children and minors as victims for the 2015-2019 period.

Year	2015	2016	2017	2018	2019
Number of criminal offences with children and minors as victims for which criminal complaints were filed	1,838	1,838	2,259	2,471	2,697

Table 1: Number of criminal complaints processed by prosecutors for criminal offences with children and minors as victims of crime in the 2015-2019 period.
Source: Joint Report on the Work of State Prosecutors' Offices for 2019, p. [?] and for 2018, p. 180.

The increase in the number of criminal offences for which complaints were filed confirms to some extent the increased level of social sensitivity to violence and other crimes against children, which is also reflected in the greater willingness to report them, so there is a positive shift in this area. On the other hand, the significant increase in the number of detected criminal offences against the most vulnerable groups calls for even greater concern in this area, both

[7] Joint Annual Report of State Prosecutors' Offices for 2019, p. 178 (30 May 2020 Available at: https://www.dt-rs.si/letna-porocil
[8] and Joint Report of State Prosecutors' Offices for 2018, p. 180 Available at: https://www.dt-rs.si/letna-porocila
[9] Joint Annual Report of State Prosecutors' Offices for 2019, p. 178

in terms of preventive work and through the use of appropriate forms of law enforcement, aimed at gradually reducing and eliminating the causes of this type of crime.[10]

The most numerous complaints in 2018 were those for the following criminal offences: [11]

- neglect and cruel treatment of children, under Article 192 of the Criminal Code (KZ-1)[12] (866 cases),
- abduction of a minor, pursuant to Article 190 of the KZ-1 (657 cases),
- sexual assault on a person under the age of 15, under Article 173 of the KZ-1 (168 cases),
- display, production, possession and distribution of pornographic material under Article 176 of the KZ-1 (44 cases), and
- domestic violence under Article 191 of the KZ-1 (31 cases).

Other criminal offences (infanticide under Article 119 of the KZ-1; solicitation of persons under the age of 15 for sexual purposes under Article 173.a of the KZ.1; violation of sexual integrity through abuse of position under Article 174 § 2 of the KZ.1; abuse of prostitution under Article 175 § 2 and § 3 of the KZ-1, change of family status under Article 189 of the KZ-1, violation of family obligations under Article 193 of the KZ-1, non-payment of child maintenance under Article 194 of the KZ-1; and incest under Article 195 of the KZ-1) were smaller in scope, occurred individually or were not processed at all.[13]

There were also other criminal offences committed to the detriment of children in which the child as a victim was not the characteristic object of the criminal offence, e.g. crimes against life and limb, honour and reputation, human health, property, safety of public transport, etc. Consequently, state prosecutors' offices do not monitor or analyse them separately in the group of criminal offences in which children and minors are victims.[14]

The reports of the state prosecutors' offices for 2019 and 2018 show certain characteristics of the processing of crime against children, in particular:

- They are characterised by a high share of rejected complaints against perpetrators of crimes against children (1,241 [for] 2019 alone, or 49% of all processed complaints;

[10] Ibid., p. 181.
[11] Joint Report of State Prosecutors' Offices for 2018, p. 180 Available at: https://www.dt-rs.si/letna-porocila (30 May 2020
[12] Official Gazette of the RS, No. 50/12 – official consolidated version, 6/ 16– corr., 54/15, 38/16, 27/17 and 23/20.
[13] Ibid.
[14] Ibid.

1,122 for 2018, or 69.8%; 988 complaints [translator's note: the year seems to be missing here], or 64.8%), which is indicative of the specific nature of these criminal offences or, more specifically, the relationship between participants in criminal proceedings (with the exception of crimes that contain elements of sexuality).[15]

- There were more indictments, which indicates a higher quality of pre-trial proceedings (police) as well as better performance on the part of the state prosecutor's office.[16]
- There is a high share of convictions as well as successful prosecution appeals in cases where the victims are children. These shares are shown in the table below:

Year	2015	2016	2017	2018	2019
Proportion of convictions where the victims are children	74%	81%	84.4%	81.1%	82%
Proportion of successful prosecution appeals	52%	40%	50%	29%	54%

Table 2: Number of convictions in cases where the victims are children and the proportion of successful prosecution appeals by year for the period 2015-2019.
Source: Joint Report on the Work of State Prosecutors' Offices for 2019, p. [?] Joint Report on the Work of State Prosecutors' Offices for 2018, p. 182.

- Regarding the profiles of the perpetrators themselves, they are most often adult men of all ages and levels of education, often related or otherwise more closely linked to the victims. Women are processed mainly as perpetrators of the crime of child neglect and in cases of the crime of abduction of minors in connection with the child's contacts with the father, as children are in most cases entrusted to the care and upbringing of the mother.
- The victimised children are from all age groups, with girls outnumbering boys.

Penal policy regarding crimes in which the victims are children generally continues to follow the trend of conditional sentences with appropriate special conditions, often with protective supervision, which can reduce the causes of crime and ensure continued coexistence in the family community where possible. State prosecutors propose custodial sentences for the crimes of [violation of] the child's sexual integrity[17] and the crimes of displaying, producing,

[15] For more on this, see the Joint Report on the Work of State Prosecutors' Offices for 2019, p. 179.
[16] Ibid.
[17] Sexual assaults have varying degrees of intensity and include all known forms of abuse or interference with the sexual integrity of children, including those well under 15 years of age.

possessing and transmitting pornographic material, while custodial sentences are usually imposed on offenders whose crimes are committed over longer periods of time and involve continuous and intense violence, and on special re-offenders.[18] Custodial sentences range approximately from three years (e.g. for sexually abusing a six-year-old child) to four years and six months (e.g. for publishing hundreds of thousands of image and video files depicting child sexual abuse).[19] In 2018, detention was ordered in 32 cases in which the victims were children, mainly due to the risk of re-offending.[20]

As before, state prosecutors' offices warned in 2019 of difficulties in detecting the criminal offences in question since obtaining evidence depends on the existence of sufficiently substantiated suspicion as a condition for issuing an order for a house search or a search of electronic devices. According to prosecutors, hearing children during criminal proceedings still poses a problem. The prosecutor's office also emphasises that, as in previous years, there are not enough suitably qualified staff or suitable premises for hearing children, including premises that would enable video conferencing with the courtroom. Obtaining evidence is also made difficult by the fact that not all participants have the necessary skills to deal with child victims of crime, although the mandatory training of all staff and experts involved in criminal proceedings where children are victims derives from Guideline 14 of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, Article 5 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and Article 61 of EU Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime. Prosecutors estimate that there are not enough suitably qualified experts, psychologists and paediatric psychiatrists.[21]

The amendment to the Criminal Procedure Act (ZKP-N) with changes aimed at strengthening the procedural position of the victims or safeguarding their rights and interests is definitely an important step towards a more efficient course of criminal proceedings in such cases. Article 236 § 3 of the ZKP should be pointed out in terms of the provision of legal instruction to privileged witnesses as it gives the court discretion in deciding on hearing minors who, given their age and mental development, are unable to understand the meaning of the right not to testify. Last but not least, the continuous training of public prosecutors in this area also has an important impact on the successful completion of court proceedings, as well as on the reduction of harmful consequences for children who become victims of crime.[22]

[18] Joint Report of State Prosecutors' Offices for 2018, p. 182
[19] Ibid.
[20] Ibid., p. 185.
[21] Joint Report of State Prosecutors' Offices for 2019, pp. 182-183.
[22] Joint Report of State Prosecutors' Offices for 2019, p. 183

1.1.2 Criminal proceedings and treatment of juvenile victims or witnesses of crime in criminal proceedings

The current regulation governing the hearing of juvenile witnesses in the Criminal Procedure Act is fragmented – even after the implementation of Directive 2021/29/EU. Different parts of the ZKP govern various court hearing regimes for different categories of juvenile victims and witnesses. The table below provides an overview of the existing provisions governing measures aimed at protecting juvenile witnesses and victims in criminal proceedings.

Table 1: Comparison of measures to protect juvenile witnesses and victims under the Criminal Procedure Act

The victim

- Principle of careful and considerate conduct, Article 18a of the ZKP
- Prevention of unwanted contact with the alleged perpetrator, Article 65 § 5 of the ZKP
- Protection of the secrecy of investigative acts (Article 188 of the ZKP) and exclusion of the public from the trial, Article 295 of the ZKP

Victims of violence and other vulnerable victims

- Presence of a person selected by the victim during (pre)criminal proceedings, Article 65 § 4 of the ZKP

Special needs victims

- The presence of a person of his or her choice, Article 240 § 5 of the ZKP
- Optional hearing with the assistance of an expert, Article 240 § 5 of the ZKP
- Optional hearing on specially adapted premises, Article 240 § 6 of the ZKP
- Optional waiver of a direct hearing at the trial, Article 331 § 5 of the ZKP

Juvenile victims

- Mandatory representative, Article 65 § 3 of the ZKP
- Presence of a person selected by the victim during (pre)criminal proceedings, Article 65 § 4 of the ZKP
- Optional waiver of a direct hearing at the trial, Article 331 § 5 of the ZKP

Victims under the age of 15, victims of acts referred to in Article 65 § 3 of the ZKP

- Mandatory recording of the hearing, Article 84 of the ZKP
- Mandatory removal of the defendant from the hearing, Article 178 § 4 of the ZKP
- Mandatory hearing on specially adapted premises, Article 240 § 6 of the ZKP
- Mandatory waiver of a direct hearing at the trial, Article 331 § 5 of the ZKP

Witnesses

- Protection of at-risk witnesses, Article 240.a of the ZKP
- Video conference, Article 244.a of the ZKP

Juvenile witnesses

- Duty of considerate conduct, Article 240 § 4 of the ZKP
- Optional hearing with the assistance of an expert, Article 240 § 4 of the ZKP

Witnesses under the age of 15

- The presence of a person trusted by the witness, Article 240 § 5 of the ZKP

The analysis of the measures for the protection of children who are witnesses or victims first shows an important discrepancy between the measures available for the protection of the mental integrity of juvenile witnesses and those available for the protection of the mental integrity of juvenile victims. Irrespective of whether the child is in the role of a witness or (also) in the role of a victim, he or she is entitled to special protection and care (Article 56 § 1 of the Constitution of the Republic of Slovenia). This special care must be provided without any discrimination (Article 2 of the UN Convention on the Rights of the Child), with the best interests of the child being a primary consideration, especially in proceedings conducted before public authorities (Article 3 of the Convention).

An additional presentation of the existing regulation and the reasons for its changes are given in more detail in Section 1.2 Reasons for the adoption of the bill – in Sections 1.2.1 – 1.2.6.

1.1.3 International conventions that define the minimum standard of protection of children's rights, including in criminal and other proceedings, and which are part of the legal system of the Republic of Slovenia

The main international conventions that ensure the minimum standard of protection of children's rights, including in criminal and other proceedings, and which also apply in the Republic of Slovenia, are as follows:

- The 1989 UN Convention on the Rights of the Child,[23]
- European Convention on the Exercise of Children 's Rights,[24] and

[23] Notification of Succession Concerning the UN Convention Act, Official Gazette of the Republic of Slovenia – International Treaties, No. 9/1992 (RS 35/1992). Under this Notification of Succession Act, in effect since 17 July 1992, the Republic of Slovenia inherited the UN Convention on the Rights of the Child from the Socialist Federal Republic of Yugoslavia (SFRY).
[24]Ratification of the European Convention on the Exercise of Children's Rights Act, Official Gazette of the Republic of Slovenia – International Treaties, No. 26/99.

- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed on 25 October [200?] (Lanzarote Convention).[25]

The Convention on the Rights of the Child, adopted by the United Nations General Assembly more than 30 years ago, is based on four main principles or rights of all children: non-discrimination, the best interests of the child, the right to survival and protection against any kind of exploitation, and the participation and participation of children. To date, as many as 196 countries have signed the Convention, and Slovenia is also one of the parties to the Convention.

Article 1 of the Convention on the Rights of the Child specifies that a child is any human being below the age of eighteen years, unless the law applicable to children stipulates that adulthood is attained earlier; Article 2 prohibits discrimination; and Article 3 states that the best interests of the child must be a primary consideration in all activities concerning children. Article 12 of this Convention also requires that States Parties assure to children who are able to form their own views the right to express them freely in all matters relating to them, the views of the child being given due weight in accordance with the age and maturity of the child. To this end, the child will in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting him or her, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law[26] In its Concluding Observations on the Combined Third and Fourth Period Report of the Republic of Slovenia, the UN Committee on the Rights of the Child also notes with concern that there are no appropriate programmes available in Slovenia for helping children who are victims of sexual violence.[27]

The European Convention on the Exercise of Children's Rights also applies to children who have not reached the age of 18 years (Article 1 § 1). The object of this Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a

[25] Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse Act, Official Gazette of the Republic of Slovenia – International Treaties, No. 13/13. The Convention entered into force on 1 July 2010, and for Slovenia on 1 January 2014. See also Council of Europe Treaty Series, No. 201.
[26] See also United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, UN Doc., ECOSOC Res 2005/20, 2005.
[27]United Nations, Committee on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Report of the Republic of Slovenia, adopted by the Committee at its sixty-third session (27 May – 14 June 2013), UN doc. CRC / C / SVN / CO / 3-4, § 41.

judicial authority. (Article 1 § 2). For the purposes of this Convention, proceedings before a judicial authority affecting children are family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children.
(Article 1 § 3), and therefore the Convention is not directly applicable for the purpose of criminal proceedings. Nevertheless, the procedural rights of children as defined in this Convention should be pointed out. These rights are: the right to be informed and to express one's opinion in proceedings (Article 3), the right to apply for a special representative (Article 4) and other possible procedural rights (defined in Article 5: the right to apply to be assisted by an appropriate person of their choice in order to help them express their views; the right to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer; the right to appoint their own representative; and the right to exercise some or all of the rights of parties to such proceedings).

It is the Lanzarote Convention, which concerns the prevention, protection and criminal law in the area of combating all forms of sexual exploitation and sexual abuse of children and which promotes cooperation at the national and international levels, that is highly relevant for the subject of this bill. The Lanzarote Convention governs work with vulnerable children and is the most ambitious and comprehensive international legal instrument to date for the prevention of sexual exploitation and sexual abuse of children, the protection of children from such crimes and the prosecution of perpetrators. In its 2015 implementation report, the Committee of the Parties to the Lanzarote Convention expressly identified the Icelandic Barnahus model as an example of a promising practice.

The purpose of the Lanzarote Convention is to: a) prevent and combat sexual exploitation and sexual abuse of children; b) protect the rights of child victims of sexual exploitation and sexual abuse; c) promote national and international co-operation against sexual exploitation and sexual abuse of children (Article 1). Article 2 of the Convention defines the principle of non-discrimination. This Convention also specifies that a child is any person under the age of 18 years, (first point of Article 3), and that a victim is any child subject to sexual exploitation or sexual abuse (third point of Article 3).

The Lanzarote Convention requires that States Parties criminalise all types of sexual offences committed against children. It clearly defines the criminal offences of sexual abuse and sexual exploitation (relating to child prostitution, child pornography, child participation in pornographic performances, inducing children to commit immoral acts, soliciting children for sexual purposes, complicity and attempt – Articles 18 to 23 of this Convention). States Parties are required by the Convention to adopt appropriate legislation and measures to prevent sexual

violence, protect child victims and prosecute perpetrators. Reports on the implementation of the Convention assist States in implementing the Convention. In 2015 the focus was first on the issue of abuse in the so-called child's trust circle, which highlighted the Icelandic “children's house” (Barnahus) model as an example of good practice aimed at child-friendly hearings in relation to abuse.[28] Since then, several countries have adopted this model. The aim is to provide assistance to victims for their physical and psychosocial recovery and to ensure that investigations and criminal proceedings are carried out as a matter of priority and without undue delay and with a protective approach so as not to exacerbate the trauma suffered by the child (secondary victimisation).

