



# Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Croatia

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## Executive summary

### Overview of the general elements of child-friendly justice in criminal proceedings

In general Croatia has a well-developed institutional and legal framework of child-friendly justice in criminal proceedings.

With respect to the legal framework, Croatia is a signatory party to all relevant international conventions in this matter and has adopted numerous laws and secondary legislation to protect and promote the rights and interests of children in criminal proceedings.

The most important piece of legislation is the Youth Courts Act which contains provisions on substantive criminal law, on courts, on criminal procedural law and on enforcement of sanctions applicable to children (and young adults) who are accused of or found guilty of criminal offences. It also contains rules on protection of children in criminal law.

In addition, many other relevant provisions can be found in the following laws: the Family Act, the Criminal Procedure Act, the Criminal Code, the Protection against Domestic Violence Act, the Social Welfare Act, the Law on the Execution of Sanctions Imposed on Juveniles Convicted of Crimes and Misdemeanours, and the Law on the Ombudsman for Children.

Croatia is at the moment in an extremely active phase of amending its framework laws as well as adopting new ones. A new Criminal Code entered into force on 1 January 2013 and the Family Act and the Criminal Procedure Act are in the process of being amended as well. The Youth Courts Act is a relatively new act, being adopted in 2011 and already amended in 2011. Finally, numerous pieces of secondary legislation related to the above mentioned framework laws are envisaged to be drafted and adopted in the course of 2013.

Croatia's institutional framework for the protection of rights of children includes numerous institutions at governmental level such as the Ministry of Social Welfare and Youth, the Ministry of Interior and the Ministry of Justice. In addition, there are a number of specialised bodies such as:

- the Ombudsman for Children established exclusively for the protection, monitoring and promotion of the rights and interests of children;
- specialised police officers within the Ministry of the Interior, trained in dealing with child victims and offenders;
- Youth Courts in criminal proceedings involving children;
- youth judges who are specialised judges working in Youth Courts;
- a specialised State Attorney for Youth within the State Attorney's Office;
- lawyers specialising in children's proceedings, appointed by youth judges when needed from the list of the Croatian Chamber of Attorneys (usually as defence lawyers);
- social workers who have an extensive role in criminal proceedings involving children;
- specialised clinics and hospitals for children; and
- numerous specialised NGOs, non-legal expert assistants (at Youth Courts and the State Attorney's Office), volunteers, etc.

Competencies amongst the main stakeholders and competent authorities are clearly divided and there do not appear to be significant overlaps or gaps in the system, in this respect.

### Overview of children's involvement before, during and after judicial proceedings

A child victim is defined in the Criminal Code as any person who has not yet reached the age of 18.

The Youth Courts Act defines a child offender as a 'juvenile' offender. A 'juvenile' is a person who, at the time of committing an offence, was at least 14 years of age but under 18 years of age. However, a person who commits a crime at the age of 18 may also be treated as a 'juvenile' during the proceedings.

Children under 14 years of age cannot be held criminally liable. Criminal prosecution as such must be dismissed and criminal proceedings ceased.

Any child or any other person may report a crime and may do so anonymously or using a false/assumed name. Police officers specialised in dealing with children's cases will respond to the report, though the police are not legally competent to conduct any interviews or testimonies with children. They may only perform activities needed for the investigation such as gathering preliminary data on the victim, the crime and the suspect, interviewing witnesses, talking to parents etc.

Child witnesses below the age of 14 and child victims up to and including 16, may only be questioned or give testimony in a separate room. The interview will be conducted by a special youth investigator or youth judge via video-link. Questions posed by the judge, lawyers or state attorney, will be directed through expert assistants for children who will use appropriate child-friendly language. Testimonies are recorded and may be used as evidence during the trial. Where possible, rooms will be made child-friendly through the use of toys and/or equipment (child tables and chairs, crayons, soft toys etc). Every major municipal court and every county court in Croatia possesses equipment for recording the child-victim in separate rooms.

This manner of questioning and provision of testimony is also recommended (though optional) for all children outside the above mentioned age ranges.

Centres for social care have wide competencies to ensure the efficient preparation, support, monitoring and protection of the child victim as well as his/her family, before, during and after the criminal procedure.

A child victim has the right to be heard, to testify and to participate in criminal proceedings and may do so through a variety of means such as presenting evidence, questioning suspects and witnesses, and accessing the case file. Children below 16 must exercise these rights through a legal representative whilst children of 16-17 years old may do so in their own right. A child victim also has the right to free legal assistance during the entire course of the criminal proceedings.

A range of measures exist to protect the child from harm including with respect to the child's privacy. For example, personal data may not be published and the public may be excluded from the trial, the child may be removed from the court sessions as soon as his/her presence is no longer required, and precautionary measures will be taken to ensure the child victim does not meet the offender while attending the court sessions.

All victims of violent intentional crimes may seek state compensation. With respect to child victims, the period within which they must submit a request does not start until the child turns 18. It is noteworthy that there are no specific regulations or legally prescribed actions for the treatment of child victims after the judicial proceedings.

With respect to child suspects/ offenders, it is at the state attorney's discretion to end any criminal proceeding, even where there are reasonable grounds for believing the child has committed a crime, when the state attorney believes prosecution is not appropriate having regard to the seriousness of the offence(s), i.e., where the punishment would be a fine or imprisonment of less than five years, and the circumstances of the child.

During criminal proceedings, a range of measures are in place to protect child suspects. Special care must be taken during interviews and the child must be represented by a lawyer from the first interview and throughout the criminal proceedings. A child will only be detained during the investigation as a measure of last resort and when being escorted will only be restrained where there is a serious risk that the child will commit an extremely violent crime.

All investigations and procedures against child suspects are confidential and the public is excluded from hearings. Relevant material may only be made public with the special approval of a competent body. The child suspect may also be removed from the hearing if his/ her participation may harm his/her upbringing and mental development.

Overall, there is an extensive legislative and institutional framework related to the scope and conditions of protection of child offenders when executing the sentence, deprivation of liberty, rehabilitation or reintegration into society.

All competent authorities involved in potential criminal proceedings involving children need to act urgently to finalise their activities and procedures as soon as possible.

### **Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps**

The child-friendly approach to criminal justice is carefully monitored by certain competent authorities. The Ministry of Justice is, in general, the competent authority for adopting, improving and enforcing the relevant legislation. The Ministry is involved in implementing relevant projects as well as promoting this approach at the national level.

With respect to awareness-raising of the public, numerous NGOs are active and represent a strong stakeholder presence.

In addition, the Ombudsman for Children is entitled to monitor any particular infringements of rights or interests of children and has unlimited access to any data, information or files regarding any procedure involving the children, regardless of its confidentiality. The Ombudsman also has unlimited access to inspect any authorised premises providing shelters or any type of accommodation for children.

Youth judges also act as an important supervisory body ensuring that a child-friendly approach is used throughout proceedings. Youth judges are one of the competent authorities to whom any infringement or threat to child rights or interests can be reported. Moreover, they are obliged to check regularly on the status and condition of children who have been sentenced to imprisonment.

Finally, social workers individually and within their centres for social care provide important services related to the protection of children involved in criminal proceedings, such as psychological support and evaluation of the child and the case/crime/offence, provision of temporary shelters and care in the earliest stages of the procedure etc.

However, despite extensive legislation, a number of difficulties have been identified in particular by the Ombudsman for Children:

- insufficient funds for continuous education and training of all experts involved in the process;
- insufficient number of experts involved in gathering and processing data (in particular insufficient number of expert assistants at Youth Courts who are non-legal professionals rather than social workers, pedagogues etc);
- insufficient child-friendly premises and equipment especially at Youth Courts;
- frequently obsolete video-link equipment for interviews and testimonies; and
- lack of legal framework for assistance to child victims after the completion of criminal proceedings.

Nevertheless, all relevant legislation is efficiently implemented taking into account all special rights and protection of children in these proceedings.

## Abbreviations

AYC	Youth Courts Act
CA	Competent Authority
CC	Criminal Code
CPA	Criminal Procedure Act
CoE	Council of Europe
EC	European Commission
EU	European Union

## 1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

The Republic of Croatia is a signatory party to the UN Convention on the Rights of the Child (CRC)<sup>1</sup>, the European Convention on the Compensation of the Victims of Violent Crimes<sup>2</sup>, European Convention on the Exercise of Children's Rights<sup>3</sup>. These Conventions are applicable in Croatia as any other law and they can be invoked in the courts.

The Croatian Constitution and numerous laws and relevant subsidiary legislation aim at ensuring protection of civil, political, economic, cultural and social rights of children. In addition, the State and relevant competent authorities continuously implement numerous national plans and strategies in the implementation of protection, further development and respect of rights of children<sup>4</sup>.

<sup>1</sup> Ratified as International Agreement and published in SL SRJ No. 15/1990.

<sup>2</sup> Ratified by Law on Ratification of European Convention on the Compensation of the Victims of Violent Crimes, (NN-MU 004/2008).

<sup>3</sup> Ratified by Law on Ratification of European Convention on the Exercise of Children's Rights, (NN-MU 1/2010).