In 2017, on the tenth anniversary of the entry into force of the Lanzarote Convention, Deputy Secretary General of the Council of Europe Gabriella Battaini-Dragoni pointed out the worrying fact that it is estimated that one in five children in the territory of the Council of Europe member states experiences sexual exploitation or abuse at some point. She pointed out that the trauma of such an experience can last a lifetime: it disrupts formal education, destroys career prospects and leads to a whole range of mental health problems. The Convention has raised awareness and led to changes in legislation, also improving the capacity to prevent and respond to child sexual abuse in signatory countries.[29]

1.1.4 The Council of Europe

The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice of 17 November 2010 were developed as a direct response by the Council of Europe to Resolution No. 2 on child-friendly justice, adopted at the 28th Conference of European Ministers of Justice (Lanzarote, 25-26 October 2007).[30] The Guidelines, together with the memorandum, define "child-friendly justice" as justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. The guidelines describe such justice systems as justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private

[28] See also https://www.iusinfo.si/medijsko-sredisce/dnevne-novice/206654 (8 March 2020
[29] See https://www.coe.int/en/web/portal/news-2017/-/asset_publisher/StEVosr24HJ2/content/ending-sexual-exploitation-and-abuse-of-children-towards-a-world-of-trust (8 March 2020
[30] Also available on the Ombudsman's website:: http://www.varuh-rs.si/fileadmin/user_upload/pdf/DOGODKI_-_razni/2016_2_18_-_Sodno_izvedenstvo/Smernice_Sveta_Evrope_za_otrokom_prijazno_pravosodje.pdf (31 May 2020

and family life and to integrity and dignity.[31] The fundamental principles set out in the Guidelines are: 1) the child's right to be informed and, taking into account his or her maturity, to participate; 2) the principle of the best interests of the child; 3) the principle of protection of the dignity of the child, 4) protection from discrimination. This bill is also based on these fundamental principles. Furthermore, the Guidelines emphasise as key approaches the importance of the administration of justice in a child-friendly manner at all stages of treatment, the special importance of appropriate training of professionals working with children and the importance of a multidisciplinary approach.

The Guidelines provide guidance to European governments for improving children's access to and treatment by the justice systems, whether in the civil, administrative or criminal areas. They derive from the position that justice systems cannot deny the fact that children have special needs and rights. When children are involved in court proceedings, the scales of justice can only be balanced if the best interests of the child are protected, if what is at stake is explained to the children, and if they can take part in decisions that affect them. These guidelines are therefore a kind of practical guide to the implementation of internationally agreed-upon and binding standards in both judicial and extrajudicial proceedings. The guidelines are also a response to the demands of the children themselves.[32]

In the chapter “Access to court and to the judicial process”, the guidelines also address the issues of evidence and statements by children.[33] Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.[34] Audio-visual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.[35] When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.[36]. The number of interviews should be as limited as possible and their length should be adapted to the child’s age and attention span.[37] Direct contact,

[31] Council of Europe Guidelines on Child-Friendly Justice, Chapter II, point c.
[32] http://www.svetevrope.si/sl/novice/novica_nove_smernice_sveta_evrope_za_otrokom_prijazno_pravosodje/index.html (31 May 2020
[33] Ibid, Chapter IV.D.6, pp.29-30
[34] Ibid., § 64
[35] Ibid., § 65
[36] Ibid., § 66
[37] Ibid., § 67

confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.[38] Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.[39] The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.[40]

The Guidelines also specify that Interview protocols should take into account different stages of the child's development and be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.[41] With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify.[42] A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.[43] The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined.[44]

The Guidelines also define child-friendly justice after court proceedings. They provide, inter alia, that, in particular, health care and appropriate social and therapeutic intervention programmes or measures for victims of neglect, violence, abuse or other crimes should be provided, ideally free of charge, and children and their caregivers should be promptly and adequately informed of the availability of such services.[45] The second part of the Guidelines is also worth noting, as an explanatory memorandum providing additional clarifications of individual guidelines.

In addition to its programmes aimed at child-friendly justice in general, the Council of Europe also pays attention to the development of children's homes in the Member States. As part of this support, it offers substantive support and project financing, of which Slovenia has also been a beneficiary. National guidelines and protocols for implementation were developed in Phase 1 of the project (2018), and the implementation and establishment of a functioning children's house will follow in Phase 2 (2019-2021).

[38] Ibid., § 68
[39] Ibid., § 69
[40] Ibid., § 70
[41] Ibid., § 71
[42] Ibid., paragraph 72
[43] Ibid., paragraph 73
[44] Ibid., paragraph 74
[45] Ibid., paragraph 80

The joint project of the European Commission and the Council of Europe "Barnahus/Children's House" (Phase 1) was concluded at the closing event on 9 October 2018**.** As part of the Children's House project, the National Guidelines for the Operation of the Children's House/Barnahus in Slovenia and the Plan for the Establishment, Operation and Evaluation of the Children's House in Slovenia were prepared as the basic documents for establishing such an institution in practice. The project, which was implemented from February to October 2018, was co-financed by the European Commission's Structural Reform Support Service and the Council of Europe in close cooperation with the Ministry of Justice of the Republic of Slovenia.[46]

The event ended with the ceremonial signing of the Commitment to Support and Cooperation in the Implementation of the Children's House in Slovenia.[47] The highest representatives of the Ministry of Justice, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Health, the Ministry of the Interior, the Supreme Court, the General Police Administration and the General Public Prosecutor's Office pledged to support the *establishment, development, implementation and operation of the Children's House in accordance with the National Guidelines for the Children's House/ Barnahus and the Manual for the Establishment, Operation and Evaluation of the Children's House in Slovenia, which will gradually reach the European Barnahus quality standards. Through their commitments, the signatories supported the establishment of a multidisciplinary group approach in assessment, investigation and prosecution and in referral to medical and psychological health care of children who may have been abused.*[48]

1.1.5 National Guidelines for the Children's House / Barnahus in Slovenia

The 2018 National Guidelines for the Children's House / Barnahus in Slovenia adopted in October 2018 were of exceptional importance for the establishment of the Children's House (Barnahus) in Slovenia[49]. The Guidelines proposed a Barnahus model in Slovenia that promotes coordination and group work, necessary for the timely, comprehensive, coordinated and child-friendly treatment of victims of sexual abuse. The aim is to reduce the potential shock

[46] https://www.norwaygrants.si/novice/vzpostavitev-barnahus-v-sloveniji-pot-naprej/ (30 May 2020
[47] https://rm.coe.int/barnahus-children-s-house-declaration-hisa-za-otroke/16808e4cb1 (30 May 2020
[48] Ibid. See also press releases available on-line: https://www.policija.si/medijsko-sredisce/sporocila-za-javnost/sporocila-za-javnost-gpue/95813-s-hiso-za-otroke-koncno-do-bolj-celostne-obravnave-otrok-zrtev-kaznivih-dejanj (30 May 2020), http://www.sodisce.si/okrabr/objave/2018101012175811/ (30 May 2020), https://www.sta.si/2561396/z-deklaracijo-slovesno-podprli-vzpostavitev-hise-za-otroke-v-sloveniji (30. May 2020
[49] Council of Europe and the Ministry of Justice: National Guidelines for the Children's House / Barnahus in Slovenia, Council of Europe, October, 2019.

that a child may experience as a result of reliving the experience if the child's treatment is not appropriate and unsupported, and to ensure fair judicial proceedings for all.[50] However, no legally binding obligations arise from the National Guidelines, and the Guidelines do not interfere with the applicable legislation of the Republic of Slovenia.

In their introductory section, the National Guidelines define the Barnahus model, the key common criteria for the Barnahus model, the legal and political background, sexual violence against children, and the structure and methodology. In their substantive part, the National Guidelines define the project partners, the content and purpose of the Guidelines, the purpose and objective of the Children's House, target group, organisation, tasks and responsibilities of relevant partners, forensic interview, financing, budget and cost sharing, location, record keeping, data protection and confidentiality, jurisdiction, training, monitoring and evaluation. Annex 1 provides an overview of the procedure from the start of the application to referral to the Children's House to measures in the House to monitoring.

1.1.6 PROMISE Barnahus network

At the end of November 2019, the Ministry of Justice signed the statutes of the PROMISE Barnahus Network.[51] It is a model of child-friendly treatment based on a multidisciplinary and inter-agency approach as part of what is known as MDMI services. The Icelandic model Barnahus proved to be the most successful example of this type of treatment, which the Council of Europe also emphasises in its documents. The PROMISE project, with the financial support of the European Commission, laid the foundations for cooperation in setting up MDMI services in Europe. With the statutes of the PROMISE Barnahus network, the founding members from 13 countries set the basic rules for the network's operation.[52]

PROMISE Barnahus is an international project funded by the European Union and aimed at establishing child-friendly multidisciplinary and inter-institutional treatment based on the Barnahus model. European quality standards for the Barnahus model were also developed as part of PROMISE: Guidelines for the multidisciplinary and inter-agency treatment of children who are victims or witnesses of violence.[53] They contain 10 standards: 1) key principles (the

[50] Ibid., summary
[51] On the margins of the Conference on Supporting Non-violent Childhoods, held in Helsinki on 25 and 26 November 2019.
[52] See https://www.gov.si/novice/2019-11-26-sopodpis-statuta-promise-barnahus-mreze/ (31 May 2020
[53] Lind Haldorsson, PROMISE project series, Council of the Baltic Sea States Secretariat and Child Circle, 2017 See https://www.childrenatrisk.eu/promise/standards/ (30 May 2020

best interests of the child, child participation and prevention of unnecessary delay), 2) multidisciplinary and multi-institutional (MDMI) collaboration, 3) non-discrimination, 4) child-friendly environment, 5) inter-agency case management, 6) forensic interview, 7) medical examination and care, 8) mental health assessment and therapy, 9) training, mentoring and counselling, and 10) prevention.[54]

1.1.6 Calls or proposals to improve the situation of victims and witnesses of crimes related to sexual abuse of children

Victims of sexual abuse in Slovenia point out that it is necessary to be aware of the power of sexual abuse of children. The power that the perpetrator abuses against the victim and the power of the victim to survive the acts and speak about them. Victims point out that it is extremely painful and repetitive for them to testify about what was happening to them. They felt exhausted and cheated by those who led the proceedings.[55]

In June 2013, as part of the 3rd and 4th reporting rounds under the Convention on the Rights of the Child, a coalition of non-governmental organisations prepared an alternative report that was presented to the UN Committee on Children. In it, non-governmental organizations pointed out, inter alia, that in Slovenia the rights of child victims of these crimes are not respected as they should be as not all children who were victims of these crimes received adequate professional help that would enable them to recover and return to society adequately.[56]

The Police also draw attention to this issue. The report that one in five children in Europe is a victim of sexual abuse and sexual exploitation. Any violence, especially sexual abuse of children, constitutes a serious violation of children's rights. The vulnerable victims include both girls and boys. Children find it difficult to understand that they can be sexually abused by a person they know. Stereotypes, denials, taboos, a “culture of silence”, the minimisation problem, and misrepresentation are obstacles on the way to protecting children from abuse.

[54] These guidelines are also available in Slovenian: https://rm.coe.int/zascita-otrok-pred-spolnim-izkoriscanjem-otrokom-prijazna-multidiscipl/16808acd37 (30 May 2020
[55] See https://drustvo-sos.si/projekt/prezivela-sem-spolno-zlorabo/ (29 May 2020
[56] Comments on the Second Periodical Report of Slovenia on the Implementation of the Convention on the Rights of the Child, June 2003, Information prepared by: SEECRAN – South East European Child Rights Action Network in co-operation with Slovenian NGOs, available at: https://unicef.blob.core.windows.net/uploaded/documents/Slovenia_ngo_report.pdf (30.3.2020).

In the Joint Report on the Work of State Prosecutors' Offices for 2019, the Supreme State Prosecutor's Office particularly points out that "the state prosecutor's office supports efforts to set up special units to implement professionally and legally properly conducted interviews (modelled on the Barnahus, or the Children's House) that would ensure comprehensive treatment of children who are victims of crime and it also actively cooperates through its representatives in this area as part of the Ministry of Justice. The emphasis of this approach is primarily on having the smallest possible number of interviews with the child, which are conducted by (the same) qualified professional and which are not repeated during pre-trial and criminal proceedings. Any medical examinations and therapies should be performed in a child-friendly environment, assistance should be offered to parents who are not perpetrators, and, above all, professional teams would have the opportunity to communicate with each other and monitor the child from the first testimony to the end of therapy. Such treatment would adequately provide evidence that would have probative value in court, thus avoiding the secondary victimisation of the victims."[57]

In his annual recommendation for 2017, the Ombudsman of the Republic of Slovenia also recommended that the Government should draft a bill as soon as possible that will regulate the status, management and operation of the Children's House and define the ways to coordinate cooperation between various services and bodies in dealing with child victims of crime. (Ombudsman's recommendation No. 75, 2019). [58] The Ombudsman pointed out that although the country formally ensures that children who are victims of crime receive at least legal assistance from representatives for juvenile victims of crime, this system does not really function perfectly. As we have repeatedly pointed out, representatives get involved too late and often do not have the time, let alone the appropriate skills, to work with minors. According to the ombudsman, there are too few people who enjoy the reputation and trust of other professional services dealing with children.[59] Also in his 2018 annual report, the Ombudsman pointed out that the implementation of the Children's House (Barnahus) project was extremely important for the comprehensive, one-stop-shop treatment of children.[60]

The Association against Sexual Abuse has also some time been drawing attention to the unprotected rights of child victims of abuse and sexual abuse. In 2016, it drew the attention of the Committee on Petitions, Human Rights and Equal Opportunities of the National Assembly

[57] Joint Report of State Prosecutors' Offices for 2019, p. 183
[58]Ombudsman's 2017 Annual Report, page 386 Available at: http://www.varuh-rs.si/promocija-publikacije-projekti/publikacije-gradiva/letna-porocila-priporocila-dz-odzivna-porocila-vlade/ (30 May 2020
[59] Ibid., paragraph 386
[60]Ombudsman's 2018 Annual Report, page 285, available at http://www.varuh-rs.si/promocija-publikacije-projekti/publikacije-gradiva/letna-porocila-priporocila-dz-odzivna-porocila-vlade/ (30 May 2020

to the most egregious violations of children's rights that they detected in the course of their work. According to the Association, not only do these violations deprive children of a specific right or constitute disrespect for the right, but a violation of a specific right of the child often means[61] disregarding the child's right to the need for help and support; secondary victimisation of the child; further traumatisation of the child; and engendering poor relations between child and parent and affecting relations in the child's family.

1.2 Reasons for passing the bill

1.2.1 Risk of discriminatory treatment of minors heard as witnesses in criminal proceedings

Although a distinction between juvenile victims and juvenile witnesses seems acceptable,[62] it leads to an unreasonable distinction when the procedural role of the child has a decisive influence on his or her family law relations outside of criminal proceedings. Situations which reveal the need for stronger protection of the child's mental integrity arise particularly from matrimonial disputes and disputes over the custody and upbringing of children, in which the conduct of the parents constitutes a criminal offence. The distress of a minor witness is all the greater as he or she, too, has a duty to respond to a court summons and to tell the truth. In the interest of criminal proceedings, this further increases the child's distress, which otherwise derives from the conduct of the parents or those to whom the child is entrusted for care and upbringing. Although in such cases one cannot speak of secondary victimisation of the child, the effects of criminal proceedings on the mental integrity of the child can similarly be fatal.

At the same time, different treatments of juvenile victims can also be identified in the situations of different categories of victims. Juvenile victims are subject to the indisputable presumption that they have special needs for protection (Article 143č § 3 of the ZKP). This does not mean, however, that the legislators have implemented the solutions from Articles 23 and 24 of Directive 2012/29/EU to the same extent.

Firstly, the difference between the optional and obligatory nature of certain measures for the protection of different categories of minors is important. Those measures that contribute the

[61] See https://spolna-zloraba.si/index.php/2016/02/02/nezascitene-pravice-otrok-zrtev-trpincenja-in-spolne-zlorabe-predlogi-za-obravnavo-na-komisijo-za-peticije-in-clovekove-pravice-in-enake-moznosti-v-dz/ (8 March 2020

[62] See section 1.1.2 above.

most to the uniqueness of the hearing of the victim and to the reduction of contacts with the accused are mandatory for a relatively narrow category of the most vulnerable victims, i.e. those under the age of 15 who are victims of criminal offences referred to in Article 65 § 3 of the ZKP. The remaining categories of juvenile victims, either because of their age or due to a secondary crime, will receive different, individualised protection. Individualised victim treatment is at the heart of Directive no. 2012/29/EU, in particular Article 1 § 2 and Article 23 of the Directive. However, it also follows from the Directive that individualised treatment does not allow for different victim treatment in comparable situations. The certainty of the legal regulation is therefore all the more important in the absence of a legal remedy that would enable the establishment of case law in the provision of victim protection measures. In Slovenian criminal procedural law, injured parties do not have an effective legal remedy with which they can obtain an examination of the correctness of court decisions on the implementation of measures for their protection. Therefore, there are also no mechanisms to prevent unreasonably different protection of the position of a juvenile victim when the envisaged measures are not mandatory.

And secondly, it is unacceptable to distinguish between those measures which to the greatest extent possible enable the non-repeatability of the hearing of a juvenile victim without personal contact with the alleged perpetrator: mandatory recording of the hearing and the prohibited presence of the accused during the hearing (Article 178 § 4 of the ZKP). The difference in the legal regime is important because without a specific legal basis it is not possible to provide a comparable level of protection for juvenile victims. Namely, the removal of the accused from the hearing is an interference with the rights referred to in Articles 22 and 29 of the Constitution and Article 6 of the ECHR, which require a legal basis (Article 15 § 3 of the Constitution of the Republic of Slovenia). Different ages of victims in cases of similar crimes are sufficient for different treatment.

1.2.2 Unspecified position of the expert referred to in Article 240 of the ZKP

A key solution to ensuring the best interests of the child and to protecting the victim from secondary victimisation is the possibility of a hearing with the help of an expert. (Article 240 §§ 4 and 5 of the ZKP). The Criminal Procedure Act does not specify the procedural role of an expert. Horvat (Criminal Procedure Act with Commentary, GV Založba, 2004, pp. 552-553) defines the tasks of an expert as assisting a judge in choosing the appropriate method of hearing and asking questions. Experts may also ask questions themselves, but they may not occupy the place of a judge and conduct hearings independently.

Due to this situation, an expert under Article 240 §§ 4 and 5 of the ZKP, must be distinguished from an expert who assists the court on the basis of Article 178 § 8 of the ZKP. An expert acting on this basis is summoned by a judge "to clarify individual technical or other professional issues arising in connection with the evidence obtained". Such an expert does not participate in the taking of evidence or in an investigative act.

The position of the expert referred to in Article 240 §§ 4 and 5 of the ZKP is therefore significantly more similar to the position of an expert who acts as an assistant of the court in Slovenian criminal proceedings, with a specific active procedural role in evidentiary proceedings. The expert may propose that certain evidence be taken or that items and data relevant for the findings and opinion be provided; if he or she is present at the investigative act, he or she may propose that individual circumstances be clarified or that individual questions be asked of the person being heard (Article 252 § 4 of the ZKP).

The specific solutions envisaged for the procedural position of an expert may, at most, contribute to the effectiveness of the hearing of a juvenile witness with the assistance of an expert. It is crucial that the expert also has the opportunity to actively contribute to the formulation of the content of the hearing, i.e. to identifying the facts and circumstances that should be clarified by the hearing. This means that the need to re-hear a witness is reduced with the help of specific expertise.

1.2.3 Inequality in the treatment of minors during a hearing

The ZKP does not govern the manner of ensuring the protection of children who, either as witnesses or as victims, participate in criminal proceedings. The implementation of child protection measures is therefore left to individual courts and judges.

Equality in the treatment of children requires not only the harmonisation of criteria for applying measures to protect their mental integrity. Equality of treatment also calls for the provision of a uniform approach to the implementation of these measures. The implementation of these measures therefore requires a comprehensive solution, within which (i) the specialisation and continuous upgrading of the essential expertise will be possible, (ii) an adequate spatial organisation of the hearing will be provided, (iii) adequate technical support will be provided, and (iv) focused participation by all participants in criminal proceedings will be facilitated.

1.2.4 Insufficient protection of defence rights

The best interests of the child, in particular the victim, will be best served by ensuring that the number of hearings of a juvenile witness in criminal proceedings is kept to a minimum. Under the current regulation of (pre) criminal proceedings, it is not possible to completely avoid repeatedly obtaining statements from a minor. The police are expected to first collect information from the minor (Article 148 of the ZKP), and only then will a court hearing follow. The alleged perpetrator will be able to exercise his or her rights to the greatest extent possible at the main hearing in criminal proceedings. In accordance with the principle of directness and orality of the main hearing, the court will be allowed to base its judgement only on the evidence presented at the main hearing. In principle, therefore, all evidence, including evidence obtained by hearing juvenile witnesses, should be presented at the main hearing. However, exceptions have traditionally been introduced in Slovenian criminal proceedings, allowing for the records of previous (court) hearings to be read out in lieu of a direct hearing of a witness (Article 335 of the ZKP). Such an arrangement interferes with the position of the defence as it does not allow for a direct hearing of witnesses before judges that will assess the evidence; this particularly undermines the test of credibility of the reason for the testimony. This is especially true in the case of the current regulation of the hearing of persons under the age of 15 who are victims of crime under Article 65 § 3 of the ZKP. The direct hearing of this category of victims is prohibited at the main hearing (Article 331 § 5 of the ZKP).

The focus of the hearing of the most vulnerable victims is therefore on the earlier stages of the proceedings. The rights of the defence, in particular the right to directly examine incriminating witnesses (Article 6 § 3 of the ECHR), may be exercised by the accused during the hearing in the judicial investigation phase (Article 178 of the ZKP) or during the hearing as an individual investigative act (Article 431 of the ZKP). However, the ability of the defence to effectively exercise its rights is also impaired in this case when the court takes measures to protect the mental integrity of the witness. The ZKP in Article 178 § 4 allows for the accused to be removed from the hearing of a witness; if the victim is under the age of 15 and is a victim of criminal offences referred to in Article 65 § 3 of the ZKP, the removal of the accused is mandatory. This means that the rights of defence in these cases can only be exercised through counsel. Since in these cases, as a rule, a formal defence will be mandatory only if the accused is in remand, in the remaining cases the accused will be able to exercise his or her rights through counsel only if he or she chooses to do so.

Two solutions are therefore available in proceedings in which the defence with the counsel will not be mandatory under the general provisions (Article 70 of the ZKP): either the accused will not be able to exercise the right to hear the incriminating witness directly, or the witness will be re-exposed at the main hearing because the defence will be able to ask the witness

questions indirectly, through the investigating judge (Article 331 § 6 in conjunction with Article 338 of the ZKP). Neither of these solutions is satisfactory. Firstly, as defendants may be treated differently in highly sensitive criminal cases; and secondly, because the juvenile witness is subjected to repeated hearings.

The solution that enables the exercise of the rights of the defence during the hearing in the earlier stages of the procedure to the greatest extent also ensures to the greatest extent that the best interests of the child will be looked after in criminal proceedings. The aim of the law is therefore to establish a witness hearing regime in which the accused – without direct contact with the witness – will be able to exercise his or her rights of defence to the greatest extent possible without risking a re-hearing, even if only an indirect hearing.

1.2.5 Inadequacy of the provisions concerning the physical examination of a child

The provisions of the ZKP on the physical examination of a child call for more specificity from the point of view of Article 18a of the ZKP. The current provisions relatively strictly govern physical examinations without the consent of the individual, at the same time allowing for the imposition of procedural sanctions on those who do not subject themselves to an examination (Article 190 of the ZKP).

1.2.6 The existing legislation does not provide an adequate legal framework for the establishment of the Children's House in Slovenia

Current legislation does not enable the establishment of a Children's House in accordance with accepted international standards. By setting up a public service and establishing a public institution whose task will be the comprehensive treatment of a child who is a victim of or witness to a crime, it will also be possible to provide crisis support and psychosocial assistance to the child. This area in Slovenia is not legally regulated to a sufficient extent, and the law therefore must explicitly define such support for children.

2. OBJECTIVES, PRINCIPLES AND MAIN SOLUTIONS OF THE BILL

2.1 Objectives

The objectives and advantages of the bill compared to the fragmented regulation of this matter through numerous laws are mainly as follows:

- comprehensive and systematic regulation of the treatment of juvenile victims of crime;
- identification of clear premises that complement existing criminal legislation in order to prevent secondary victimisation of child victims and witnesses and pursue the best interests of the child;
- independent regulation of numerous institutes within a single law, which makes the treatment system clearer and more transparent and thus capable of more consistently ensuring the legal security of child victims of crime and to a certain extent also of juvenile offenders;
- ensuring the implementation of international legal standards and conventions;
- pursuing good practices adopted in some other countries and promoted by both the European Union and the Council of Europe.

2.2. Principles

The bill, which determines the procedure for the comprehensive treatment of children, derives from the following basic principles, which are generally and internationally established[63] for the treatment of child victims or witnesses of crime:

- the child's participation in proceedings in a child-friendly way, taking account of the child's maturity and possible communication difficulties (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice);
- respect for the best interests of the child (Article 3 of the Convention on the Rights of the Child, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice);
- respect for the dignity of the child, including the limitation of child hearings to a minimum in order to prevent secondary victimisation (Council of Europe Committee of Ministers Guidelines on Child-Friendly Justice);
- prohibition of discrimination and ensuring equal treatment of children (Article 2 of the Convention on the Rights of the Child, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice),
- respect for a fair trial and the right of defence in criminal proceedings (Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms), and

[63] United Nations Committee on the Rights of the Child, General Comment No. 10 (2007): Children's rights in juvenile justice, CRC/C/GC/10, of 28 April 2007.

- prevention of undue delay (Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice).

The law also derives from the guideline stating that in the process of comprehensive treatment, the child is at the centre of all activities and services, while the right of the defendant or accused to a fair trial is fully respected throughout the procedure.

The law also allows respect for the right to life, survival and development (Article 6 of the Convention on the Rights of the Child); the right of the child to be heard (Article 12 of the Convention on the Rights of the Child) and the right to dignity (Article 40, § 1 of the Convention on the Rights of the Child).

The bill also implements the constitutionally guaranteed rights of children as Article 56 § 1 of the Constitution of the Republic of Slovenia[64] states that children enjoy special protection and care and enjoy human rights and fundamental freedoms in accordance with their age and maturity. The second paragraph of the same article specifies that children are provided with special protection against economic, social, physical, mental or other exploitation and abuse and that such protection is governed by law.[65]

2.3. The main solutions

2.3.1 Scope of the Act in relation to the subject under treatment

This Act lays down the institutional framework, principles and procedures for the protection in criminal proceedings of juvenile victims and witnesses of criminal offences defined by law, and exceptionally also of others, and their comprehensive treatment. If the best interests of the child so require, the comprehensive treatment of children, as provided for in this Act, may also be applied mutatis mutandis in the process of dealing with juvenile offenders. In accordance with international standards, a child is defined as person under 18 years old.

2.3.2 Scope of the Act in relation to the criminal offence

[64]Official Gazette of the RS,33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99 and 75/16 – UZ70a.
[65] See: Matej Avbelj et al.: Commentary on the Constitution of the Republic of Slovenia, New University, European Faculty of Law, Nova Gorica, 2019.

This Act provides for the protection of juvenile victims and witnesses of crimes referred to in chapters dealing with crimes against humanity (Chapter Fourteen), life and body (Chapter Fifteen), sexual integrity (Chapter Nineteen), marriage, family and children (Chapter Twenty-one), and Articles 131 to 138, 140, 143, 283, 284, 286, 296, 323 and 324 of the Criminal Code. If the court deems it necessary for the protection of the best interests of the child, the law may also be applied to the hearing and comprehensive treatment of a child who is a victim or witness of another criminal offence.

2.3.3 Establishment of a public service and a public institution

The Act defines the implementation of comprehensive treatment of children as a public service provided by the state through the establishment of a public institution (Children's House), which is also a professional institution for a certain type of expert work under Article 249 § 2 of the Criminal Procedure Act. The public comprehensive treatment service includes the hearing of the child, the child's physical examination, and crisis support and psychosocial assistance to the child. The institution is organised for the entire territory of Slovenia.
It is also specified that the activity of the institute is financed from the budget of the Republic of Slovenia.

2.3.4 Equal treatment of children during a hearing

The procedural solutions proposed in this Act strive for the uniform, comprehensive treatment of a child during a hearing, either in the role of a witness or (also) in the role of a victim. The procedural solutions are therefore designed so that the court by ordering a hearing under this Act also decides on the implementation of all measures to protect the child's mental integrity: avoiding contact with the accused, using adapted premises, hearings with the help of an expert, and minimising the number of hearings (the one-stop-shop approach). The criminal-procedural legal basis for court decisions does not change with this Act; the premises set out in the ZKP remain unchanged. However, it is to be expected that thanks to the reduced administrative burdens the courts will be able to focus more easily on the substantive treatment of the position of a juvenile witness or victim and on the substantive conduct of the hearing itself.

2.3.5 Non-repeatability of the hearing of a victim

The key to eliminating unnecessary secondary victimisation or distress of a juvenile witness is to reduce the number of hearings. All elements of the proposed solution contribute to this objective: a comprehensive approach, strengthening the rights of the defence and the hybrid nature of the procedural act itself.

2.3.6 Equal treatment of the accused and respect for the protection of the rights of the defence

Respect for the rights of the defence is key to avoiding unnecessary re-hearings of the victim. Therefore, the proposed solutions also include the extension of the mandatory defence with defence counsel until the end of the hearing of the child and the active participation of the accused and the defence counsel in the preparation for the hearing and during the hearing itself.

2.3.7 Hybrid nature of the hearing

The proposed solution comes in the wake of some already known solutions in the ZKP in which the investigative act is performed by an expert (although this is not considered professional expert work; Article 219.a of the ZKP). The bill concretises and supplements the otherwise broadly defined position of an expert (Article 240 §§ 5 and 6 of the ZKP) so that the hearing is conducted in the procedural regime of an expert. This strengthens the guarantees of a fair trial (especially through the institute of the exclusion of an expert) and ensures the prior adversary nature of the hearing (through a preparatory meeting with the active participation of all parties and other participants).

The public institution is organised as a professional institution which – similarly as in the case of an expert – the court entrust with the organisation and conduct of the hearing, while maintaining the substantive procedural management of the hearing itself.

2.3.8 Concretisation of the principle of careful and considerate conducting during a physical examination

The bill includes an emphasis on the explanatory duty, intended to minimise distress during a physical examination, which involves significant interference with the physical and mental integrity of the child. Therefore, it is specified that the examination of medical records has priority in the physical examination, and that the (direct) physical examination will not be performed in the event of insurmountable opposition from the child.