<sup>4</sup> The most significant pieces of legislation related to children in criminal proceedings are the following:

1. *Obiteljski zakon* pročišćeni tekst zakona NN 116/03, 17/04, 136/04, 107/07, 57/11, 61/11 (The Family Act);
2. *Zakon o socijalnoj skrbi* NN 33/12 (The Social Welfare Act);
3. *Zakon o zaštiti od nasilja u obitelji* NN 137/09, 14/10, 60/10 (The Protection against Domestic Violence Act);
4. *Kazneni zakon* NN 125/11, (New Criminal Code, entered into force 01.01.2013);
5. *Zakon o kaznenom postupku* - NN 152/08, 76/09, 80/11, 121/11 (Criminal Procedure Act);
6. *Zakon o novčanoj naknadi žrtvama kaznenih djela pročišćeni tekst zakona* (NN 80/08, 27/11) (Act on Financial Compensation to Victims of Crimes);
7. *Zakon o sudovima za mladež* NN 84/11, 143/2012 (Youth Courts Acts);
8. *Zakon o izvršavanju sankcija izrečenih maloljetniku za kaznena djela i prekršaje* NN 133/12 (Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences);
9. *Zakon o izvršavanju kazne zatvora* NN 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 190/03, 76/07, 27/08, 83/09, 18/11 i 48/2011 (Law on Execution of the Prison Sentence);
10. *Zakon o zaštiti osoba s duševnim smetnjama* NN 111/97, 27/98, 128/99 i 79/02 (Law on the Protection of Challenged Person);
11. *Zakon o besplatnoj pravnoj pomoći* pročišćeni tekst zakona NN 62/08, 44/11, 81/11 (Free Legal Aid Act);
12. *Zakon o ustanovama* NN 35/08 (Law on Public Institutions);
13. *Zakon o pravu na pristup informacijama* pročišćeni tekst zakona NN 172/03, 144/10, 37/11, 77/11 (Law on Access to Information);
14. *Zakon o zaštiti osobnih podataka* pročišćeni tekst zakona NN 103/03, 118/06, 41/08, 130/11 (Law on Protection of Personal Data);
15. *Zakon o medijima* NN NN 59/04, 84/11 (Law on Media);
16. *Zakon o pučkom pravobranitelju za djecu* NN 96/03 (Law on Ombudsman for Children);
17. *Nacionalna strategija zaštita od nasilja u obitelji od 2008.g. do 2011.g.* (National Strategy on Protection against Violence in the Family from 2008 to 2011);
18. *Nacionalna strategija prevencije poremećaja u ponašanju djece i mladih od 2009. godine do 2012. godine* (National Strategy on Prevention of Disturbing Behaviour of Children and Juveniles 2009-2012);
19. *Nacionalni plan aktivnosti za prava i interese djece od 2006. do 2012. godine* (National Plan on Activities on the Rights and Interests of Children 2006-2012).



The institutional framework for the protection of rights of children in Croatia consists of numerous institutions at governmental level such as the Ministry of Social Welfare and Youth, the Ministry of the Interior and the Ministry of Justice. A special advisory body has been established in the Ministry of Justice's Commission for monitoring and improving the work of the criminal proceedings and the execution of juvenile sanctions.

Moreover, there are specialised competent authorities such as the Ombudsman for Children which is an independent authority answerable solely to the Parliament and which has been established with the exclusive objective of protection, monitoring and promotion of rights and interests of children. The Ombudsman for Children was set up by the Law on Ombudsman for Children<sup>5</sup> adopted on 18 June 2003 with the following relevant competencies:

- Monitoring the status of harmonisation and implementation of Croatian national laws in accordance with international agreements and conventions to which Croatia is a signatory party and are related to children.
- Monitoring particular infringements of rights or interests of children.
- Adopting recommendations and warnings addressed to other public authorities dealing with children who are obliged to cooperate with the Ombudsman and, upon its request, are obliged to deliver requested data or answers; in case of non-cooperation, the Ombudsman is entitled to notify the respective authority responsible for the supervision of the public authority or may notify the Government directly.
- Has unlimited access to any data, information or files regarding any procedure involving children, regardless of the status of confidentiality of those data and unlimited access to inspect premises providing shelters or any type of accommodation for children authorised by special legislation to provide those services, including the premises of religious communities.
- Whenever the Ombudsman identifies any kind of infringement or danger to any right or interest of a child, especially with respect to criminal offences, the Ombudsman should immediately inform the State Attorney's Office and the competent centres for social care and propose measures to protect the child.
- Can request assistance from any expert body in order to decide on particular child cases. Those bodies are obliged to provide their expertise e.g. with respect to a request for an expert evaluation of a child psychologist and/or assistance in questioning the child victim.

The Ombudsman for Children reports annually to the Croatian Parliament but in cases of significant infringements of the rights of children, the Ombudsman can address particular issues to Parliament in special reports.

Centres for social care (*Centri za socijalnu skrb*) are institutions with public competencies which also play a significant role in the protection of children in criminal proceedings. According to the Social Welfare Act<sup>6</sup>, centres for social care provide important services related to children involved in criminal proceedings, provide psychological support and evaluation of the child and of the case/crime/offence, and provide temporary shelters and care in the earliest stages of the proceedings.

The main purpose of the work of social workers is to promptly protect and support child victims, evaluate the situation, provide their expertise and implement any measures required to eliminate any additional harm or secondary victimisation of the child.

Social services that could be provided for children are as follows:

1. primary social services (informing, identifying and preliminary assessment);
2. counselling and assistance;

<sup>5</sup> O.J. No. 96/2003.

<sup>6</sup> O.J. No. 33/12.



3. assistance and house care;
4. expert family assistance;
5. early intervention;
6. assisting the integration of the child into correctional and educational programmes;
7. accommodation; and
8. expert assistance in professional training and employment.

With respect to the criminal justice system and procedures, the role of the social service is significant. Since prompt and efficient support to child victims or witnesses is their crucial responsibility, social workers and social experts are invested with numerous competencies and obligations. They are included in all phases of criminal proceedings involving children, starting from the earliest interviews of children (within the investigation phase) through to later phases of the criminal procedure in the Youth Court (such as support and preparation for testimony, preparation for court hearings).

The State Attorney for Youth and the Youth Judge notify the competent county centre for social care of the facts and circumstances that contributed and led to the commission of the crime with a view taking the measures to protect the rights and welfare of children. In addition, the competent authorities must request a county centre for social care to initiate 'non-contentious' proceedings against a parent abusing or seriously violating his/her parental responsibilities, duties and rights, with a view to terminating his/her right to parental care or taking away his/her right to be with the child where such abuse or violation is established during the criminal proceedings<sup>7</sup>.

Finally, the social service provides facilities, institutions (such as correctional facilities, institutions or disciplinary centres) and expertise with respect to the execution of certain correctional measures imposed on child offenders<sup>8</sup>.

The Croatian judicial system has established Youth Courts (*Sudovi za mladež*) within municipal and county courts specialised in criminal proceedings involving children, young adults and in criminal cases requiring the protection of children, in accordance with the Youth Courts Act<sup>9</sup>.

A special department has been established within 15 county courts and 15 municipal courts (which exist within the jurisdiction of the county court) with youth councils and youth judges. These judges are appointed by the President of the Supreme Court of the Republic of Croatia for a period of five years from among judges of existing municipal and county courts. Such judges may be reappointed. In the same manner, the General State Attorney appoints state attorneys specialised in cases dealing with children.

Youth councils consist of youth jurors coming from different professions specialised in dealing with children, such as professors, teachers or pedagogues. In addition, Youth Courts closely cooperate with other relevant experts called expert assistants such as social pedagogues<sup>10</sup>, social workers and psychologists. They are involved in gathering relevant data and providing their expert opinion to the court on, for example, the capability of the child to testify, the type of sanctions that should be imposed, or on the ending or changing of a sanction<sup>11</sup>. Expert assistants are also employed at the State Attorney's Office providing similar expert services.

In addition, since May 2008, county courts have been developing a network of special committees which provide assistance to victims and witnesses (so far seven of these

<sup>7</sup> Article 117 and 118 of Youth Courts Act.

<sup>8</sup> As prescribed in the Youth Courts Act, the new Social Welfare Act and the new Law on the execution of sanctions imposed on juveniles for crimes and offences, which entered into force on 01.01.2013.

<sup>9</sup> Youth Courts Act O.J.. No. 84/2011, 143/2012.

<sup>10</sup> A social worker with a specialisation in working with children or other individuals with problems in socialisation.

<sup>11</sup> Article 43, Youth Courts Act.

committees have been established at the County Courts of Zagreb, Rijeka, Split, Osijek, Sisak, Vukovar and Zadar). These committees directly assist victims, witnesses and their families in the court house by providing them with practical information on court procedures as well as emotional and psychological support, when needed. These committees consist mostly of non-legal professionals such as social workers, teachers, psychiatrists including volunteers from law studies, social studies, pedagogy etc.

A number of other institutions are also active in the protection of children and their rights in various sectors such as:

- education: e.g. the Centre for Educational Research and Development<sup>12</sup>;
- health: institutions and clinics such as policlinic “Child Protection Centre of Zagreb”<sup>13</sup> or the psychiatric hospital for children and youth in Zagreb (see further in section 3.1.3);
- NGOs: such as “Brave phone” (see further in section 3.1.3), “Blue phone” or “SOS phone”, “*Udruga Most*”;
- shelters: such as “DUGA ZAGREB”<sup>14</sup> (shelter for children and adults as victims of domestic crimes);
- psychological assistance: “*Centar za djecu, mlade i obitelj Modus*”<sup>15</sup> (Society for Psychological Assistance) is specialised in helping to alleviate the suffering of traumatic stress survivors and to provide psychological and psychosocial assistance to individuals, families, groups and communities in distress.

### Training

Youth judges and state attorneys for youths must have a pronounced inclination for the upbringing, needs and welfare of young people and have basic knowledge in the area of criminology, social pedagogy, youth psychology and social work for young people. State attorneys for youths, while taking into account the criteria referred to in Article 38 of this Act, are appointed for a five year term from the ranks of state attorneys or deputy state attorneys, by the Head State Attorney of the Republic of Croatia<sup>16</sup>.

The Ministry of the Interior ensures, within its training programmes, that certain police officers are specially trained in the treatment of child victims and offenders. Although according to the criminal procedural rules currently in force, police officers do not have a right to interview or question children, they are in practice very often the child’s first contact with the authorities and therefore need to be experienced and trained in numerous sensitive issues relevant to crimes involving children.

<sup>12</sup> The Centre for Educational Research and Development (CERD) is a research unit within the Institute for Social Research in Zagreb, which carries out fundamental and applied research in education. It was established in January 2001 on the initiative of a group of professors from the Faculty of Humanities and Social Sciences (Departments of Pedagogy, Psychology, Sociology and Philosophy) at the University of Zagreb. The initiative was supported by experts from other Croatian universities and institutions, and in particular the Institute for Social Research in Zagreb, the Open Society Institute, the Croatian Ministry of Science and Technology and the Croatian Ministry of Education and Sport, <http://www.idi.hr/cerd/index.php/en>.

<sup>13</sup> Child Protection Centre - Zagreb was founded in 2002 with the aim of providing effective and systematic support of traumatised children and their families (i.e. abused and neglected children, families affected by war).

<sup>14</sup> DUGA ZAGREB, *Dom za djecu i odrasle - žrtve obiteljskog nasilja*; [www.duga-zagreb.hr/](http://www.duga-zagreb.hr/).

<sup>15</sup> The SPA is a registered (since 1993), non-profit, non-governmental mental health organisation. It is based in Zagreb, Croatia. It welcomes mental health professionals as full members and other people as beneficiaries without regard to gender, race, ethnicity or religious affiliation. Membership in SPA is open to psychologists, social workers, psychiatrists and special educators with clinical, research, teaching and applied backgrounds. Graduate students from these disciplines also take part in SPA projects; see more at: <http://www.dpp.hr/eng/index.php>.

<sup>16</sup> Articles 38 and 39 of Youth Courts Act.

## 2 Child-friendly justice before and during criminal judicial proceedings

### 2.1 The child as a victim

According to Croatian legislation, child witnesses and victims are persons under 18 years of age.<sup>17</sup> In addition, according to the definition as established in the Criminal Code<sup>18</sup> and relevant to criminal-justice cases, a victim below the age of 18 is classed as a child victim.

Children, i.e. persons below 18 years of age, do not in principle have legal capacity but exceptionally, they can acquire legal capacity where they are married or are a parent over 16 years of age.

#### 2.1.1 Reporting a crime

According to the Croatian criminal justice system, in particular with respect to provisions established in the Criminal Code<sup>19</sup> and Criminal Procedure Act<sup>20</sup>, any person having knowledge of a violation of any of the rights of a child has an obligation to inform a competent authority, especially in cases of any form of physical or mental violence, sexual abuse, neglect or misdemeanour or any other form of abuse and exploitation of a child.

Children may report a crime or offence or request help related to any inappropriate treatment or harm the child has suffered. A child may report a crime directly to the following institutions: the school (that is obliged to inform further competent authorities), the centres for social care, the police, the Ombudsman for Children, the State Attorney's Office or NGOs active in protecting the rights of children. As such, there are no restrictions on the reporting by a child of a crime including the possibility of reporting a crime anonymously or under a false name. The Criminal Procedural Act (CPA) does not prescribe the form or content of a crime report.

The report may be submitted by the child victim personally or by his/her parents or legal representative, by any other citizen, legal person, or state authority whenever they have the knowledge that the crime has been committed. The crime report will be acknowledged in most cases by the police and an officer specialised in child crimes and protection of children and family will respond.

It is possible to report a crime at a police station as well as in the child's home or at a centre for social care, whenever the circumstances imply that this would provide better protection of the rights and interests of the child and would reduce secondary victimisation.

The competent authorities are obliged to proceed *ex officio* upon the receipt of any information on the commission of a crime. Any person (whether adult or child) who reports a crime (and does not do so anonymously or pseudonymously) must be warned in advance that the false reporting of a crime is a crime in itself and is punishable under Article 302 of the Criminal Code .

Therefore, in order for state attorneys and the police to proceed regularly with the crime report, in practice, the report should contain the following information:

1. Detailed description of the crime, event and all other relevant circumstances enabling the police and state attorney to determine what kind of crime has been committed and to proceed as efficiently as possible with the investigation.
2. Name and the address of the offender and victims, if they are known to the person reporting the crime.
3. Name and address and personal data of the person reporting the crime.

<sup>17</sup> Article 113 of Youth Courts Act.

<sup>18</sup> As defined as in Article 87 Paragraph (7) of the Criminal Code.

<sup>19</sup> O.J. 125/11.

<sup>20</sup> O.J. 152/08, 76/09, 80/11, 121/11.

### 2.1.2 Provision of information

Victims, both adults and children, have the right to effective psychological and other professional assistance and support from the organisation or institution responsible for helping victims of crime, the right to participate in criminal proceedings as an injured party, and other rights provided by law<sup>21</sup>.

The victim of a criminal offence punishable by imprisonment of five years or more, is entitled to:

1. advice before testifying in criminal proceedings free of charge and the filing of claims for compensation;
2. if the victim suffers psychophysical consequences, severe damage or serious consequences as a result of the criminal offence(s), the victim may claim pecuniary and non-pecuniary damages from the state fund under the conditions set out under the law<sup>22</sup>.

The court, state attorney, investigator or police must inform the victim of the above mentioned rights and the rights they have as an injured party<sup>23</sup>.

In addition, a child or youth victim of a crime has the right to:

1. a legal counsel at the expense of budget funds;
2. the confidentiality of personal information;
3. the exclusion of the public.

When the court, state attorney, investigator or the police deal with a child victim, they must treat them with special consideration bearing in mind their age, personality and other factors in order to avoid adverse consequences for the upbringing and development of the child<sup>24</sup>.

In addition, the victim of criminal acts against sexual freedom and sexual morality has the right:

1. to talk to a counsellor prior to the testimony at the expense of budget funds;
2. to have the police and the State Attorney's Office investigate persons of the same sex;
3. to refuse to answer questions that relate strictly to the personal life of the victim;
4. to require to have the testimony recorded using audio-visual devices;
5. to the confidentiality of personal information; and
6. to require the exclusion of the public from the hearing<sup>25</sup>.

Prior to the first testimony, the court, state attorney, investigator and police must inform the victim of an offence as set out above of their rights<sup>26</sup>.

Child victims and/or the parents or legal representatives of the child victim may be informed of the arrest of the suspect and on-going investigation and the prosecution, usually by the police. Furthermore, additional information on the court proceedings, such as the trial dates, information on the proceedings etc. will be provided either by expert assistants from the court or by a special committee which provides assistance to victims and witnesses established within the court<sup>27</sup>.

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<sup>21</sup> Article 43 Paragraph (1) of the Criminal Procedure Act.

<sup>22</sup> Article 43 Paragraph (2) of the Criminal Procedure Act.

<sup>23</sup> Article 43 Paragraph (3) of the Criminal Procedure Act.

<sup>24</sup> Article 44 Paragraph (1) and (2) of the Criminal Procedure Act.

<sup>25</sup> Article 45 Paragraph (1) of the Criminal Procedure Act.

<sup>26</sup> Article 45 Paragraph (2) of the Criminal Procedure Act.

<sup>27</sup> Information provided by the Ministry of Justice, during the interview with their legal expert.

### 2.1.3 Protection from harm and protection of private and family life

The centre for social care is, after the police, another competent authority responsible for providing adequate protection measures to child victims. Whenever it comes to their attention that a child has been victim of a crime, they must inform the police and the State Attorney's Office in order to launch an official investigation. The presence of a social worker is obligatory at the police station whenever the child's parents or legal representatives are not present, refuse to be present or are themselves suspected of having committed the crime.

The social service will subsequently check, in a separate procedure, why the parents or legal representatives were not able or refused to be present. This procedure is carried out with a view to determine whether there has been a breach of parental obligations as provided in the Family Act and to determine any appropriate action such as warning measures or measures to supervise the application of parental obligations.

The role of the centre for social care is extremely important in the treatment of the child victim, especially when the child testifies as a victim and or witness of the crime, since these centres have a wide range of options and competencies to ensure the efficient preparation, support, monitoring and protection of the child victim as well as his/her family, before, during and after criminal proceedings<sup>28</sup>.