2.3.9 Provision of crisis support and psychosocial assistance

In order to protect the child's mental and physical integrity, the institution also provides crisis support and psychosocial assistance to the child. Under this Act, crisis support means providing support to a child during a hearing or personal examination, while psychosocial assistance is a more permanent form of assistance to the child that is provided during the period after the hearing (which does not last longer than six months). The bill also stipulates that the institution may liaise with other organisations that provide assistance in order to provide crisis support and psychosocial assistance.

2.3.10 Qualifications of the director of the institution, experts and consultants and other requirements

The bill defines the necessary qualifications and requirements for the performance of the duties of the director of the institution (Children's House), experts conducting hearings of children and counsellors providing crisis support and/or psychosocial assistance to the child:

- the director, who is the manager of the institution, must have completed at least Bologna level 2 education or previously level 7 education in psychology or medicine, social work or special pedagogical disciplines, have at least seven years of experience working with children, knowledge of the official language and be a citizen of the Republic of Slovenia;
- the expert who will conduct the hearing of the child must have completed at least Bologna level 2 education in psychology or medicine, social work or special pedagogical disciplines, have at least five years of experience working with children, must have completed additional training in conducting child hearings as determined by the institution, and must have knowledge of the official language;
- the child counsellor who will provide crisis support and psychosocial assistance to the child must have completed at least Bologna 2 level education in psychology or medicine, social work or special pedagogical disciplines, have at least three years of experience working with children, must have completed additional training in crisis support and psychosocial assistance to children as determined and provided by the institution, and must have knowledge of the official language.

The transitional provision specifies that until an adequate network of experts is established, but not later than five years from the entry into force of this Act, the institute may under this law also designate as an expert for conducting child hearings a member of the police force

who has conducted child hearings or collected information from children for at least 5 years, has successfully completed professional training in this area and has successfully completed additional training prescribed and provided by the institution.

2.3.11 Training

The bill specifies that the institution provides regular training for its employed experts and child counsellors. Depending on need, it can also organise training for other interested professionals. The institution provides MDMI training and awareness raising for experts from various fields dealing with children and for the general public on the activities of the institution and the appropriate treatment of child victims and witnesses of crime. This means that the institution can organise or carry out training for all those who are in any way connected with child victims or witnesses of crime, i.e. also, for instance, for police officers, doctors, teachers and school staff. The aim is to provide adequate training in correct action for relevant people who in the course of pursuit of their profession may come into contact with a child victim or witness of crime. The rules on training under this Act will be adopted by the institution with the consent of the minister responsible for justice.

2.3.12 Cooperation between participants in the procedure

All participants in crisis support and child psychosocial assistance procedures under this Act are obliged to cooperate with the institution when the court issues a written order for a hearing under this Act. The manner of cooperation between the institution and other participants in the proceedings is determined by the minister responsible for justice by issuing a regulation. The institution will adopt protocols that define more detailed standards for the implementation of comprehensive treatment of children and cooperation between authorities.

2.3.13 Validity and application

Gradual implementation of the law is envisaged, with a sufficiently long initial transitional period. The Act will take effect one year after its entry into force for the criminal offences against sexual integrity, and three years after its entry into force for other criminal offences referred to in point 2 of Article 2 of this Act and for treatment under Article 1 §§ 2 [and 3] of the Act.

3. PRESENTATION OF THE REGULATION IN OTHER LEGAL SYSTEMS AND THE ADAPTATION OF THE PROPOSED REGULATION TO THE EU ACQUIS

3.1. Presentation of regulation in other legal systems

3.1.1. The "Barnahus" idea: development, concept and prevalence

In Europe, the Icelandic word "Barnahus" (Icelandic for "children's house") is used for children's houses. This model of child treatment derived from the American concept of "Children Advocacy Centres (CAC)", which developed in response to child sexual abuse in Alabama in 1985, giving rise to over 1,000 centre across the United States; in Europe it was introduced in a different way, first in Iceland and then in other Nordic countries. Both the European and American models build on the understanding of child abuse as a complex phenomenon that requires specialised and multidisciplinary treatment, and they differ mainly in the nature of the institution providing specialised services: the centres in the US are predominantly privately owned, while those in Europe operate under the auspices of the state.[66] In addition, the idea has taken on new dimensions in Iceland: the service has been integrated into the social welfare system and operates within the legal system, which also allows the involved children to be treated outside the courts, while alternative methods are used to conduct child hearings.

In general, the European countries that have implemented the Barnahus concept regulate this area in various specific ways, but most of them have the following in common:[67]

- The Barnahus operates as a child-friendly service that combines procedures within criminal justice, care services and medical and psychosocial assistance under one roof.
- Hearings and medical examinations of children are carried out in the Barnahus, and the police, prosecutor's office, defendant's lawyer, courts and others participate in the proceedings. At the same time, the child's need for further medical and psychosocial assistance is assessed. Multidisciplinarity is the basis of the operation of the Barnahus.

[66] Johansson, S., Stefansen, K., Bakketeig, E., Kaldal, A. (2017) Implementing the Nordic Barnahus model: Characteristics and local adaptations, in: S Johansson et al. (ed). Collaborating against child abuse, Cham: Palgrave Macmillan, pp. 4-5.
[67] Promise2 (2020) What is it, available at: https://www.childrenatrisk.eu/promise/barnahus-what-is-it/

- In some countries the prosecutor's office decides on the merits of charges before a child is included in the trial, while in others children are referred to the Barnahus directly by police and social security bodies.
- If it is established during proceedings that a child and his or her family do not need treatment within the Barnahus but within the framework of social care, they are referred to the appropriate services.

Furthermore, through the Barnahus the common concepts across Europe, while following the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, in many respects significantly exceed them:[68]

- Multidisciplinary approach: the services involved in the work of the Barnahus are bodies of (criminal) justice and social welfare and medical management services, thus usually involving professionals such as social workers, psychologists, police officers and prosecutors, paediatricians and medical experts.
- the one-door (or "under one roof") approach: the basic idea of the Barnahus is to provide children who find themselves in criminal and similar proceedings with one-off treatment in one place, thus avoiding the unnecessary additional and long-term burden of visiting different services at different times and in different locations.
- Avoiding secondary victimisation: closely related to the above is the idea of avoiding secondary victimisation (additional trauma caused to an already traumatised child by inappropriate treatment in criminal proceedings), which the Barnahus addresses in a way that adapts the proceedings to the child and provides the maximum protection of the child's interests.
- A safe place to make statements and a neutral place to carry out formal procedures: The next fundamental approach is to provide a safe environment in which children can make statements about abuse – this environment must be child-friendly, child-centred and supportive. It is characteristic of the European area (in contrast to America) that the Barnahus also represents a neutral space in which official proceedings are carried out so the child no longer needs to enter the court.
- A wide range of beneficiaries and a broad definition of child abuse: Basically, the CACs and the Icelandic Barnahus targeted child victims of sexual abuse. Such an approach was soon overcome as virtually all countries that have this system include (at least) child victims of sexual abuse and other forms of violence as beneficiaries.

[68] Johansson, S. et al. Ibidem, pp. 5-8.

In addition, there is a fundamental balance in the European space that systems seek to establish between the best interests of the child and the principles of fair (criminal) proceedings. In general, country-specific responses are based on the principles and approaches described above, but country-specific arrangements may also differ from one aspect to another.

The Barnahus model thus comprises four rooms under one roof: 1) a medical examination, 2) assessment, therapy and support, 3) a forensic interview and 4) child protection.[69] Individual arrangements tend to include as many as possible or preferably all of these systems, but they are dealt with in different ways, taking account of the legal context and circumstances. Given the highest prevalence of the concept in the Nordic European countries and also in view of the similarities between the social welfare systems and criminal treatment of children in these countries and in Slovenia, the review will pay more attention to these systems.[70]

3.1.2 Overview of selected individual arrangements

Iceland

Iceland was the first country to introduce the first Barnahus centres within the wider European legal framework in 1998. There is currently one Barnahus operating there.

Children under the age of 15 who are victims of sexual and physical violence are entitled to treatment in the Barnahus. Children may be referred for treatment by both police and social welfare bodes when abuse is suspected. In Iceland the Barnahus is coordinated by the government's child protection service. Social welfare bodies, medical services, police, the prosecutor's office and the courts are involved in directing and operating the Barnahus. The Barnahus directly employs psychologists, social workers and criminologists. Treatment in the Barnahus is not expressly mandatory, but there is a legal requirement to treat children in a similar way.

The Barnahus is not specifically governed by its own law but has a strong legal basis in the Child Protection Act (No. 80/2002)) and in the Law on Criminal Procedure (Mo. 88/2008).

[69]Council of Europe (2018) Protection of children against sexual exploitation and sexual abuse, Strasbourg: Council of Europe. Available at https://rm.coe.int/zascita-otrok-pred-spolnim-izkoriscanjem-otrokom-prijazna-multidiscipl/16808acd37.
[70] Johansson, S. et al. Ibidem.

Sweden

Sweden introduced the Barnahus in 2006 and currently has about 30 different Barnahus centres, which have considerable autonomy with regard to regulation and also differ from each other.

Children under the age of 18 who are victims of sexual and physical violence are entitled to treatment. In addition to these children, the national guidelines also cover children who are victims of female genital mutilation, direct and indirect witnesses to violence or honour crimes as well as children who commit crimes in which they sexually abuse other children. Any other children who may be included in the treatment in the Barnahus are determined by the individual Barnahus centres. Children may be referred for treatment by both the police and social welfare bodies when they both deal with cases.

The pilot Barnahus project in Sweden was coordinated by the Ministry of Justice together with a multidisciplinary coordination commission. After the pilot period, however, there has been no central, country-wide coordination. The Barnahus centres are united in the National Barnahus Association.

Social welfare bodies, police, the prosecutor's office, medical services and forensic services are involved in directing and operating the Barnahus centres. The Barnahus system directly employs social workers and psychologists, and in some of the Barnahus centres also police officers. The treatment of children in the Barnahus centres is not mandatory.

The Barnahus is not specifically governed by its own law or in sectoral laws. The police have adopted the National Barnahus Guidelines and Standards.

Norway

Norway introduced the Barnahus in 2007 and currently has 11 Barnahus centres.

Children under the age of 16 and adults with special needs who are victims or witnesses of the criminal offences of sexual and indirect or direct physical violence, murder and genital mutilation are entitled to treatment. Children may only be referred for treatment by the police.

The Barnahus in Norway is coordinated by the Police Directorate and the National Barnahus Commission.

The police, prosecutor's office and forensic experts work in directing and operating the Barnahus. The Barnahus directly employs psychologists, social workers and criminologists. The treatment of children in the Barnahus is mandatory at the level of the police and the prosecutor’s office.

The Barnahus is not specifically governed by its own law but is regulated by the Criminal Procedure Act and regulations governing adapted hearings (FOR-2015-09-24-1098).

Denmark

Denmark introduced the Barnahus in 2013 and currently has 5 Barnahus centres with three additional branch offices.

Children under the age of 18 who are victims of sexual and physical violence are entitled to treatment. Children may be referred for treatment by social welfare bodies in cases where they must involve the police and/or medical staff in their own proceedings. The Barnahus in Denmark is coordinated by the National Social Welfare Committee.

Social welfare bodies, police, the prosecutor's office and medical services are involved in directing and operating the Barnahus. The Barnahus directly employs psychologists, social workers and criminologists. The treatment of children in the Barnahus is mandatory in cases where social welfare bodies have to involve the police and/or medical staff in their proceedings.

The Barnahus is not specifically governed by its own law. It is governed by the Consolidation Act on Social Services (No. 1284), Order on Children Houses (No. 1153 of 01/10/2013). Quality standards for the Barnahus have also been adopted.

Other countries

In recent years, the Barnahus model, with the encouragement of the Council of Europe and the European Union, has spread significantly to other countries in Europe's narrower and wider regions. Examples of other countries that have already implemented solutions based on the Barnahus model include England, Germany, the Netherlands, Poland, Lithuania, Estonia, Croatia, Finland and Cyprus. Many other countries are more or less far behind in the

processes of weighing and adopting Barnahus-based solutions: Belgium, Ireland, Spain, Portugal, Bulgaria, Romania, Hungary, Slovakia, Montenegro and Latvia.[71]

3.2 Compliance of the proposed regulation with the EU acquis

EU law does not specifically regulate children's safe houses. Nevertheless, at the level of the EU acquis, we can detect a number of instruments that directly and indirectly address the challenges faced by children's houses.

The European Union is bound by the Treaty of Lisbon to promote the protection of children's rights. The structural changes brought about by the Treaty have strengthened the EU's capacity and responsibilities to promote children's rights. Fundamentally, one of the EU's general objectives is also ”the protection of children's rights” (Article 3(3) TEU), which should also be an important policy aspect of the EU's external relations (Article 3(5) TEU). Children's rights are also fundamental rights that the EU must respect under Article 24 of the Charter of Fundamental Rights of the European Union. This article sets out three basic principles regarding children's rights: 1) the right of children to express their views freely in accordance with their age and maturity, 2) the right to have their interests taken into consideration in all measures relating to them, and 3) the right to maintain on a regular basis personal relations and direct contact with both their parents.

The EU regulates the area within the framework of child-friendly justice. In 2011, the European Commission adopted the EU Agenda for the Rights of the Child[72], in which it defined key priorities for the development of children's rights law and policy in the EU Member States. It took a number of measures on the basis of an extensive study of the situation in 28 Member States[73]. It provided special protection to vulnerable victims, including children, under 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. The issue of juvenile offenders was also regulated by Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or

[71] Promise2 (2020) Progress by country, available at: https://www.childrenatrisk.eu/promise/eubarnahus/ (30 May 2020

[72] European Commission (2011), EU Agenda for the Rights of the Child: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2011), Brussels, 15 February 2011.

[73] European Commission (2015), Children's involvement in criminal, civil and administrative judicial proceedings in the 28 Member states of the EU. https://op.europa.eu/sl/publication-detail/-/publication/c3cd307f-ff03-4010-b322-dcf7063403c5 (30 May 2020

accused persons in criminal proceedings. The European Commission further promoted the Guidelines of the Committee of Ministers of the Council of Europe, which are described in more detail below, and promoted training programmes in the area of child-friendly justice.

Directly in relation to children's houses, the European Union is also funding the PROMISE 3 project, which brings together European countries that have already adopted or are in the process of adopting solutions that include the concept of the children's house and thus child-friendly justice. Slovenia is also involved in this project through its Ministry of Justice.

II. TEXT OF THE ARTICLES

I. GENERAL PROVISIONS

Article 1
(content and purpose of the Act)

(1) In order to ensure the maximum benefit of the child, child-friendly and safe treatment and environments and the strengthening of a child-friendly justice system, this Act defines the institutional framework and procedures for the protection of juvenile victims and witnesses of criminal offences referred to in point 2 of Article 2 of this Act in criminal proceedings and their comprehensive treatment.

(2) This Act shall also apply to hearings and comprehensive treatment of a child victim or witness of another criminal offence, if the court deems it necessary for the protection of the child's interests.

(3) If the best interests of the child so require, the comprehensive treatment of children, as defined in this Act, may also apply mutatis mutandis to the process of treating juvenile offenders.