Where children are victims of physical or mental abuse, a few specialised child health care institutions exist e.g. Polyclinic Child Protection Centre of Zagreb<sup>29</sup> (*"Dječja poliklinika Zagreb"*) which is specialised in child health care and help or the psychiatric hospital for children and youth in Zagreb<sup>30</sup>. For specialist check-ups and emergency treatments the City of Zagreb has a specialised health clinic for children.

The Child Protection Centre of Zagreb is the only specialised centre of this kind in Croatia and therefore attends to patients from around the country. The key purpose of the work of the Child Protection Centre is to provide help and support to children with various traumatic experiences, including child victims of neglect and abuse, children at risk of abuse and their families.

The Centre uses multidisciplinary teams consisting of psychologists, psychiatrists, paediatricians, social workers, rehabilitators and social educators, nurses and a lawyer<sup>31</sup>. The work of the team is carried out through: assessment and treatment of children and their families; co-ordination within the team and supervision; training professionals from other child protection institutions; research and scientific work and publishing and raising public awareness<sup>32</sup>.

The Centre's tasks are as follows:

- individual assessment and diagnosis of the problems suffered by children referred to the Centre;
- planning of treatment for every child;
- conducting individual treatment according to the child's needs;
- organising and conducting group psychotherapy of children, organising support groups for children with difficulties and socialisation groups<sup>33</sup>.

<sup>28</sup> Source: Brochure on national expert round table "Protection of the child witness in criminal investigation and criminal and offence procedures" organised by Ombudsman for Children, held in Zagreb on 14 December 2011. Available only in Croatian at [http://www.dijete.hr/attachments/1260\\_PUBLIKACIJA\\_FINAL.pdf](http://www.dijete.hr/attachments/1260_PUBLIKACIJA_FINAL.pdf).

<sup>29</sup> Đorđićeva 26, 10 000 Zagreb, <http://www.poliklinika-djeca.hr/english/>.

<sup>30</sup> Kukuljevićeva 11, 10 000 Zagreb, <http://www.djecja-psihijatrija.hr>.

<sup>31</sup> Source: [http://www.poliklinika-djeca.hr/wp-content/uploads/poliklinika\\_brosura\\_web\\_eng.pdf](http://www.poliklinika-djeca.hr/wp-content/uploads/poliklinika_brosura_web_eng.pdf), page 1.

<sup>32</sup> Source: [http://www.poliklinika-djeca.hr/wp-content/uploads/poliklinika\\_brosura\\_web\\_eng.pdf](http://www.poliklinika-djeca.hr/wp-content/uploads/poliklinika_brosura_web_eng.pdf), page 3.

<sup>33</sup> Source: [http://www.poliklinika-djeca.hr/wp-content/uploads/poliklinika\\_brosura\\_web\\_eng.pdf](http://www.poliklinika-djeca.hr/wp-content/uploads/poliklinika_brosura_web_eng.pdf), page 3.

Children, parents and anyone in need of expert advice may obtain free telephone counselling (available during working hours) through '*Hrabri telefon*'<sup>34</sup> ('Brave phone'), '*Plavi telefon*' ('Blue phone') and '*SOS telefon*' ('SOS phone') which operate in all large cities throughout the country. These services are published in daily papers, on school boards, and child-friendly and popular media.

Volunteers, young professionals and different specialists, primarily in counselling, respond to calls to provide assistance. However, where an expert believes a child has been victimised or is at risk they must report the matter to the competent authorities such as the police, a centre for social care, etc.

Finally, the child's right to privacy is also protected by legislation regulating the media. The media are obliged to respect the privacy, dignity, reputation and honour of the citizens, especially children, youth and families, regardless of gender and sexual orientation. It is prohibited to disclose information which reveals the identity of the child if it jeopardises the welfare of a child. In addition, the media are obliged to respect the right to protect the identity of witnesses and victims of crimes and, without their knowledge and consent, not to disclose their identities<sup>35</sup>.

#### **2.1.4 Protection from secondary victimisation and ensuring a child-friendly environment**

The Criminal Procedure Act<sup>36</sup> provides that, in particular, the court, state attorney, investigators and the police are obliged to treat the child victim with special care and concern, taking into account their age, personality and other relevant circumstances, in order to avoid additional damage and harmful consequences to a child's development and education.

In addition, child victims of sexual abuse and violence have the right, upon their request, to be questioned by an expert or state attorney of the same gender as they are, to refuse to answer any question related to their personal life and to have the interview audio-visually recorded (for further details on the procedure, please see section 2.1.5 below)<sup>37</sup>. The police, state attorney, investigators and the court are obliged by this Act to inform the victim of their rights as explained above [in section 2.1.2](#)<sup>38</sup>.

The court's investigation, interviews and testimonies of child victim or witness are conducted only by video-link up until the child is aged 16. Specialised child experts direct the questions of the youth judge, defendant and/or his/her lawyer and the state attorney to the child in a child appropriate and comprehensive manner. During the course of this examination, a child is placed in a separate room, which should, where possible, have child-friendly toys and/or equipment (tables and chairs adapted for children, crayons, soft toys etc.). Every major municipal court and every county court in Croatia possesses equipment for recording interviews of child victims in separate rooms.

Furthermore, the Youth Courts Act<sup>39</sup> requires that all criminal proceedings against children ('juveniles') and cases involving the protection of children in criminal cases must be processed as 'urgent proceedings'.

The state attorney for youth and the youth judge notify the competent centre for social care of the facts and circumstances that contributed and led to the commission of the criminal offence with a view to taking measures to protect the rights and the welfare of the child.

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<sup>34</sup> <http://www.hrabritelefon.hr/>.

<sup>35</sup> Article 16 of the Media Act.

<sup>36</sup> Article 44(2) of the Criminal Procedure Act.

<sup>37</sup> Article 45 of the Criminal Procedure Act.

<sup>38</sup> Articles 44 and 45 of the Criminal Procedure Act.

<sup>39</sup> Article 4 of the Youth Courts Act.



In addition, the above mentioned authorities may request from a competent centre for social care to initiate ‘non-contentious proceedings’ against a parent abusing or seriously violating his/her parental responsibilities, duties and rights, with a view to terminating his/her right to parental care or taking away his/her right to be with the child where such abuse or violation is established during the criminal proceedings<sup>40</sup>.

The Criminal Procedure Act<sup>41</sup> requires that the child victim is interviewed only once during criminal proceedings by video-link and only in the Youth Court as described above for reason of avoiding any repetition or multiple testimonies and therefore causing possible secondary victimisation of a child.

### 2.1.5 Protecting the child during interviews and when giving testimony

The police are usually the first criminal justice authority to come into contact with a child victim. As such, specialised police officers are trained and educated to work with both child victims and child suspects. It is a policy<sup>42</sup> that those officers aspire to working with children and are highly educated with a degree in criminology, pedagogy, social pedagogy, law, psychology etc. However, the police do not have the legal competence to conduct interviews or testimonies with children, and may only carry out investigative acts such as gathering preliminary data on the victim, the crime and the suspect, interviewing witnesses, talking to parents etc.

Child witnesses below 14 years of age and child victims up to 16 (inclusive) years of age may only be questioned or give testimony via a video-link to a youth judge who sits in a separate room<sup>43</sup> or, when the youth judge is absent, to a special Investigation Judge for Youth. This approach is recommended, though optional, for children from 16 years onwards.

When a child is interviewed as a victim or witness, a recording of the interview must be reproduced at the hearing<sup>44</sup>. A judge may also order a transcript to be made of the recorded testimony which thus becomes part of the interview. In the case of criminal offences against ‘sexual freedom’ and ‘sexual morality’, the recording of a testimony must always be transcribed<sup>45</sup>.

During the course of the interview, a child is placed in a separate room and has the possibility to be accompanied by a person the child trusts where this does not present a risk to the child or to the proceedings. Every major municipal court and every county court in Croatia possesses equipment for the recording of the child-victim in separate rooms.

Both child victims and witnesses (under the age of 16) are interviewed in a separate room, with questions from the judge, state attorney and other parties in the proceedings being directed through expert assistants such as psychologists or social pedagogues. Children from 16 years upwards (‘older juveniles’ – henceforth referred to as older child victims/offenders/suspects) may be interviewed in the same manner as children under 16 years old where the judge determines it is in the best interests of the child and the proceedings<sup>46</sup>.

The interview must be conducted in the presence of the child’s legal representative (parent, guardian, foster parent, person appointed for the safeguard and care of a child, officer from a centre for care etc.) and under specific circumstances it can also be conducted in the child’s home<sup>47</sup> (such as in the case of severe illness).

<sup>40</sup> Articles 117 and 118 of the Youth Courts Act.

<sup>41</sup> Article 292 of the Criminal Procedure Act.

<sup>42</sup> Information provided from the Police Academy (“*Policijska Akademija*”) within the Ministry of the Interior.

<sup>43</sup> Articles 115 Paragraphs (2) – (8) of the Youth Courts Act and 292 Paragraph (1) of the Criminal Procedural Act.

<sup>44</sup> Article 115 Paragraph (4) of the Youth Courts Act.

<sup>45</sup> Article 115 Paragraph (5) of the Youth Courts Act.

<sup>46</sup> Article 292 Paragraphs (1)(2) of the Criminal Procedure Act.

<sup>47</sup> Article 292 Paragraph (3) of the Criminal Procedure Act.



A parent, foster parent, guardian or any other person appointed to safeguard and care for a child (this may be an officer from a centre for social care) is not allowed to be present at the interview or testimony of a child if there is a reasonable doubt that they committed the crime or offence against that child.

According to the CPA, a child can be examined as a witness unless he/she is not old enough or doesn't have the required level of maturity. This will be assessed by the expert assistants at the Youth Court. However, any knowledge or information gathered from that child by experts, family or any other person who was in close contact with the child can be used as evidence in the criminal proceeding. Furthermore, in interviewing children, especially child victims, the interview and testimony will be conducted with special care and concern so as not to cause any additional stress to that child.

It is prohibited to perform on the defendant, witness or other person any medical intervention or other means that would affect their willingness to give testimony, nor can force, threat, or other similar means be used<sup>48</sup>.

While interviewing children and taking other actions during which the child is present, care must be taken that, taking into account the mental development and personal characteristics of the child, the conduct of the criminal procedure should not be to the detriment of the development of his/her personality<sup>49</sup>.

A child victim of certain crimes can be interviewed no more than twice and always in the presence of psychologist, pedagogue or other expert. This relates to the following crimes: murder, infanticide, illegal restraint, assisting in suicide, abduction, abuse in the performance of duty or public authority, rape, sexual intercourse with a helpless and vulnerable person, sexual intercourse with a child, coercion into sexual intercourse, sexual intercourse through abuse of position, sexual abuse and exploitation of the child, obscenity, incest, family violence, exploitation of children in pornography, abandonment and neglect of a child, human trafficking, slavery and cross-border prostitution. This restriction of a maximum of two interviews is only applicable to court investigations<sup>50</sup>. In practice, the child victim will have to talk about the crime/offence more than this as a result of preliminary assessments and investigation of the circumstances of the crime by various experts.

Where the police learn that a criminal offence, which is subject to a punishment of imprisonment of three years or more, was committed against a child, they must immediately notify a youth state attorney. The competent state attorney must submit to the investigating youth judge for criminal offences against sexual freedom and sexual morality and against marriage, family and youth, a proposal for the holding of an evidentiary hearing, with a view to interviewing the child as a witness<sup>51</sup>. This must be done at the latest within three days of the entry of the criminal charges into the register of criminal charges.

The testimony of the witness will be read at the main hearing or reproduced by playing the recordings from the testimony and interview. Recordings that are made of such interviews must be kept for the same period of time as criminal files as prescribed by the CPA and no longer than five years after the ruling<sup>52</sup>. Information on a child who is a party to the criminal proceedings is confidential and any person acquainted with this information has an obligation to keep it secret.

In order to provide additional protection to a child, the court can *ex officio* or on the request of the concerned parties (but only after they have been interviewed) exclude the public from attending the court hearing for its entire duration or just a part of it.

<sup>48</sup> Article 6 of the Criminal Procedure Act.

<sup>49</sup> Article 53 of the Youth Courts Act.

<sup>50</sup> Article 113 of the Youth Courts Act.

<sup>51</sup> Article 115 of the Youth Courts Act.

<sup>52</sup> Art. 115 Paragraph (6) of the Youth Courts Act.

Furthermore, when the child is present at the court hearings as a witness or victim, he will be removed from the sessions as soon as his or her presence is no longer required, and precautionary measures will be taken for child victims not to meet their offenders while attending the court sessions.

Finally, children, if they refuse to testify, are not subject to the provisions on arrest, pecuniary and/or prison punishment. A summons to the child to appear as a witness must be served through his/her parents<sup>53</sup>.

### **2.1.6 Right to be heard and to participate in criminal proceedings**

In accordance with the Criminal Procedure Act, an alleged child victim has the right to be heard, to testify and to participate in criminal proceedings. They have the right to inform appropriate authorities on relevant facts and propose evidence with respect to the crime and the criminal proceedings, as well as to exercise their right to legal remedies. In this respect they have the right to ask questions to suspects, witnesses and to expert witnesses during court sessions and submit their comments and explanations regarding their testimony.

Where the child is a victim or is declared incapable of performing legal acts, his/her legal guardian must be authorised to give all statements and perform all actions to which, according to the Criminal Procedure Act, the victim is entitled, such as the right to access case files<sup>54</sup>. Children who are aged 16 years or more can undertake those activities and exercise the abovementioned rights personally.

A child aged 16 years or more may, in his/her own right, submit a request for prosecution to the police or State Attorney's Office. A child under the age of 16 or aged 16 and over but declared incapable of performing legal acts can do this only through his/her legal representative<sup>55</sup>.

### **2.1.7 Right to legal counsel, legal assistance and representation**

Free legal counsel, assistance or representation can be appointed to the child allegedly damaged by the crime throughout the entire criminal proceeding.

The Criminal Procedure Act<sup>56</sup> stipulates that children involved in criminal proceedings, in addition to all the rights prescribed for victims by this Act, also have the following rights: a right to free legal representation, confidentiality of personal data and exclusion of the public from the trial.

The Youth Courts Act states that when the president of the court assesses the need to protect victims' or offenders' interests, he will appoint a lawyer on the proposal of the judge in charge of the investigation or the children's judge, chosen from respectable attorneys for children within the Croatian Bar Association. This appointment must be executed by the president of the court when he evaluates that the legal interests of a child (as an injured party), child victim or child plaintiff need to be ensured<sup>57</sup>.

The court must always appoint (in the line of duty) a lawyer to the child victim of a criminal offence for which the sentence is established as imprisonment for five years or more, and where the person suspected of committing the crime against a child's sexual freedom is a relative of the child in the vertical line of descent, or in the horizontal line of descent in the third degree, or a relative by marriage (up to the second degree) or an adopted parent<sup>58</sup>.

Furthermore, the child victim must be provided with assistance by a counsellor for the purpose of issuing a statement in a criminal procedure, and counselling must be provided by

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<sup>53</sup> Article 115 Paragraph (8) of the Youth Courts Act.

<sup>54</sup> Article 285 Paragraph (4) of the Criminal Procedure Act.

<sup>55</sup> Article 48 Paragraph (5) of the Criminal Procedure Act.

<sup>56</sup> Article 44 Paragraph (1) of the Criminal Procedure Act.

<sup>57</sup> Article 116 Paragraph (1) of the Youth Courts Act.

<sup>58</sup> Article 116 Paragraph (2) of the Youth Courts Act.

an expert assistant or other professionals, appointed by the court and funded from the budget<sup>59</sup>.

### 2.1.8 Remedies or compensation exist for violation of rights and failure to act

All persons having the right to appeal<sup>60</sup> may appeal against a judgment of the competent court as set out in the general rules and conditions on legal remedies established by the Criminal Procedure Act.

A child victim, in addition to a state attorney, defendant and defence counsel, may appeal a judgment of the court of first instance. A child victim, as a party in the criminal proceedings, may appeal the decision of the court on the costs of the trial and the decision of the court on his/her financial claims.

The child victim as a party in the proceedings is not entitled to any of the extraordinary legal remedies such as reopening of criminal proceedings, request for protection of legality<sup>61</sup> and request for extraordinary review of the final judgment.

The Act on Financial Compensation for Victims of Crime is another important legal basis, providing victims of intentional and violent crimes the possibility to request compensation. This Act regulates in detail who is entitled to compensation (direct and indirect victims)<sup>62</sup>, under which conditions, how to apply for compensation, which are the competent authorities and what is the exact procedure to do so, even in cross-border cases. All provisions and conditions established by this Act are also applicable to child victims.

There is a special privilege for child victims, in respect of the start of the period of the statute of limitations regarding the deadline to submit the request for compensation; for children and child victims it starts running when the victim reaches the age of 18 years old. Therefore, child victims are entitled to submit a request for compensation, even later in life, when they are fully legally capable of exercising all their rights as adults, in case their legal representative did not do so before<sup>63</sup>.

There is the same privilege for child victims in cases when the system or their legal representatives fail to act promptly in regard to when the offence or crime was committed, and the child victim was, at that time, under 18 years of age<sup>64</sup>.

The Criminal Code establishes that for certain criminal offences<sup>65</sup> committed against a child, the prescribed period of the statute of limitations regarding criminal prosecution starts running when the victim reaches the age of 18 years old. Therefore, child victims are entitled to initiate prosecution against their offender, even later in life, when they are fully legally capable of exercising all their rights as adults.

## 2.2 The child as a witness

### 2.2.1 Reporting a crime

In general, the provisions applicable to child victims of crime, as elaborated in section 2.1, are also applicable to child witnesses.

<sup>59</sup> Article 116 Paragraph (3) of the Youth Courts Act.

<sup>60</sup> As defined in Article 464 paragraphs (1)(6) of the Criminal Procedure Act.

<sup>61</sup> The State Attorney of the Republic of Croatia may submit a request for the protection of legality against a final court's decisions and against judicial proceedings which preceded such final decisions if there was a violation of law in a manner that presents a violation of basic human rights and liberties guaranteed by the Constitution, domestic and international law (Art. 509 of the CPA).