Article 2
(meaning of terms)

The terms used in this Act have the following meaning:

1. Child – is a natural person under the age of 18 years who is a juvenile victim or witness of crime or a juvenile offender.
2. Criminal offence – is a criminal offence referred to in chapters dealing with crimes against humanity (Chapter Fourteen), life and body (Chapter Fifteen), sexual integrity (Chapter Nineteen), marriage, family and children (Chapter Twenty-one), and Articles 131 to 138, 140, 143, 283, 284, 286, 296, 323 and 324 of the Criminal Code (Official Gazette of the Republic of Slovenia, No. 50/12 – officially consolidated version, 6/16 – corr., 54/15, 38/16 and 27/17).

Article 3

(general principles)

(1) The procedure for the comprehensive treatment of a child under this Act derives from the following fundamental principles:

- the child's participation in proceedings in a child-friendly way, taking account of the child's maturity and possible communication difficulties;
- respect for the best interests of the child;
- respect for the dignity of the child, including the limitation of child hearings to a minimum in order to prevent secondary victimisation;
- non-discrimination and ensuring equal treatment of children;
- respect for a fair trial and the right of defence in criminal proceedings; and
- prevention of unnecessary delay.

In the process of comprehensive treatment, the child is at the centre of all activities and services, while the right of the defendant or accused to a fair trial is fully respected throughout the procedure.

Article 4

(public service)

(1) The implementation of comprehensive treatment of children is a public service provided by the state through the establishment of a public institution (hereinafter: the institution), which is at the same time a professional institution for a certain type of expert work.

(2) The public comprehensive treatment service includes the hearing of the child, the child's physical examination, and crisis support and psychosocial assistance to the child.

Article 5

(personal data, records, databases and data storage)

(1) The institution shall manage and keep databases and records related to the comprehensive treatment of children, in accordance with the law governing personal data protection. In the general personal data filing system, the institution shall manage the necessary personal data of children and their family members, suspects or accused persons

and other individuals it processes. Data shall be processed for the purpose of acting in proceedings under this Act or on the basis of other laws that are applicable to the treatment procedure or on the basis of which the content or information from the treatment shall be processed in other procedures.

(2) The following data may be processed in the personal data filing system:

- the personal names or other names of persons referred to in the second sentence of the preceding paragraph and the address of their permanent or temporary residence,
- the personal name or other name of the delegate or representative of the victim or the suspect or accused or other persons treated by the institution,
- an indication of the case, relevant circumstances or other information relating to the case which should or do show that pre-trial or criminal proceedings are ongoing,
- an indication of the body handling the case submitted to the institution, but may also be the reference number of the case, or the reference number or other unique number of the body's case,
- special types of personal data provided by people referred to in the first paragraph or provided by the body participating in the proceedings under this Act to the institution, and
- special types of personal data obtained during the procedure of comprehensive treatment of the child under this Act.

(3) The institution shall process personal data on persons referred to in this Article so that the smallest circle of authorised persons becomes familiar with them.

(4) Personal data from the database of persons referred to in this Article shall be stored and used as long as the person is included in the procedure of comprehensive treatment under this Act. After the end of the treatment, the data shall be archived and stored in the institution for another 20 years after the child being treated in the institution has reached majority and shall then be destroyed.

(5) The database of persons referred to in this Article shall be linked to the court information system with which it shall exchange data and documents that the court is obliged to provide under this Act in a secure electronic form for entry and processing purposes, as well as to the police information system, with which data from the records of issued restraining orders shall be exchanged in a secure electronic form.

(6) The institution shall keep an audio and video recording of a hearing independently of the court, which shall keep the recording in accordance with the law governing criminal proceedings. Data obtained for the purpose of criminal proceedings and from the police, prosecutor's office or court shall be kept in the database separately from data processed by the institution for crisis support and psychosocial assistance purposes.

(7) The director of the institution may allow access to, transcription, copying or extraction of data from the records and other databases of the institution in an anonymised form to an individual who proves that he or she needs such data for scientific research work. The permission may relate only to records and files that have been archived. An individual may view or transcribe data free of charge, or copy or print the, at his or her own expense. Access, transcription, copying or printing shall be performed under the supervision of an employee of the institution authorised to do so in writing by the director of the institution.

II. Children's House

Article 6
(institution)

(1) The Children's Home is a public institution (hereinafter: institution) established by the state for the provision of public service of comprehensive treatment of juvenile victims and witnesses of criminal offences in accordance with this Act and at the same time a professional institution for a certain type of expert work in accordance with the law governing criminal proceedings.

(2) The institution is organised for the entire territory of the Republic of Slovenia.

(3) The Institution may, if necessary, form organisational units for individual areas and for individual sectors of activity.

(4) The activity of the institution shall be financed from the budget of the Republic of Slovenia.

Article 7
(activity of the institution)

(1) The Institution, as a state public service, shall carry out the following activities:

- management and organisation of multidisciplinary and multi-institutional (hereinafter: MDMI) cooperation and case management;
- carrying out expert work concerning the hearing of children for the purposes of pre-trial and criminal proceedings through trained experts and providing appropriate, child-friendly interrogation facilities;
- organisation, provision of premises and other assistance in performing physical examinations and expert examinations of bodily injuries and medical examinations of juvenile victims and witnesses of crime;
- crisis support and psychosocial assistance for juvenile victims of crime and their family members, if they are not suspected of abuse, in pre-trial and criminal proceedings and after the end of the proceedings;
- providing information to and supporting the employees of the institution;
- international cooperation with similar institutions or institutes;
- implementation and organisation of training programmes for experts to conduct child hearings and to provide crisis support and psychosocial assistance for juvenile victims, witnesses and their family members, if they are not suspected of abuse;
- implementation and organisation of MDMI training programmes;
- raising public awareness, collecting data and implementing research and other projects in the area of its operation.

Article 8
(institution bodies)

The bodies of the institution are the council of the institution, the director, the professional council and other bodies, if they are defined in the articles of association of the institution.

Article 9
(institution council)

(1) The activity of the institution shall be managed by the council of the institution, which shall perform the following tasks

- adopts the articles of association of the institution,
- determine the financial plan and adopt the annual accounts of the institution,
- adopt general acts for the implementation of the activities of the institution,
- carry out other tasks defined by this Act and the articles of association of the institution, and

- appoint the director.

(2) The Government of the Republic of Slovenia shall give its consent to the appointment of the director, the articles of association, the financial plan and the annual accounts of the institution.

(3) The council of the institution shall consist of nine members, including:

- four members appointed by the Government of the Republic of Slovenia, one each from the ministry responsible for justice, the ministry responsible for family affairs, the ministry responsible for health care and the ministry responsible for the interior;
- one member appointed by the Supreme Court of the Republic of Slovenia, the Supreme State Prosecutor's Office of the Republic of Slovenia and the Bar Association of the Republic of Slovenia;
- two members elected by the employees of the institution.

(4) The council of the institution shall start operating once at least five of its members have been appointed. The term of office of the members of the council of the institution shall be four years.

(5) The council of the institution shall elect a president and a vice-president from among its members.

(6) The council of the institute shall reach valid decisions if more than half of its members are present at the meeting. The articles of association and other general acts, the financial plan and the annual accounts shall be adopted by the council of the institution by a majority vote of all members. Other issues shall be decided by the council of the institution by a majority vote of the attending members.

Article 10
(director)

(1) The director shall be the manager of the institution, who must have completed at least Bologna level 2 education or previously level 7 education in psychology or medicine, social work or special pedagogical disciplines, have at least seven years of experience working with children, knowledge of the official language and be a citizen of the Republic of Slovenia.

(2) The director shall organise and manage the work and operation of the institution, represent the institution and be responsible for the legality of its operations.

(3) The director shall be appointed by the council of the institution in agreement with the Government of the Republic of Slovenia.

(4) The tasks and competencies of the director and additional conditions for his or her appointment shall be defined in the articles of association of the institution.

Article 11
(expert council)

(1) The expert council shall be a collegial professional body consisting of five members. Its members shall be individuals who are experts in criminal law or criminology, social workers, psychologists or other professionals with experience in working with child victims of crime. Expert council members shall perform their work independently and shall not bound by the positions of the employer.

(2) The expert council shall give opinions and proposals regarding training programmes, MDMI cooperation protocols and other professional issues defined by the articles of association of the institution.

(3) The composition, method of formation and tasks of the expert council of the institution shall be determined by the articles of association.

Article 12
(other bodies)

(1) The articles of association of the institution may also define other bodies of the institution for individual areas of activity of the institution and for individual sectors and their competencies.

(2) The articles of association of the institution shall also define the professional tasks of the institution in more detail.

Article 13
(supervision)

(1) Supervision over the legality of the operation of the institution and the purpose of the use of funds for financing the tasks and programmes of the institution shall be exercised by the minister responsible for justice.

(2) If irregularities are found during an inspection, the minister responsible for justice shall define the measures and deadlines for their elimination.

(3) If, after the expiry of the time limit, the deficiencies or irregularities have not been eliminated, this may be the reason for the dismissal of the director.

(4) The minister responsible for justice shall decide in cases of doubt as to whether a specific task is part of public service performance and in competency disputes between public service providers.

III. COMPREHENSIVE TREATMENT PROCEDURE

A. Hearing the child

Article 14
(application of the provisions of the Criminal Procedure Act)

Unless otherwise provided by this Act, the provisions of the Criminal Procedure Act on the hearing of a witness and on expert work shall apply to the hearing of a child under this Act.

Article 15
(hearing the child)

Under this Act, the hearing of a child shall be performed by the institution's experts on specially adapted premises.

Article 16
(order)

(1) A hearing under this Act shall be conducted on the basis of a written order issued by a court at the proposal of a competent prosecutor, a suspect or defendant, defence counsel, the legal representative of a child, a child who has reached 16 years of age or ex officio.

(2) In its order, the court shall state the following:
- that the expert work that includes the hearing of the child has been entrusted to the institution;
- that the institution should appoint one or more experts to conduct the hearing;
- that the institution should be allowed to review and transcribe the criminal record and, at its request, be provided additional explanations necessary for expert work;
- the personal data of the child (Article 240 § 4 of the Criminal Procedure Act),
- the facts and circumstances concerning which the child is to be heard;
- the date of the preparatory meeting and the date of the hearing of the child.

(3) The court shall inform the institution, the competent prosecutor, the defendant, the defence counsel, if the defendant has one, the child who has reached 16 years of age, the legal representative of the child, the victim's representative and the competent social work centre of the order and summons to the preparatory meeting. The notice shall be noted in the file.

(4) A defendant who does not have an attorney shall at the same time be instructed that he or she has the right to freely choose an attorney who may, in accordance with the provisions of this Act, participate in the hearing of the child. The court must be notified of the choice of counsel within three days of service of the order; otherwise the court shall act in accordance with the provision of Article 18 of this Act. The suspect or accused must be instructed that he or she may, together with the notice, submit a motion that the court adjourn the preparatory meeting or hearing of the child for the purpose of preparing the defence, but for no more than eight days.

Article 17
(appointment of an expert)

(1) The institution shall without delay appoint an expert who will conduct the hearing. In doing so, he or she must comply with the provisions of Articles 251 and 44 of the Criminal Procedure Act.

(2) If the institution is unable to appoint an expert in accordance with the preceding paragraph of this Article, it shall submit a motion to the court to appoint an expert subject to the reasonable application of Article 249 § 4 of the Criminal Procedure Act.

(3) The expert referred to in the preceding paragraph of this Article must have completed at least Bologna level 2 education in psychology or medicine, social work or special pedagogical disciplines, have at least five years of experience working with children, must have completed additional training in conducting child hearings as determined by the institution, and must have knowledge of the official language.

Article 18
(appointment of counsel)

(1) The court shall appoint a defence counsel for a suspect or accused who does not have a defence counsel and who does not notify the court within three days of the service of the court's hearing order.

(2) If the suspect or accused person also chooses a defence counsel after the appointment of a defence counsel, the appointed defence counsel shall carry out the tasks along with the selected defence counsel until the end of the hearing of the child.

(3) The court shall also act in accordance with the first paragraph if it finds that the suspect or accused person is abusing the right to free choice of counsel.

(4) The appointed defence counsel shall perform his or her duties until the end of the hearing of the child unless other reasons for the mandatory defence with defence counsel are given.

(5) The costs of the appointed counsel shall be the costs of the criminal proceedings.

Article 19
(adjournment of the preparatory meeting or hearing)

The court may adjourn the preparatory meeting or hearing of the child for a maximum of eight days at the proposal of the competent prosecutor, suspect or defendant, a child who has reached the age of 16, or the legal representative of the child, the victim's representative, counsel or the institution's expert.

Article 20
(summons)

(1) A summons to the hearing shall be communicated orally to the child. The summons shall be communicated to the child by the staff of the institution, his or her legal representative or other person appointed by the court. If the communication of the summons is not successful the first time, it shall be repeated in another manner, and the communication of the summons through several people may be ordered.

(2) The provisions of the Criminal Procedure Act on knowing the consequences of non-compliance with the summons shall not apply to the communication of the summons.

(3) The successful communication of the summons shall immediately be notified to the court, which shall record this in the file.

Article 21
(preparatory meeting)

(1) A preparatory meeting shall be held on the premises of the institution. The preparatory meeting shall be conducted by the investigating judge.

(2) The participants in the preparatory meeting shall be the expert form the institution entrusted with the hearing of the child, the competent prosecutor, a police representative, the suspect or accused, defence counsel, the child's legal representative, the victim’s representative, the child's counsellor and a representative of the social work centre.

(3) At the preparatory meeting, the participants shall declare themselves as to the facts and circumstances that are important for the conduct of the hearing; the question to be asked of the child; and the manner of conducting the hearing of the child.

(4) After the preparatory meeting, the court may supplement or amend the order on the hearing of the child. The court shall without delay inform the participants in the preparatory meeting about the supplements and amendments to the order.

(5) A record shall be kept of the course of the preparatory meeting in accordance with the provisions of the Criminal Procedure Act on keeping records of investigative acts.

Article 22
(spatial requirements and prohibition of personal contact)

(1) The hearing room shall include separate rooms, connected by audio and video links.

(2) The room in which the child is located must be equipped so as to take into account the principle of careful and considerate conduct (Article 18.a of the Criminal Procedure Act). The content of the child's testimony must not be influenced by the equipment of the room.

(3) The institution shall ensure that there is no unwanted personal contact between the child and the suspect or accused immediately before, during and after the hearing.

(4) The institution shall ensure that there is no direct personal contact prior to the hearing between the child and other participants in the proceedings, including the expert who will conduct the hearing.

(5) Upon the child's arrival at the institution's premises, the child shall be accompanied by a person to whom the child has been entrusted for care and upbringing and by a person of the child's own choice.

Article 23
(presence of persons during the hearing)

(1) In addition to the expert conducting the hearing, another person in addition to the child of the child's own choice may be present (Article 240 § 5 of the Criminal Procedure Act).

(2) The presence of other persons shall be ensured in a separate room by means of an audio and video link. In addition to the judge conducting the proceedings and the essential court staff, the competent prosecutor, suspect or accused, counsel, legal representative of the child, representative of the victim, the expert of the social work centre, the child's counsellor, technical staff from the institution and other persons whose presence has been permitted by the court for the purpose of carrying out the activities of the institution may be present in a separate room.

Article 24
(hearing)

(1) The hearing of the child shall be conducted by the reasonable application of the provisions of Articles 236, 238, 240 and 241 of the ZKP, but in a manner that protects the integrity of the child to the greatest extent. The hearing shall be conducted directly by the expert of the

institution. In doing so, he or she shall proceed from the premises formulated at the preparatory meeting.

(2) During the hearing, the expert and the judge conducting the hearing shall communicate with the help of electronic communication equipment or in another suitable manner.