<sup>62</sup> Article 5 of the Act on Financial Compensations to Victims of Crimes.

<sup>63</sup> Article 25 Paragraph (3) of the Act on Financial Compensations to Victims of Crimes.

<sup>64</sup> Article 25 Paragraph (3) of the Act on Financial Compensations to Victims of Crimes.

<sup>65</sup> As listed in Article 82 Paragraph (3) of the Criminal Code.

### 2.2.2 Provision of information

There are no special provisions regarding the rights of child witnesses in criminal proceedings.

According to the Criminal Procedure Act<sup>66</sup>, the witness will be summoned to the court by a court order to stand as a witness, and will hear his/her name, the time and the place of the court session when the witness has to come, as well as information on the case, the legal procedure and a warning about the consequences of a no-show without proper reason.

The child witness may be summoned via his/her parents or legal representatives<sup>67</sup> up to the age of 18 years old.

### 2.2.3 Protection from harm and protection of private and family

See section [2.1.3](#) above as the same rules apply to child victims and witnesses.

### 2.2.4 Minimising the burden of proceedings and ensuring a child-friendly environment

See section [2.1.4](#) above as the same rules apply to child victims and witnesses.

### 2.2.5 Protecting the child during interviews and when giving testimony

See section [2.1.5](#) above as the same rules apply to child victims and witnesses.

Once again, it is noteworthy that a child witness (who is not at the same time a victim of crime) must always be interviewed or give testimony under the same conditions established for child victims (i.e. in a separate room via video-link) up to the age of 16 years old; on the other hand, this is not obligatory for child witnesses from the age of 16 to 18 years old but it could be recommended if the competent authorities find it necessary<sup>68</sup>.

### 2.2.6 Right to be heard and to participate in criminal proceedings

See section [2.1.6](#) above as the same rules apply to child victims and witnesses.

### 2.2.7 Right to legal counsel, legal assistance and representation

See section [2.1.7](#) above as the same rules apply to child victims and witnesses.

### 2.2.8 Remedies or compensation for violation of rights and failure to act

There are no specific remedies or compensation envisaged for the violation of the rights of a child as a witness. General rules on criminal procedures on witnesses are applicable.

## 2.3 The child as a suspect/defendant

All relevant rights and obligations for child suspects/defendants are regulated under the new Youth Courts Act, which now encompasses all relevant provisions on children's rights in criminal proceedings, both under the Criminal Code and the Criminal Procedural Act.

In general, and as regulated by the Criminal Procedural Act, any person is innocent and nobody may hold them culpable until their culpability is established by a final judgment. Doubt regarding the existence of the facts which constitute the elements of the criminal offence, or which are conditions for the implementation of a certain provision of the criminal law, must be decided in favour of the defendant<sup>69</sup>.

There are numerous specifics when it comes to criminal proceedings of child suspects such as:

<sup>66</sup> Article 287 of the Criminal Procedure Act.

<sup>67</sup> Article 115 Paragraph (8) of the Youth Courts Act.

<sup>68</sup> Article 292 Paragraphs (1)(2) of the Criminal Procedure Act.

<sup>69</sup> Article 3 of the Criminal Procedure Act.

- Child suspects/offenders cannot be prosecuted and stand trial for crimes if they are absent (as is allowed under certain circumstances for adults).
- Provisions from the Criminal Procedural Act relevant to short criminal proceedings are not applicable to children's criminal proceedings.
- In criminal proceedings against children, the competent prosecutor is always the state attorney for youth; the victim cannot act as prosecutor against a child offender, though it is optional if an adult is the offender.
- While interviewing child suspects, special care and concern must be taken to prevent harm to the child's development, education or mental health.
- In cases of initiating a criminal procedure against a child, the state attorney is obliged to inform the competent authority/centre for social care.
- In cases where the suspect is accused of a crime for which, under the Criminal Code, there is a penalty of up to five years' imprisonment or a fine, the state attorney can decide not to initiate the criminal procedure, even where there are reasonable grounds that the suspect committed that crime. This may be done if the state attorney believes that, based on the type of crime, circumstances, personal profile and background of the suspect, criminal proceedings against that suspect would serve no purpose<sup>70</sup>.
- In cases where the child suspect committed the crime together with an adult, the child suspect must be interviewed and subject to criminal proceedings as established in the Youth Courts Act; and only in exceptional cases, must a child suspect be tried in the same criminal proceedings with an adult<sup>71</sup>.

### 2.3.1 Age of criminal responsibility

Under Croatian legislation, child offenders are called minors and are not called children.

The Youth Courts Act defines the age of the offender in the following manner:

'A minor is a person who at the time of committing an offence was over fourteen years of age, and under eighteen years of age. A young minor is a person who was over fourteen years of age, and under sixteen years of age at the time of committing a criminal offence. A senior minor is a person who was over sixteen years of age, and under eighteen years of age at the time of committing a criminal offence'.

Children under the age of 14 cannot be held criminally liable. When it is determined that the offender at the time of committing the crime was not yet 14 years of age, the criminal prosecution must be dismissed, criminal proceedings ceased and information on the 'criminal' act and the child 'perpetrator' forwarded to the competent centre for social care<sup>72</sup>.

Children are treated within two groups; younger children aged from 14 to 15, who can only be punished by correctional measures and if needed, in combination with security measures; older children, aged from 16 to 17 that can be punished with correctional measures, security measures and 'juvenile imprisonment'.

### 2.3.2 Provision of information

The Criminal Procedure Act<sup>73</sup> sets out general legal provisions on informing the suspect. It is also applicable to child suspects arrested under suspicion of having committed a crime who will be promptly informed of the following:

- the reasons for his/her arrest;
- that he/she is under no obligation to testify;

<sup>70</sup> Article 71 of the Youth Courts Act.

<sup>71</sup> Article 61 of the Youth Courts Act.

<sup>72</sup> Article 49 of the Youth Courts Act.

<sup>73</sup> Article 7 of the Criminal Procedure Act.

- that he/she is entitled to the legal assistance of a defence counsel of his/her own choice; and
- that the competent authority must, upon his/her request, inform his/her family or other person designated by the defendant that he/she is under arrest.

Furthermore, Article 8 of the Criminal Procedural Act stipulates that the Croatian language and the Latin script must be used in criminal proceedings, unless the law prescribes another language or script for certain areas within the jurisdictional territory of the courts<sup>74</sup>. The child suspect will have the right to use their own language. If proceedings are not carried out in their language, the interpretation of statements and the translation of documents and other written evidence will be provided. The interpretation and translation will be carried out by an interpreter. The child suspect will be informed of his/her right to an interpreter and translator before the first interview takes place, and he may waive his/her right if he speaks the language in which the proceedings are conducted. The court must enter in the record that such information was given and must record the person's response.

### 2.3.3 Immediate actions following first contact with police or other relevant authority

In cases where the police receive a report of a crime and the crime involves a child suspect, they will send out their special officer trained in the investigation of crimes and offences involving children.

When In cases where the state attorney receives a report of a crime and he assesses that it is necessary to initiate criminal proceedings against a child suspect, he will initiate preliminary/preparatory procedures for crimes punishable by a term of imprisonment of five or years or more. With respect to crimes punishable by imprisonment of less than 5 years, the state attorney will take all circumstances into account and decide whether or not to prosecute. The state attorney will then interview the child suspect and his/her parents (as legal representatives) which will be audio-visually recorded and will collect all data regarding the crime and other relevant circumstances. At the end of the preliminary procedure, or within eight days, the state attorney must propose sanctions or dismiss criminal proceedings. All competent authorities involved in potential criminal proceedings involving children need to act urgently in order to finalise their activities and procedures as soon as possible<sup>75</sup>.

The child suspect must have a defence lawyer, from the first interview to the conclusion of the criminal procedure (by a legally effective decision). Even after the conclusion of the criminal proceeding where a court adopts a decision to replace correctional measures with institutional correctional measures or imposes a sanction of imprisonment, a lawyer must be provided<sup>76</sup>. If the child does not engage a defence lawyer, the court must appoint one from those listed from the Croatian Bar Association, specialised/experienced in defending child suspects?

Child suspects are summonsed, via their parents or legal representatives, to the Youth Court unless this is not possible due to the urgency of proceedings or other important circumstances. If a child suspect is in prison at the time of the investigation, the suspect will be accompanied unrestrained to the court by police officers, and taken there in an undercover police vehicle (unless circumstances make this impossible). Only, in cases where it is believed that the child suspect committed an extremely violent crime, can he/she be restrained<sup>77</sup>.

The State Attorney's Office must also inform the competent centre for social care within 8 days of when they received any knowledge of the facts and circumstances of the criminal offence. This will enable the representative of that institute to become acquainted with the

<sup>74</sup> Croatian law acknowledges the rights of certain minorities, such as Serbs, to use their language. Serbian is written in Cyrillic script; thus a municipal court in an area highly populated by Serbs might accept writing in Cyrillic.

<sup>75</sup> Article 59 of the Youth Courts Act.

<sup>76</sup> Article 53 of the Youth Courts Act.