(3) During the hearing, the participants may propose to the court that the child be asked certain additional questions or that additional circumstances be investigated. The judge shall decide whether to allow an individual question to be asked and shall communicate it to the expert conducting the hearing in an appropriate manner.

(4) If the expert directly conducting the hearing estimates that the integrity of the child would be affected by a certain question, he or she shall inform the judge thereof. The judge shall either prohibit the question or allow the hearing in this part to be conducted in a manner that will not affect the integrity of the child.

(5) The provisions of the Criminal Procedure Act governing confrontation with other witnesses and the suspect or accused or the provisions of Article 244 of the Criminal Procedure Act shall not apply to the hearing of a child under this Act.

Article 25
(recording)

(1) The hearing of a child shall always be recorded using audio and video equipment, of which the expert shall inform the child at the beginning of the hearing, explaining to the child the meaning of the recording.

(2) Article 84 § 4 of the Criminal Procedure Act shall not apply to such recording.

(3) The audio and video recording of the hearing may be used for the purpose of conducting criminal proceedings and for the purpose of providing crisis support and psychosocial assistance to the child.

(4) If the court orders a transcript of the recording, it shall be transcribed in its entirety.

Article 26
(record)

The record of the preparatory meeting, the recording and the transcript of the recording of the hearing shall constitute an integral part of the record of the hearing of the child. The record shall be signed by all those present at the hearing.

Article 27
(re-hearing)

(1) The provisions of this Act shall apply if a child heard under the provisions of this Act needs to be re-heard. The judge shall not allow a hearing concerning circumstances that were already the subject of the first hearing.

(2) A re-hearing of a child shall be performed by the same expert as before, unless there is a justified reason for the institution to appoint another expert.

B. Physical examination of a child

Article 28
(provision)

The physical examination of a child shall be ordered by the court in accordance with the provisions on expert work in criminal proceedings.

Article 29
(the institution's assistance)

(1) The institution shall provide premises and other assistance in carrying out a physical examination so as to ensure, to the greatest extent possible, the careful and considerate treatment of the child and respect for his or her personal rights and interests.

(2) The expert may propose to the court that medical documentation and explanations be obtained from the child's personal doctor.

Article 30
(expert examination of bodily injuries)

When expert work is carried out with regard to bodily injuries, the court shall especially carefully assess whether expert work should be carried out by examining the child or on the basis of medical documentation and other data on file.

Article 31
(explanatory duty)

Prior to the physical examination, the meaning and nature of the medical actions pertinent to the analysis and the establishment of the facts relevant to the criminal proceedings shall be explained to the child.

Article 32
(objection by the child)

(1) If, despite careful explanations, the child continues to object to the examination, the physical examination shall be carried out by examining the medical documentation and the data on file, if possible.

(2) The provisions of Article 190 of the Criminal Procedure Act shall not apply to the physical examination of a child.

C. Crisis support and psychosocial assistance

Article 33
(crisis support and psychosocial assistance)

(1) In order to protect the child's mental and physical integrity, the institution shall also provide crisis support and psychosocial assistance to the child.

(2) Crisis support means providing support to the child during a hearing or personal examination.

(3) Psychosocial help means a more permanent form of assistance to the child that follows during the period after the hearing.

(4) The institution shall liaise with other organisations that provide assistance in order to provide crisis support and psychosocial assistance.

Article 34

(child counsellor)

(1) The director of the institution or the head of the organisational unit shall without delay after receiving a court order on the comprehensive treatment of a child appoint the child's counsellor who shall take care of crisis support and psychosocial assistance to the child.

(2) The director shall select the child's counsellor from among the employees who meet the requirements for the provision of crisis support and psychosocial assistance. The counsellor may not be the person conducting the hearing in the same case. Except in exceptional cases, the child shall be accompanied by the same counsellor throughout the treatment.

(3) The counsellor must have completed at least Bologna 2 level education in psychology or medicine, social work or special pedagogical disciplines, have at least three years of experience working with children, must have completed additional training in crisis support and psychosocial assistance to children as determined and provided by the institution, and must have knowledge of the official language.

Article 35

(crisis support)

(1) The assigned counsellor may access all data that are kept by the institution and which he or she may need in his or her work.

(2) The assigned counsellor shall receive the child in the Children's House immediately before the hearing. The first contact with the child shall include only the giving of information and reassurances to the child, with the counsellor explaining the course of the hearing and further treatment to the child.

(3) The assigned counsellor shall monitor the hearing of the child in a separate room.

(4) The assigned counsellor shall immediately after the hearing or physical examination of the child and in accordance with the rules of the profession and the rules of the institution offer the child professional help and support, which also means the initiation of psychosocial assistance.

Article 36
(psychosocial help)

(1) The counsellor shall offer psychosocial assistance to the child during the period after the hearing or personal examination. Psychosocial help shall include psychological, social and practical help.

(2) The counsellor shall prepare a treatment plan for the child as soon as possible, in which he or she shall determine the intensity and frequency of contacts with the child based on the circumstances and needs of the child and shall define the content of psychosocial assistance in accordance with the professional guidelines and the rules of the institution. The counsellor shall complement and adjust the treatment plan during the duration of psychosocial assistance.

(3) Psychosocial assistance shall last for 6 months from the beginning of the treatment. If the counsellor estimates that the child needs further treatment, he or she shall refer the child to appropriate external institutions. After six months has elapsed, the counsel, or shall continue to treat the child within the institution only until appropriate assistance is provided outside the institution.

(4) Within the framework of psychosocial assistance, the counsellor shall, at his or her own discretion, connect the child with and cooperate with other forms of support and assistance provided by state bodies or non-governmental organisations.

Article 37
(voluntary participation)

(1) Inclusion in crisis support and psychosocial assistance shall be voluntary for the child.

(2) For a child under the age of 15, his or her legal representative shall give his or her consent for the child's inclusion in crisis support and psychosocial assistance.

IV. TRAINING AND COOPERATION

Article 38
(training)

(1) The rules governing the training and verifying of the qualifications of experts conducting hearings under this Act and of child counsellors providing crisis support and psychosocial assistance shall be adopted by the institution with the consent of the minister responsible for justice.

(2) The institution shall provide regular training for employed experts and child counsellors. Depending on need, it can also organise training for other interested professionals.

(3) The institution shall provide MDMI training and awareness raising for experts from various fields dealing with children and for the general public on the activities of the institution and the appropriate treatment of child victims and witnesses of crime.

Article 39
(Cooperation between participants in the procedure)

(1) All participants in crisis support and child psychosocial assistance procedures under this Act shall cooperate with the institution when the court issues a written order for a hearing under this Act.

(2) The manner of cooperation between the institution and other participants in the proceedings is determined by the minister responsible for justice by issuing a regulation.

(3) The institution shall adopt protocols that define more detailed standards for the implementation of comprehensive treatment of children and cooperation between authorities.

V. TRANSITIONAL AND FINAL PROVISIONS

Article 40
(implementing regulation)

The Minister responsible for justice shall, within six months of the entry into force of this Act, adopt rules on the manner of cooperation between the institution and other participants in the proceedings.

Article 41
(child hearing experts during the transitional period)

Until an adequate network of experts is established, but not later than five years from the entry into force of this Act, the institution may also designate as an expert for conducting child hearings under Article 17 § 3 a member of the police force who has conducted child hearings or collected information from children for at least 5 years, has successfully completed professional training in this area and has successfully completed additional training prescribed and provided by the institution.

Article 42
(validity and application)

This Act shall enter into force on the fifteenth day after its publication in the Official Gazette of the Republic of Slovenia. It shall take effect one year after its entry into force for the criminal offences against sexual integrity, and three years after its entry into force for other criminal offences referred to in point 2 of Article 2 of this Act and for treatment under the Article 1 §§ 2 [and 3] of the Act.

III. EXPLANATORY NOTES TO THE ARTICLES

I. GENERAL PROVISIONS

Ad Article 1 (content and purpose of the Act)

In the implementation of all measures and in the adoption of decisions concerning a child, the most important thing – including in criminal proceedings – is to identify and pursue the best interests of the child. This is already required of states by the fundamental provision of the Convention on the Rights of the Child in its Article 3, which states in § 1 that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

It is crucial that the hearing and other treatment be conducted in a child-friendly environment and so that the child understands the questions and that a secondary victimisation of the child is avoided as much as possible. The child must also have access to information, including the possibility of necessary treatment and therapies.

The comprehensive treatment of a child juvenile victim or witness of crimes against sexual integrity and other crimes defined in this Act requires a comprehensive approach both in the Slovenian criminal justice system and in the area of health care and psychosocial assistance.

This law thus defines both the necessary institutional framework and the adjustment of procedures to ensure equal treatment to juvenile victims and witnesses of crime, which are necessary for pursuing the best interests of the child and for child-friendly justice.

In cases where this is in accordance with the principle of the best interests of the child, the Act may, in the judgement of the court ruling on juvenile offenders, be applied mutatis mutandis to the treatment of a juvenile offender – a juvenile defendant. This will, as a rule, occur in proceedings in which the court, in accordance with the law defining the criminal responsibility of minors, decides that such conduct is in favour of the child.

Ad Article 2 (meaning of terms)

The definition of a child derives from the Convention on the Rights of the Child, which the Republic of Slovenia assumed through succession in 1992.[74] Article 1 of the Convention defines a child as any human being under the age of eighteen, unless the law applicable to the child specifies that adulthood is achieved earlier. Furthermore, Article 3 § 1 of the Convention stipulates that the best interests of the child shall be a primary consideration in all activities concerning children, whether conducted by public or private social welfare institutions, courts, administrative authorities or legislative bodies. Article 56 of the Constitution of the Republic of Slovenia also states that children enjoy human rights and fundamental freedoms in accordance with their age and maturity.

Throughout the Act the term child covers both a child who is a juvenile victim of crime and a child who is a witness to crime. This unification derives from the fundamental purpose of the Act and the concept of the Children's House, which is the comprehensive treatment of all children who find themselves in criminal proceedings. In addition, the Act exceptionally allows for a juvenile offender to be treated under this Act if that is required by the best interests of the child. The definition of a child thus also includes, in addition to victims and witnesses, juvenile perpetrators.

For the purposes of this Act, a criminal offence is defined so as to define explicitly specified criminal offences to which this Act applies and for which child victims of these criminal offences will be provided with comprehensive treatment. The range of criminal offences is wide and includes both criminal offences defined in Article 65 § 3 of the ZKP and certain other criminal offences with an element of violence or criminal offences of such a nature that it is necessary to provide the child with an easy-to-understand and friendly hearing and participation in criminal and pre-trial proceedings, prevent secondary victimisation and at the same time ensure effective pre-trial and criminal proceedings.

Ad Article 3 (general principles)

The Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (adopted on 17 November 2010) lay down five basic principles: participation, the best interests of the child, dignity, protection against discrimination and the rule of law. The first four principles stated in this Article follow the first four principles of the Guidelines, while the fifth principle, "rule of law", is the fundamental principle of the modern state, which is defined

[74]Notification of Succession Concerning UN Conventions and Conventions Adopted by the International Atomic Energy Agency Act, Official Gazette of the Republic of Slovenia, No. 35/92.

for the entire Slovenian legal system by Article 2 of the Constitution of the Republic of Slovenia. The order of these principles follows the order from the Guidelines. These principles derive from various Council of Europe documents and from the case law of the European Court of Human Rights.

These general principles are also concretised in the European quality standards for the Barnahus model. Respect for the dignity of the child thus includes limiting the number of hearings of the child to a minimum in order to prevent secondary victimisation, in line with these very principles.

The Act also proceeds from the premise that equality of treatment of victims and witnesses of crime must be ensured. The procedural solutions proposed in this Act strive for the uniform, comprehensive treatment of a child during a hearing, either in the role of a victim or (also) in the role of a witness. They also provide crisis support and psychosocial assistance to the child without discrimination.

Ad Article 4 (public service)

This Article defines the comprehensive treatment of juvenile victims and witnesses of crime as a public service performed by a public institution. This is an activity that is necessary for the development of society, is provided by the state and is carried out in the public interest in accordance with the public law regime. Although this public service essentially comprises three different aspects or activities, they together constitute a public service as all three aspects – the hearing of the child, the physical examination of the child (which is essentially a medical examination), and crisis support and psychosocial assistance to the victim – are inextricably linked and only together constitute the comprehensive treatment of the child. This activity, which ensures a professional and child-friendly approach to treating a victim or witness of crime, is carried out within the framework of the public service.

Ad Article 5 (personal data, records, databases and data storage)

This Article governs personal data, records, databases and data storage. Paragraph 1 specifies that the institution manages and keeps databases and records related to the comprehensive treatment of children, in accordance with the law governing personal data protection. It is defined which data the institution manages in the general database and for what purpose data are processed: data are processed for the purpose of acting in proceedings under this Act or on the basis of other laws that are applicable to the treatment procedure or

on the basis of which the content or information from the treatment is processed in other procedures. This does not mean that all address changes are recorded, e.g. if the perpetrator ceases to serve a prison sentence, which means that there is no basis for the institution to be informed thereof.

An important provision is that data are processed for the purpose of acting in proceedings under this Act or on the basis of other laws that are applicable to the treatment procedure or on the basis of which the content or information from the treatment is processed in other procedures. This means that certain data are processed e.g. on the basis of the law governing criminal proceedings, and other data on the basis of the law governing databases in the area of health care.

Paragraph 2 defines which personal data the institution may process in the personal data file, while Paragraph 3 states that the institution processes personal data in such a way that they should be known to the smallest circle of authorised persons. Given the activity of the institution and the sensitivity of the comprehensive treatment of the child, such a provision is necessary.

Paragraph 4 specifies that personal data about persons referred to in this Article will be stored and used as long as the child is included in the comprehensive treatment procedure under this Act, and then archived and stored for another 20 years after the child treated in the institution reaches the age of majority. This time limit puts all treated children in the institution in the same position from the point of view of access to data after they reach the age of majority, regardless of the age at which they were treated as children in the institution. The 20-year deadline is also reasonably long considering that usually adults needs a certain amount of time to be ready to face their past again. Thus, given the special nature of the comprehensive treatment procedure, the retention period for data relating to crisis support and psychosocial assistance to the child is predictably longer for valid health care records for children and adolescents with psychosocial problems, the purpose of which is monitoring the mental health of children, under the Care Databases Act (Annex 1), which is 15 years. At the same time, the specified time limit also enables a reasonably long period for storing archived data for the purpose of scientific research work. After the lapse of the time limit, the institution is obliged to destroy the data. The data retention period refers to all data kept by the institution.

Paragraph 5 specifies the connection of the institution's database to the information system of the courts and the police with regard to restraining orders. Therefore, the Personal Data Protection Act (ZVOP-1) does not provide for data integration, but only the method of

exchange via information systems is defined. A connection of the institution's database with the system of the administration for the enforcement of criminal sanctions is not provided for as there is no need for special arrangements for this. Informing victims of crime about the release of a convicted person after they have served a prison sentence is regulated by the law governing criminal proceedings. A victim can therefore obtain information on other grounds given the implementation of 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.

Paragraph 6 specifies that audio and video recordings are also be kept by the institution in addition to the court (Article 84 § 7 of the Criminal Procedure Act). However, it also states that two categories of data are stored separately within the same database (comprehensive treatment). Data obtained on the basis of the law governing criminal proceedings and in connection with criminal proceedings (obtained as part and for the purpose of the hearing) and data relating only to crisis support and psychosocial assistance (comparable to medical records) are kept separately. This means that it will not be possible to access both categories of data at the same time. However, this does not necessarily mean that data are also processed separately.