<sup>77</sup> Article 55 of the Youth Courts Act.



case and move the proceedings forward or make proposals and warn about facts and evidence important for the adoption of the correct decision<sup>78</sup>. The representative of the centre for social care must also be informed of how the child suspect has been treated.

#### 2.3.4 Conditions for pre-trial detention/ custody

A child suspect can be detained for offences punishable by 5 years and above, but only as a precautionary measure or for the purposes of temporary lodging<sup>79</sup>. In that respect, child suspects may be placed in a centre for social care when it is appropriate with respect to the expected sentence and to prevent the child suspect from repeating the crime.

The police can arrest a child suspect only under special conditions<sup>80</sup>. They are then obliged to bring him/her immediately, or at the latest within 24 hours from the moment of arrest, to a prison supervisor, or to release him/her. The prison supervisor must then immediately inform the state attorney, youth judge, the child suspect's parents or legal representatives and the competent centre for social care.

Upon the request of the state attorney, the police will accompany the child suspect to the youth judge who needs to interview the arrested child suspect within 12 hours from the moment of his/her detention in prison. It is obligatory for the defence lawyer of the child suspect and the state attorney to be present at this interview. Immediately after this interview, the youth judge decides whether to release the suspect or continue detention or imprisonment for the purposes of the investigation. Both the defence lawyer of the child suspect and the state attorney can appeal against the youth judge's decision within six hours and the youth council must decide on the appeal within eight hours of its submission<sup>81</sup>. The child must be separated from adults in the detention unit<sup>82</sup>. The detention supervisor must immediately release the child if so instructed by the state attorney or in the case that the child is not interviewed within the time limit referred to above<sup>83</sup>.

The youth judge may also temporarily place the child suspect in a centre for social care for enhanced supervision, in order to protect him/her from a further threat to his/her development, especially when it is the case of preventing the suspect from repeating the crime.

Precautionary measures can be taken only when they are a condition for submitting the child to 'juvenile prison' during the investigation<sup>84</sup>. Such a measure may be issued against a child offender only as a final resort, in proportion to the seriousness of the crime and the expected sanction. It must be for the shortest necessary duration and only imposed if the purpose cannot be achieved by applying precautionary measures, a temporary interim placement or detention in his/her home. In such a case, the child will be placed in an enclosed institutional facility<sup>85</sup>, i.e., premises envisaged exclusively for use as a child investigative prison, often at the county court premises. This institutional facility must have a diagnostic department and department for education. Work in small groups must be possible and the child suspect must be allowed to work. The youth judge will monitor enforcement of the detention once a week, receive any verbal or written complaints from the child suspect and take necessary measures to remedy any irregularities<sup>86</sup>.

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<sup>78</sup> Articles 56 and 57 of the Youth Courts Act.

<sup>79</sup> Article 65 of the Youth Courts Act.

<sup>80</sup> Article 107 of the Criminal Procedure Act

<sup>81</sup> Article 63 Paragraphs (2)(4) of the Youth Courts Act.

<sup>82</sup> Article 63 Paragraph (5) of the Youth Courts Act.

<sup>83</sup> Article 63 Paragraph (6) of the Youth Courts Act.

<sup>84</sup> Articles 98 and 123 of the Criminal Procedure Act.

<sup>85</sup> Article 66 of the Youth Courts Act.

<sup>86</sup> Article 66 of the Youth Courts Act.



A youth judge may also issue, extend or terminate a precautionary measure until there is a proposal to issue a sanction that is submitted by the youth council<sup>87</sup>. A precautionary measure and supervision is carried out as a correctional measure of supervision and will involve staying in a correctional institution. Detention can last until the procedure is concluded by a legally effective decision. The time spent in the correctional facility will count towards any term to be spent through an institutional correctional measure<sup>88</sup>.

In addition, a youth judge must visit a child at least once a week in order to supervise the enforcement of placement in an investigative prison, and to enable the child to submit to him/her any verbal or written complaints on this enforcement as well as to take any necessary measures to remedy any irregularities established<sup>89</sup>.

### 2.3.5 Protection of private and family life

There is a general requirement that all investigations and procedures against children are confidential and that the content and the progress of the procedures or decisions adopted in such procedures cannot be published. No specific decision is required to establish this requirement in an individual case. Only a part of the procedure or a part of the decision may be published where there is the special approval of the youth judge or the state attorney for children. Even in that case, the name of the child and any other data which may enable the identification of the child may not be indicated<sup>90</sup>. As mentioned in [section 2.1.3](#), the media are obliged to respect the privacy, dignity and reputation of citizens, especially children, youth and families. It is prohibited to disclose information which reveals the identity of the child if it jeopardises the welfare of a child.

### 2.3.6 Alternatives to judicial proceedings

With respect to crimes punishable by a term of imprisonment of less than 5 years or by fine, the state attorney may decide that there are no grounds for conducting criminal procedures and for going to trial, even though there might be a justified reason to believe that the child suspect committed the criminal offence. This would be the case if the state attorney believed that it would not be purposeful to conduct such a procedure against the child in view of the nature of the criminal offence and the circumstances under which the offence was committed, or in view of the former life of the child and his/her personal characteristics.

For the purpose of taking such a decision and establishing such circumstances, the state attorney may request a notification from the parent or the child's guardian, or other persons or institutions, and he may request that such data should be collected by an expert assistant in his/her office.

The aforementioned decision may be affected by the following:

- apologising to the injured party;
- remedying the damage inflicted by the criminal offence to the greatest extent possible by the child;
- involvement in the mediation procedure through an out-of-court settlement;
- involvement in the work of humanitarian organisations or in activities having municipal or ecological significance;
- voluntary detoxification from drugs or other types of addictions, based on the approval of the child's parent or legal representative;
- involvement in individual or group psychosocial treatment in a youth counselling centre;

<sup>87</sup> Article 64 of the Youth Courts Act.

<sup>88</sup> Article 65 of the Youth Courts Act.

<sup>89</sup> Article 66 Paragraph (5) of the Youth Courts Act.

<sup>90</sup> Article 60 of the Youth Courts Act.

- attending competent institutions for training drivers and taking tests in normal traffic conditions (this can be relevant with respect to traffic violations); and
- other obligations appropriate in view of the criminal offence committed and the personal and family circumstances of the child.

Only after the child suspect meets these obligations, and with the cooperation and supervision of the county centre for social care and expert assistance at the State Attorney's Office, must the state attorney adopt his/her final decision not to initiate the criminal procedure against the child.

He must notify the police authorities if they filed the charges, the relevant county centre for social care and the injured party of this decision, with supporting arguments and instructions to the injured party on the possibility to exercise his/her property legal claims in a private law-suit<sup>91</sup>. The state attorney may condition the decision by the readiness of the child to fulfil one of special obligations of the decision. His/her readiness means that he/she and one of his/her parents or guardians give free and voluntary written consent.!

### 2.3.7 Minimising the burden of proceedings and ensuring a child-friendly environment

In all procedures against children, decisions are taken by the state attorney specialised in child cases and by the investigating judge for children. Decisions can only be exceptionally taken by another state attorney or investigator if under specific circumstances, the state attorney and investigator specialised in child cases cannot take those decisions (for example during weekends). In that respect, all decisions established by the Criminal Procedure Act to be taken by the investigative judge, will be taken by the youth judge. In the case where the youth judge cannot take the necessary decisions, they will be taken by an investigative judge and he must notify the youth judge on any decisions taken accordingly<sup>92</sup>.

Another important measure, to minimise as much as possible the burden of proceedings, is the established urgency of the procedure in the sense that the criminal procedures against a child or young adult, including all decisions that need to be taken within this procedure need to be taken urgently by all competent authorities<sup>93</sup>. There is a special obligation established on all other bodies that might be taking part in the procedure against a child suspect to submit, upon the request of the competent authorities, such as the State Attorney's Office or youth judge, their data, reports or opinions urgently so that the procedure might be concluded as soon as possible<sup>94</sup>.

In addition, it is established by the Youth Courts Act<sup>95</sup> that while interviewing the child and taking any other decisions during which the child is present, special care must be taken that, in the view of the mental development and personal characteristics of the child, the conduct of the criminal procedure should not be to the detriment of the development of his/her personality.

Furthermore, there is a legal obligation for any person to testify, without the possibility of being released from that duty, if that person can provide information related to the assessment of the mental development of the child and that would enable the competent authorities to become acquainted with the child's personality and circumstances in which he/she lives<sup>96</sup>.

Finally, and as already elaborated above in [section 2.3.4](#), any detention of the child has to be minimised to the shortest possible duration within the most appropriate facilities and environment, e.g., separated from adults.

<sup>91</sup> Article 72 Paragraphs (1)(4) of the Youth Courts Act.

<sup>92</sup> Article 73 of the Youth Courts Act.

<sup>93</sup> Article 4 of the Youth Courts Act.

<sup>94</sup> Article 59 of the Youth Courts Act.

<sup>95</sup> Article 53 of the Youth Courts Act.

<sup>96</sup> Article 58 of the Youth Courts Act.

Being placed in an investigative prison has to be for the shortest possible duration and only if the purpose of the investigation cannot be achieved by applying other precautionary measures, interim placements or an investigative prison in a children's home<sup>97</sup>. In this case, a child suspect must be placed in an enclosed institutional facility that must have a diagnostic department and a department for the upbringing of children and the facility to work in small groups. A child must be able to work and receive instructions that are useful in terms of his/her upbringing and his/her occupation during this placement.