Paragraph 7 expressly states that the director of the institution may allow access to, transcription, copying or extraction of data from the records and other databases of the institution in an anonymised form to an individual who proves that he or she needs such data for scientific research work. There is an additional requirement that permission may relate only to records and files that have been archived. It is also specified that an individual may inspect or transcribe such data free of charge or copy or print them at his or her own expense and that access, transcription, copying or extraction can be performed under the supervision of an employee of the institution authorised in writing by the director of the institution.

II. Children's House

Ad Article 6 (the institution)

The Children's House as a public institution established by this Act provides the public service of comprehensive treatment of juvenile victims and witnesses of crime as defined by this Act. It is also a professional institution for certain types of expert work, as provided for in Article 249 § 2 of the Criminal Procedure Act. Under this provision, such work, in particular if it is

more complex (demanding), is usually assigned to such an institution or body, and the institution or body appoints one or more experts to perform this work.

The status issues of the institution are generally regulated by the Institutions Act, and its provisions apply only if individual issues are not regulated differently by this Act. Given that this is a public service, the most appropriate organisational form for ensuring its provision is the establishment of a public institution. In this case, the institution is established to carry out a specific activity, the aim of which is not to make a profit, but to ensure progress in Slovenia's commitment to ensuring child-friendly justice and providing support to children in accordance with its legal obligations and EU and Council of Europe guidelines. The institution operates as an independent service with legal status.

Under this Act, the institution is organised uniformly for the entire country, but it may, if necessary, form independent organisational units, both for individual areas, in order to bring its activities closer to users, and in view of the need for individual areas of the comprehensive treatment of children.

Ad Article 7 (the institution's activity)

The activity of the institution derives from the need to ensure the comprehensive treatment of children (specifically, juvenile victims and witnesses of crime). The activity of the institution follows the European quality standards for the Barnahus model, which represents the operational and organisational framework for the organisation and operation of centres adopting the Barnahus model. The key role of the institution is to coordinate criminal investigation proceedings and child protection procedures, which can run in parallel.

Its activity thus includes the implementation and organisation of training programmes for experts to conduct child hearings and to provide crisis support and psychosocial assistance for juvenile victims, witnesses and their family members, if they are not suspected of abuse as well as MDMI training. This means that the institution can organise or carry out training for all those who are in any way connected with child victims or witnesses of crime, i.e. also, for instance, for police officers, doctors, teachers and school staff. The aim is to provide adequate training in correct action for relevant people who in the course of pursuit of their profession may come into contact with a child victim or witness of crime. Such an approach is also in line with the Barnahus international standards and the practice of foreign experts.

The institution raises the awareness of various segments of the public about its work and Barnahus standards, i.e. both the general (lay) public and various professionals, e.g. judges, prosecutors, police officers and doctors.

Ad Article 8 (bodies of the institution)

The Institutions Act specifies that the institution is managed by a council or other collegial governing body. This Act specifies that this is the council of the institution. The Act does not specify that the professional work of the institution is led by a professional manager, which is allowed by the Institutions Act.

Ad Article 9 (council of the institution)

This article defines the activity and the tasks of the council of the institution and determines which cases require government consent.

Paragraph 3 determines the composition of the council of the institution, namely that the council of the institution has nine members. In addition to government representatives (four ministries), one member each is also appointed by the Supreme Court of the Republic of Slovenia, the Supreme State Prosecutor's Office of the Republic of Slovenia and the Bar Association of Slovenia. Two members elected by the employees of the institution. Such a composition is important as it ensures the representation of the various branches of government involved in the work, operation and activity of the institution. The justice system must be understood broadly in this respect.

At least five members are required to constitute the council of the institution. The term of office of members is 4 years. Given that no provision restricts their reappointment, a member of the council may be appointed several times in succession.

The council’s quorum for decision making is more than half of its members, i.e. five. It is also specified in which cases the council may decide by absolute majority and in which by relative majority.

Ad Article 10 (director)

Paragraph 1 lays down the conditions for the appointment of the director of the institution as its manager. The defined criteria ensure the adequate professional qualifications of the director of the institution and the necessary experience in working with children. This is necessary for the operation of the institution as the activity of the institution is focused on working with children in a highly specific area.

Ad Article 11 (expert council)

The expert council has five members. It is a collegial body – in accordance with the Institutions Act, the purpose of which is primarily to give opinions and proposals regarding training programmes, MDMI cooperation protocols and other professional issues in accordance with the articles of association of the institution. It is specified that members of the expert council are independent in their (professional) work and are therefore not bound by the positions of the employer.

Ad Article 12 (other bodies)

This Article allows for the articles of association of the institution to determine other bodies if it turns out that they are necessary for its operation.

Ad Article 13 (supervision)

Paragraph 1 specifies that the supervision of the operation of the institution and the use of funds is exercised by the minister responsible for justice. Namely, the content and purpose of the activity of the institution falls within the scope of the ministry responsible for justice as it concerns the provision of child-friendly justice, in particular the treatment of child victims and witnesses as well as juvenile offenders. The comprehensive treatment of a child also includes crisis support and psychosocial assistance to the child, but this is linked to the treatment of the child in criminal proceedings. Article 4 of the Ratification of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse Act (Lanzarote Convention) also specifies that the primary responsibility for the implementation of the Convention lies with the ministry of justice. It specifies that the ministry responsible for justice, in cooperation with the ministry responsible for the interior, the ministry responsible for family and social affairs, the ministry responsible for health care and the ministry responsible for education, is responsible for the implementation of the Convention.

Paragraph 2 specifies that in the event of identified irregularities as part of supervision, the minister responsible for justice will determine the measures and deadlines for their elimination. Paragraph 3 specifies that if the deficiencies or irregularities have not been eliminated after the expiry of the time limit, that may be the reason for the dismissal of the director.

Paragraph 4 specifies that the minister responsible for justice decides both in case of doubt as to whether a specific task is part of the provision of the public service and in cases of competency disputes between public service providers.

III. COMPREHENSIVE TREATMENT PROCEDURE

A. Hearing the child

Ad Article 14 (application of the provisions of the Criminal Procedure Act)

The proposed solution derives from the special position of the expert referred to in Article 240 § 5 of the ZKP. This expert is an assistant to the court in carrying out a procedural act requiring special expertise. Such a case is also recognised in Article 219.a § 9 of the ZKP; in this case, too, the legislators decided to entrust the investigative act to an expert. Such a solution is also suitable for hearing a child under this Act. As the hearing should be an unrepeatable act under this Act, the regulation must also ensure the fairness of the proceedings to the greatest extent possible. The fact that a hearing is conducted with elements of expert work ensures the impartiality of the expert conducting the hearing and enables the participants in the proceedings to make the greatest contribution to the hearing of the child.

Therefore, an arrangement of a hybrid nature is proposed: it is a hearing of a witness within a somewhat modified procedural framework of expert work. The result of the expert work will therefore not be a report and an opinion, but a record of the child's hearing obtained through the direct use of expertise, which should ensure the adequate comprehensive treatment of the child.

Ad Article 15 (child hearing)

The public institution is established as a "professional institution for a certain type of expert work" (Article 249 § 2 of the ZKP). Even if the procedural solution in this proposal is of a hybrid nature, the basic procedural framework is the provision on expert work, which is entrusted to

a professional institution, which, in turn, appoints an expert to perform the work (Article 249 § 2 of the ZKP).

The European quality standards for the Barnahus model presuppose as one of the key elements of its operation the existence a safe environment in which activities can be carried out within the Children's House, which includes both the location and the appropriate equipment and layout of the premises in which the activity is performed.

Ad Article 16 (order)

The hybrid nature of the hearing of a child under this Act is already reflected in the content of the order on hearing the child. This order has both typical elements of an expert work order (appointment of an expert, determination of the subject of the expert work) as well as typical elements of an order to hear a witness (personal data, date of the hearing).

The text also specifically regulates eligible submitters of motions for the child's hearing. Despite the fact that this issue is already partially regulated by the ZKP, additional regulation is necessary due to the limited circle of submitters of motions for investigative actions in pre-trial proceedings. Namely, motions for individual investigative actions in the earliest stages of the proceedings can only be submitted by the state prosecutor (Articles 165 et seq. of the ZKP, Article 431 of the ZKP). In order to ensure the rights of the defence and thus also the position of the child, the bill also provides for the possibility of the motion for a hearing being submitted by the suspect and defence counsel. In order to protect the interests of the child, the child's legal representative also has this option; a child over the age of 16 also has this option under the provision of Article 64 of the ZKP. Due to the possibility of taking over or continuing the prosecution, the right to submit such a motion is also extended to other victims and the prosecutor.

In this case too, the court, of course, retains the position it has under the provisions of the ZKP. In accordance with the principle of free assessment of evidence, the judge will, when receiving a motion for a hearing under this Act, decide whether or not to order a hearing. In doing so, he or she will particularly be guided by the criteria of relevance of the motion, the best interests of the child and the interests of a fair trial.

Due to the emphasised adversarial nature of the hearing of the child, a preparatory meeting has also been introduced in the bill. This solution derives from the provision of Article 252 § 4

of the ZKP and will be explained below. At this point, it is important that the order already establishes a timeline of procedural tasks to ensure the smooth conduct of the hearing.

This provision also concretises and adapts the provision of Article 73 of the ZKP. The right to a defence counsel is crucial in this case as it guarantees the rights of the defence at the hearing to the greatest extent possible. This reduces the likelihood of the child being re-heard and contributes to the uniqueness of this procedural act.

Ad Article 17 (appointment of an expert)

In accordance with the established solution in criminal proceedings, an expert carrying out professional work for the institution will be appointed by the institution after receiving the order referred to in Article 16 of this Act.

The provision is a concretisation of the provision of Article 249 § 2 of the ZKP, while allowing for the extreme possibility of appointing an ad hoc expert who is not formally included in the institution. This ensures that the institution will be able to perform its tasks even in cases where this would not be possible due to the personal circumstances of the institution's experts. The law also defines the minimum level of education, type of education and other requirements that must be met by experts conducting hearings in the institution.

When selecting an expert, especially if he or she is not included in the institution, the institution will have to take account of the criteria for ensuring the right to an impartial court and established practice. This will be particularly important when, due to the limited circle of suitably qualified persons, it has to decide whether to appoint as an ad hoc expert a police officer or another person who also carries out tasks within criminal procedure bodies, which Article 41 allows during the transitional period.

Ad Article 18 (appointment of counsel)

The bill introduces a new case of mandatory formal defence to ensure the fairness of proceedings and reduce the need to re-hear the child. The proposed solution takes account of the right to free choice of counsel, but it also restricts it. The speed of the proceedings is crucial in order to protect the best interests of the child, so the bill envisages that the court will appoint counsel for the alleged perpetrators who do not hire counsel themselves. In order to prevent the abuse of the right to free choice of counsel, the appointed counsel will perform his or her duties even if the alleged perpetrator hires another counsel in the meantime.

The appointed counsel will perform his or her duties independently or in addition to the selected counsel until the end of the hearing. This prevents the possibility of procrastination through successive revocations of the counsel's credentials. Since the suspect or accused may have – in addition to the appointed counsel – also a selected counsel, the interference with the right to counsel is minimal.

Ad Article 19 (adjournment of the preparatory meeting or hearing)

The adjournment of the preparatory meeting and hearing may be necessary for the purpose of preparing for the defence, preparing for the hearing or collecting additional material in criminal proceedings. The court conducting the proceedings weighs the interests of the child and the interests of conducting a fair trial.

It should be emphasized that the primary guideline remains the best interests of the child, even as the protection of the rights of the defence is ensured. Respect for the rights of the defence during the hearing enables the defence to contribute to the credibility of testimony through the (otherwise limited) exercise of the right to a direct hearing of the incriminating witness, thus reducing the likelihood of a subsequent re-hearing.

Ad Article 20 (summons)

The starting point for summoning a child are those provisions of the ZKP that regulate summonses to witnesses under the age of 16 years (Article 239 § 2 of the ZKP) and which enable oral summonses (Article 127 § 6 of the ZKP). The purpose of the solution is to ensure as much care as possible in the treatment of the child. Therefore, the summons process is also oral and less formal.

The summons to a hearing remains an act of the court, with the proviso that the summons is orally communicated to the child by another person whom the court will determine by an order, taking account of the circumstances of the case. As the summons itself is crucial for establishing an appropriate attitude of the child towards the hearing itself, it is desirable that this should be done by professionally qualified staff from the institution (but not the one who will also conduct the hearing; see the proposed Article 22).

Warnings of sanctions for non-compliance with the summons and creating a summons protocol are especially excluded. Due to the informal nature of the summons, it is important

that the court should be immediately informed of the course and success or failure of the summons and that this should be noted in the file.

Ad Article 21 (preparatory meeting)

A preparatory meeting under this Act does not preclude possible prior consultations between the bodies involved in the proceedings (e.g. the police) and the competent professional services (e.g. the social work centre). This bill also does not preclude the prior collection of information from the child. However, the aim of this Act is to reduce the number of interviews with the child and at the same time engage the defence in an appropriate manner, thus ensuring the reliability of the child's testimony for evidentiary procedure purposes. The preparatory meeting under this Act is therefore intended for a comprehensive transitional examination of the subject of the hearing and for preparation for the hearing. It is crucial that both parties to the proceedings have the opportunity to contribute as much as possible to the conduct of the hearing beforehand; this possibility is severely limited during the hearing itself. At the same time, the expert of the institution will be able to independently contribute to the planning of the hearing at the preparatory meeting and – within the meaning of Article 252 § 4 of the ZKP – propose that additional material be provided, certain questions be asked, etc.

The purpose of the preparatory meeting is to prepare a hearing that is as focused as possible, both in terms of content and time. The set of facts about which questions should be posed to the child should preferably be defined at the meeting itself. In what form this will be recorded will be left to practice, and the bill does not deal with this area. It is possible to imagine a practice of formulating a more or less open list of questions that should be asked of the child in an appropriate way.

The presence of a child counsellor makes sense, especially in the case of special needs children or obviously traumatised children. Based on previously known information, the counsellor can also contribute with his or her expertise to a more appropriate conduct of the hearing.

After the preparatory meeting, the court that issued the order will have the opportunity to supplement the order and thus respond to the statements made by other participants in the proceedings. The criteria that the court will take into account in this are the criteria for deciding on evidentiary motions and the criteria for ensuring the benefits and comprehensive treatment of the child.

Ad Article 22 (spatial requirements and prohibition of personal contact)

The provision concretises the requirements regarding a hearing on adapted premises and conduct during the hearing. This ensures the rights of the child to the greatest extent possible. Special emphasis is placed on elements reducing the suggestive effects of the hearing under this Act, e.g. through the equipment of the premises or through the child's prior contact with the person conducting the hearing.

The European quality standards for the Barnahus model specify the characteristics of the premises with great precision Thus, they specify that the location of the premises must be accessible and normal, and the equipment and materials must be child- and family-friendly and tailored to the age of the children. Separate, sound-proofed areas that provide privacy are required. It is also necessary to prevent contact with the suspect or accused. As counsel is expected to perform his or her duties in accordance with the code of ethics, there is no reason to impose similar restrictions on counsel; such a solution is comparable to the current Article 178 § 4 of the ZKP. However, the inter-institutional team may follow the hearing live, but not in the room where the hearing is taking place.

Ad Article 23 (presence of persons during the hearing)

The provision regulates the issues of direct and indirect presence at the hearing of the child. The circle of persons present is not exhaustive, but it should be noted that sensitive personal data may be obtained from the child during the interrogation. Therefore, the circle of persons who can be present is limited by personal data protection rules: data can be accessed by those whose presence is essential for the implementation of the activities of the institution. Their presence is decided on by the judge conducting the hearing.

Ad Article 24 (hearing)

In order to ensure the protection of the child's (mental) integrity, the course of the hearing as it is defined in the ZKP is not always appropriate. The established model of a witness hearing provides for 1) free narration, followed by 2) questions, with the first questions being asked by whoever proposed the witness or by the court. This model of hearing is possible, but at the same time the expert conducting the hearing has the option to conduct the hearing differently, in accordance with the child's needs and benefits. In terms of content, the expert's hearing will be guided by issues and facts raised at the preparatory meeting.

However, room should be left for the possibility of new circumstances being revealed during the hearing that were not known at the preparatory meeting and therefore it was not possible to plan the hearing. Therefore, the bill allows for the possibility of asking the child certain questions which the participants propose to the court, which then forwards them to the expert. Questions may be referred to the expert only by the judge conducting the proceedings; others may suggest to the judge which questions should be forwarded to the expert. In this way – from the point of view of the defence – the adversarial nature of the hearing and the right to a direct hearing of incriminating witnesses are ensured to the greatest possible extent directly during the hearing.

The provisions regarding the right to refuse to testify or answer individual questions also apply to the hearing itself. The task of the expert will be to check during the hearing whether the child understands the meaning of the right to refuse to testify and to state whether that is the case. If the expert estimates that the child does not understand the meaning of the right not to testify, it is the task of the court to assess whether or not the hearing is in the child's best interests (Article 236 § 3 of the ZKP). If the court decides that it is not the case, the child will not be heard unless the suspect or defendant so requests.

The possibility of confronting other witnesses or the accused is excluded (Article 241 § 3 and Article 229 of the ZKP); in such a context, ensuring the protection of the best interests of the child in the manner governed by this Act is not possible.

Ad Article 25 (recording)

The recording of investigative acts under the ZKP is optional; the exception are victims under the age of 15 who are victims of acts referred to in Article 65 § 3 of the ZKP. Under this bill, a hearing [SIC: recording?] is mandatory for everyone being heard in court. As the hearing is supposed to be a one-off act, recording is mandatory for a reliable evidentiary assessment. The possibility of the recording also be played to the person being heard with the possibility of correction is also excluded.

The duty to inform the person being heard about the recording is already prescribed by Article 84 § 1 of the ZKP. Although this provision can be properly implemented for the purposes of this Act, a special provision highlights the key elements of such information: the information is provided by the expert in a child-friendly manner, at the beginning (not before) the hearing.

The transcription of the recording is also regulated in a somewhat different manner. As in the ZKP, a transcript is still optional, but the hearing can only be transcribed in its entirety. This maintains the integrity of the hearing, which is important for the reliability of the subsequent evidentiary assessment.

The recording will later become part of the court file. At the same time, the recording will also be an important source of data for the provision of support under this Act.

Ad Article 26 (record)

The record of the preparatory meeting, the recording and the transcript of the recording of the hearing constitute an integral part of the record of the hearing of the child. The record is signed by all those present at the hearing.

Ad Article 27 (re-hearing)

This Act attempts to avoid a re-hearing as much as possible. However, if a re-hearing still needs to take place (at the trial in accordance with the provisions of Article 331 §§ 5 and 6 of the ZKP in conjunction with Article 338 of the ZKP), it must be conducted in accordance with the provisions of this Act. In particular, it is pointed out that a re-hearing is not intended to be a hearing regarding circumstances already discussed; therefore, only new facts that were revealed during the investigation or at the trial can be taken into consideration.

The provision of Paragraph 2 follows the European quality standards for the Barnahus model and Article 23 of Directive no. 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, that a re-hearing, if any, should normally be conducted by the same expert or person.

B. Physical examination of a child

Ad Article 28 (order)

A physical examination is a form of expert work performed through medical acts due to bodily injuries, for identification of traces or consequences of a crime on the body or traces in the body (collecting blood samples, etc.). Under the provisions of this Act, expert work is also

performed in accordance with the provisions of the Criminal Procedure Act (especially Articles 264 and 266 of the ZKP).

Ad Article 29 (assistance of the institution)

The role of the institution in this context is primarily a supportive one. The institution is not a medical institution and its staff are not medical staff. The Article also provides for the implementation of Article 252 of the ZKP regarding the inter-institutional environment and cooperation between the expert and the child's personal doctor. It is also specified that the expert may contact the child's personal doctor regarding further treatment. The Guidelines also specify that active inter-institutional cooperation is recommended.

Paragraph 2 specifies, in accordance with the ZKP, that the expert may propose to the court that medical documentation and explanations be obtained from the child's personal doctor. This means that the court orders that such documentation and explanations be obtained if it finds the proposal justified.

Ad Article 30 (expert examination of bodily injuries)

Reasoning:
Due to the invasiveness of a physical examination, the court should specifically estimate when ordering an expert examination whether expert work involving a physical examination is really unavoidably necessary. If it is not, the physical examination should be performed using medical documentation and data on file (within the meaning of Article 264 of the ZKP).

Ad Article 31 (explanatory duty)

Under the provisions of Article 266 of the ZKP, a physical examination may also be performed without the consent of the individual. The explanations regarding the nature of expert work are intended to ensure the consent of the child and to reduce the consequences of a physical examination for his or her mental integrity. From the point of view of the basic provisions of the ZKP, the explanatory duty is the concretisation of the principle of careful and considerate conduct (Article 18.a of the ZKP).

The consent of the child is not required. Appropriately provided explanations, perhaps even consent, can have a significant impact on the child's attitude towards a relatively invasive

examination and criminal proceedings as a whole, thus contributing to the protection of the child's mental integrity.

Ad Article 32 (objection by the child)

If the child does not wish to participate in a physical examination, procedural coercion measures may not be used against him or her (e.g. reprimand or fine; Article 190 of the ZKP). In such a case, the protection of the mental and physical integrity of the child must take precedence over the interests of criminal proceedings.

C. Crisis support and psychosocial assistance

Ad Article 33 (crisis support and psychosocial assistance)

In accordance with the European quality standards for the Barnahus model, psychosocial assistance is one of the pillars of the Children's House model. The immediate start of the hearing is that which facilitates the comprehensive treatment of the child from the first contact with the judiciary.

Here we distinguish between two elements: the first occurs during a hearing, which can be extremely traumatic for the child and poses a major risk of secondary victimisation; while the second element occurs over a long period of time during which the child has to work through and process the experience of the crime and its consequences as well as the experience of the system with the risk of secondary victimisation. In addition to the psychological burden, this period can also be accompanied by social changes, which are easier for the child to process and accept with the help of a qualified counsellor.

Crisis support and psychosocial assistance are intended for children referred to in Article 2 of this Act, and the institution also includes members of the child's family in the treatment at its own discretion and with a view to ensuring more effective and comprehensive work.

In an effort to provide more effective assistance in the provision of psychosocial assistance, the institution also cooperates with social work centres, health care centres and other experts as well as non-governmental organisations active in this area.

Ad Article 34 (child counsellor)

Upon receipt of the court order, the institution will immediately start proceedings relating to preparations for handling the case. The director of the institution or the head of the organisational unit (in cases referred to in Article 6 § 3 of this Act) will appoint a specific counsellor in order to facilitate the best possible preparation of the counsellor for the treatment of the child.

The counsellor will monitor the child over a long period of time, from the first contact onwards, if possible, and will work with the child on the basis of scientifically proven effective approaches. The institution may replace the child's counsellor during the child's treatment only in exceptional or specially justified circumstances. Exceptionally, continuous treatment by a single counsellor will not be possible, e.g. in the event of the counsellor's prolonged absence due to illness or in the case of absence pursuant to the Parental Protection Act. The institution will, as far as possible, prepare a plan of work and treatment in advance in such cases. In some cases, this can be done relatively effectively: in cases of planned maternity leave, for example, the institution will not assign new cases to the counsellor before the leave itself, where it is clear that the counsellor will not be able to full monitor those cases. In other cases, this will be more difficult or even impossible. The institution will determine the procedure for possible exceptional changes of counsellors under more detailed internal acts, with the basic guideline being the greatest benefit to the child.

Counsellors can provide both psychosocial assistance and conduct hearings in the Children's House, but these two tasks are incompatible in some cases: in individual cases, the child's counsellor may not be the same person conducting the child's hearing.

Crisis support and psychosocial assistance are provided by counsellors qualified for it. This article lays down special conditions for counsellors who are employees of the Children's House:

- Adequate education: the training of a counsellor must include content that specifically qualifies him or her for working with vulnerable groups.
- Work experience: before carrying out counselling tasks, the counsellor must have at least three years of experience working with children. As regards the additional training requirement, the bill proposers believe that a longer period is not appropriate.
- Training for the provision of crisis support and psychosocial assistance: Training will be planned and carried out by the institution so as to ensure the best possible qualification of the counsellor for performing the tasks referred to in this Article. In

addition, the institution will also provide additional training for the counsellor after his or her appointment to the position.

Ad Article 35 (crisis support)

In order to provide the best possible support and assistance to the child, the counsellor may, after being assigned the case, access all materials related to the child and available at the institution and attend the preparatory meeting and monitor the child's hearing. Regarding the acquisition of the necessary materials, the counsellor will also liaise with any other organisations (e.g. social work centres). With the help of the material, the counsellor will ensure as best as possible the conditions for the treatment of the child and plan the entire process, from the first contact in the crisis assistance context onwards.

Before conducting a hearing or physical examination, the counsellor will receive the child and become familiar with him or her (first contact). The purpose of this meeting is to get the counsellor and the child to know each other and to provide reassurances to the child. The counsellor will explain to the child in a simple and understandable way how the hearing will take place and what will happen in the future. In doing so, the counsellor will refrain from any activity that could result in the “contamination” of the child prior to the hearing.

The counsellor may follow the child's hearing child in the room where the judge is located.

The counsellor will offer the child and the person accompanying the child crisis support at his or her own discretion immediately after the hearing or physical examination of the child, in accordance of the rules of the profession and the protocols established by the institution. The process of psychosocial assistance will begin at this point as there is no longer any risk of influencing the child's testimony.

Ad Article 36 (psychosocial assistance)

Psychosocial assistance is provided by the counsellor in accordance with the treatment plan, which is prepared while taking into account the needs of the child and the circumstances of the case. It needs to be prepared quickly so that psychosocial assistance can start as quickly as possible. It is also based on the contact the counsellor has with the child in the context of crisis support. The counsellor will prepare the treatment programme in accordance with the highest ethical norms of the profession and taking account of scientifically supported methods

determined and accepted by the institute. If necessary, the counsellor will also include members of the child's family in psychosocial assistance.

Psychosocial assistance under this Article means:
- providing emotional support (expressing empathy, understanding, attention, the opportunity for the child to express strong emotions, etc.);
- providing support and assistance in connecting with family, friends and others;
- informational support (providing information on the process, information on further procedures, information on institutions that may be useful, advice);
- integration with other forms of assistance (e.g. regular health services or specialist services, social work centres, non-governmental organisations, etc.)
- other forms of assistance in accordance with the professional practices and rules of the institution.

The counsellor will contact the child through individual interviews or in the form of group meetings. Contacts will take place either on the premises of the Children's House or outside of it at the discretion of the counsellor. In conducting contacts, the counsellor will take care to respect all the basic principles of this Act, striving to ensure the best possible benefit to the child and consistently follow the rules of the profession.

Psychosocial assistance under this Act will last for 6 months from the beginning of the treatment. In accordance with the purpose and activity of the institution, such a period is appropriate and enables intensive work with the child at the time when he or she needs it most. Expert guidelines recommend up to 24 individual treatments, which is about 6 months with contacts on a weekly basis. If the counsellor deems that the child still needs professional help after this time, he or she will direct the child and, if necessary, his or her family to existing institutions dedicated to this. During the transitional period, including after 6 months from the beginning of the treatment, the counsellor may continue to provide psychosocial assistance until the establishment of appropriate assistance outside the institution.

The last paragraph emphasises the aspect of inter-institutional cooperation. In accordance with the child's treatment programme and when it is necessary, the counsellor will try to make other options for the child's inclusion in assistance programmes that are appropriate for him or her accessible to the child.

Ad Article 37 (voluntary participation)

Participation in crisis support and psychosocial assistance is voluntary. A child cannot be forced into such treatment nor would such conduct be in accordance with the idea of the House of Children as it would violate the fundamental principles of the law. The role of the counsellor is to offer help to the child and show the child how this assistance can be useful to him or her. The counsellor will also present this information to the child's legal representatives in cases where they must give consent.

The age of fifteen is determined in accordance with the otherwise applicable age limits recognised by various laws regulating children's autonomous decision making.

IV. TRAINING AND COOPERATION

Ad Article 38 (training)

The rules governing the verification of the qualifications of experts conducting hearings under this Act and providing crisis support and psychosocial assistance are adopted by the institution itself, although with the consent of the minister responsible for justice. The purpose of such an arrangement is to enable the definition of the highest possible professional criteria for the implementation of its activities, which will be defined by the institution, while the competent ministry will exercise additional supervision to ensure the quality of training and verify the qualifications of the experts.

The European standard is that for the staff of the Barnahus centre, in the Slovenian case – the institution, regular training is organised in the professional fields in which they are specialised, while they also participate in joint training on topics that combine several different fields.

The international Barnahus standards specify that MDMI training is also needed, especially for police officers, teachers and others who come into contact with child victims or witnesses of crime in the course of their work. It is also necessary to raise the awareness of various segments of the professional public and the general (lay) public about the activities of the institution and the approach offered by the Barnahus model.

Ad Article 39 (cooperation between participants in the procedure)

MDMI collaboration and case planning and management are key to the successful implementation of the Barnahus model. In line with the European standards, roles, mandates, the coordination mechanism, the budget, monitoring and management measures need to be clearly defined. MDMI collaboration is present throughout the treatment of a case. However, general inter-institutional collaboration between all participants in proceedings is also needed. The method of collaboration is prescribed by the minister responsible for justice in a regulation. The duty to participate in procedural acts is otherwise governed by the ZKP.

In addition, the institution adopts more detailed protocols that lay down operating standards. The standards lay down a framework within which quality objectives are set in the implementation of the basic tasks for which the institution is responsible.

V. TRANSITIONAL AND FINAL PROVISIONS

Ad Article 40 (implementing regulation)

The rules on collaboration between the institution and other participants in proceedings will be adopted by the minister responsible for justice within six months of the entry into force of the Act, which will facilitate the appropriate preparation of all bodies for the application of the Act.

Ad Article 41 (child hearing experts during the transitional period)

Due to the anticipated need for specific knowledge and additional training of experts who will be working in the Children's House, the transitional provision specifies that during the transitional period, hearings may also be carried out by experts who have to date conducted them as part of the police. Under the current arrangements, individual criminal investigators within the police have the greatest experience with such hearings, so it would be a shame not to benefit from their knowledge. Such people may be appointed as experts during this transitional period, regardless of their primary type of education, provided, however, that they successfully complete the training which will be prepared and carried out by the institution.

Add Article 42 (validity and application)

The customary *vacatio legis* for the entry into force of the Act has been defined. It is envisaged that the Act will begin to be applied one year after its entry into force as in the meantime it is necessary to prepare legal acts for the beginning of the operation of the institution as well as

all operational aspects for its work. After one year, the Act will be applied only to criminal offences against sexual integrity, and three years after its entry into force to other criminal offences to which this Act applies. The purpose of such a gradual approach is to enable a gradual adjustment to the new way of expert work with and treatment of children, so that there will be no excessive influx of cases at the beginning and that the suitable professional staff can be trained. The experience of other countries shows that, following the establishment of the Barnahus mechanism, the number of reports of criminal offences and treated cases increased sharply.