### **2.3.8 Protecting the child during interviews and when giving testimony**

In addition to the special care that will be taken into consideration while interviewing a child, in view of his/her mental development and personal characteristics, the child must have a defence attorney from the first interview throughout the entire criminal procedure against him/her.

If the child or his/her legal representative does not appoint a defence lawyer, the court must appoint one from the list of lawyers for children compiled by the Croatian Bar Association and in that respect the child's defence counsellor can only be a lawyer.

Any interview of the child without the presence of his/her defence attorney or the minutes or recording of that interview cannot be used as evidence in the procedure<sup>98</sup>.

### **2.3.9 Right to be heard and to participate in criminal proceedings**

Suspects must be summoned, via their parents or legal representatives, to the Youth Court unless that is not possible for reasons of urgent proceedings or other important circumstances. If a child suspect is in prison at the time of investigation, the suspect will be accompanied unrestrained to the court by police officers and taken there in an undercover police vehicle (unless that is impossible for certain reasons). Only, in cases when it is believed that the suspect committed an extremely violent crime, can he be restrained<sup>99</sup>.

In the case of the trial, the court must summon to the main hearing the suspect, his/her defence lawyer, the state attorney and the suspect's parents or his/her guardian or legal representative and optionally the representative of the centre for social care. The child is interviewed at the beginning of the main hearing, unless he/she chooses otherwise, and must be informed of his/her rights.

Criminal proceedings against children are always conducted without the public being present. In special cases, when certain parts of evidence or testimony are given, the judge may decide to exclude the child suspect if there is a reasonable concern that his/her participation may harm his/her upbringing and mental development.

Later on the court must notify the child in an appropriate fashion of the content and progress of the procedure during his/her absence<sup>100</sup>.

### **2.3.10 Right to legal counsel, legal assistance and representation**

According to the Youth Courts Act, a child shall have a defence counsel during all stages of the criminal proceeding, beginning from the first interrogation until the end of the criminal proceeding, as well as when bringing a new decision on changing the correctional measure. If the child him/herself, his/her legal representative or members of his/her family do not hire a defence counsel, the youth judge shall automatically provide one to him/her at the expense of the state budget.

<sup>97</sup> Article 66 Paragraph (1) of the Youth Courts Act.

<sup>98</sup> Article 54 Paragraph (6) of the Youth Courts Act.

<sup>99</sup> Article 55 of the Youth Courts Act.

<sup>100</sup> Article 86 Paragraph (6) of the Youth Courts Act.

A child may be defended only by an attorney-at-law. A defence counsel shall, if possible, be appointed from among the attorneys-at-law who have strong inclinations towards, and basic knowledge about, the upbringing and welfare of young persons.

Any interview of the child without the presence of his/her defence attorney or the minutes or recording of that interview cannot be used as evidence in the procedure<sup>101</sup>.

Please also see [section 2.3.8](#)

### **2.3.11 Remedies or compensation for violation of rights and failure to act**

All persons having the right to an appeal may appeal against a judgment of the competent court as set out in the general rules and conditions on legal remedies established by Criminal Procedure Act.

The right to appeal the first instance judgment is the ordinary legal remedy. An appeal may be filed by the parties, the defence counsel and the injured person. All conditions and requirements for an appeal procedure are applicable to a child and a child offender, as a party in the criminal procedure.

In the same way as an appeal and only under conditions established by the Criminal Procedure Act, the child or child offender as a party in the procedure is also entitled to extraordinary legal remedies such as the reopening of criminal proceedings, request for the protection of legality, and request for the extraordinary review of the final judgment.

In addition, all persons that have a right to appeal against the court's judgment<sup>102</sup> may file an appeal against the judgment issuing the sentence on a child and against a court's decision issuing correctional measures against a child or suspending criminal proceedings within eight days from the receipt of the judgment or the decision.

The defence attorney, the state attorney, the spouse, a relative in a vertical line of descent, an adopted parent, guardian, brother or sister and foster-parent may submit an appeal in favour of the child, even against his/her will<sup>103</sup>. However, persons having submitted an appeal in favour of the child can only dismiss the appeal subject to the child's approval.

A child can be required to undergo institutional measures before the decision of the youth council enters into force or upon the child's request and after interviewing the child in the presence of his/her defence attorney. Before taking such a decision, parents, legal representatives and guardians can be interviewed. In case the above-mentioned decision is taken after the main hearing, the youth council will have to consist of three judges<sup>104</sup>.

The second-instance court can alter the decision of the first-instance court. A stricter sentence can be issued by the second-instance court against the child only if it has been proposed in the appeal.

Where the first-instance decision does not result in child imprisonment or an institutional measure, the second-instance council may alter the first-instance judgment and issue such a punishment or measure. An appeal against such second-instance decisions is permissible within eight days to the third-instance court. This appeal cannot be submitted on the grounds of wrongly or incompletely established facts.

The child suspect can also be summoned to the session of the council of the second-instance court if the president of that council or the council itself establishes that such a presence could be useful<sup>105</sup>.

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<sup>101</sup> Article 54 of the Youth Courts Act.

<sup>102</sup> Article 464 Paragraph (1)(6) of the Criminal Procedure Act.

<sup>103</sup> Article 90 Paragraph (2) of the Youth Courts Act.

<sup>104</sup> Article 90 Paragraph (4) of the Youth Courts Act.

<sup>105</sup> Article 90 Paragraph (5) of the Youth Courts Act.

## 3 Child-friendly justice after judicial proceedings

### 3.1 The child as a victim or offender

#### 3.1.1 Provision of information

There are no specific regulations or legally prescribed actions for the treatment of child victims after judicial proceedings. It is therefore left to the child's parents or legal representatives to seek out post-trial assistance.

On the other hand, numerous regulations are in place with respect to convicted child offenders especially in the execution of their sentence. For example, Croatia has just adopted a new Law on the Execution of Sanctions Imposed on Juveniles Convicted of Crimes and Offences<sup>106</sup>.

The purpose of this legislation is to regulate the following:

- conditions for the execution of sanctions imposed on child offenders and young adults in the criminal procedure in particular correctional measures, 'juvenile' prison and security measures; and
- conditions for the execution of sanctions imposed on child offenders in the offence procedure in particular correctional measures, 'juvenile' prison and protective measures.

Unless prescribed by this specific legislation, the following legislation will apply: Youth Courts Act, Social Welfare Act, Execution of Prison Sanctions Act, Law on Probation, Law on Protection of Challenged Persons etc.

The basic principles established in the execution of sanctions against child offenders are:

- protection of dignity;
- protection of personal and material rights and interests;
- personal execution programmes and preparation treatments for release from prison.

As such, a child offender must be guaranteed respect of his/her dignity, and his/her physical, intellectual and moral upbringing and wellbeing must be safeguarded. Furthermore, any discrimination of the child offender based on his/her race, ethnic origin, colour, gender, religious, political or other convictions, nationality or social status, membership, education, family or marital status, age, health condition, disability, genetics or sexual orientations, is forbidden<sup>107</sup>. Any kind of torture, abuse, humiliation or submission to medical or scientific tests, is strictly forbidden, as well as excessive measures for the purpose of maintaining order, that might cause the child to suffer, or inappropriate limitations of a child's human rights.

Representatives of the competent centre for social care play a significant role in ensuring the proper treatment of child offenders. In particular they are responsible for the monitoring of measures within their competence and for reporting to the Youth Courts or offence courts<sup>108</sup>. Furthermore, social workers assist in drafting execution programmes within their competences, individually designed for each child offender and taking into account all relevant circumstances of the crime, the child's personal characteristics and interests and sanction imposed.

The centre for social care is also responsible for summoning and instructing the child on the execution of any correctional measure. The centre for social care brings together the child

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<sup>106</sup> O.J. NN 133/12.

<sup>107</sup> Article 5 of the Law on Execution of Sanctions Imposed on Juveniles for Convicted Crimes and Offenses.

<sup>108</sup> Offence courts deal only with offences, such as disturbing the public order by shouting too loud in the middle of the night or by vandalising walls with spray paints; these are not crimes as such and are dealt with by the offence court according to the Law on Offences, via a special procedure.

offender and the correctional institution and provides all necessary input and support in order to begin the correctional measure as soon as possible.

The centre for social care also assists in drafting special family aid programmes aimed at providing effective support to the family of the child offender. These contain proposed measures and activities that the family should carry out. In addition, social workers perform regular check-ups on family members and assess the progress and efficiency of the proposed family aid programme.

Finally, the centre for social care assists child offenders with their reintegration into normal life such as returning home, to family, school or to work. They assess whether conditions in the child's family are favourable for his/her return and they supervise and monitor the reintegration process for up to 6 months after the completion of any measure.

Where the centre for social care determines that it would not be in the best interests of the child to return to his/her family, they are responsible for finding alternative accommodation for the child until he can act independently (for example through temporary social welfare shelters, foster homes or other institutions accredited with providing a home and safety for children).

### 3.1.2 Sentencing

As already stated above, children are treated within two groups; 'younger juveniles' aged from 14-16 (younger children/ child offenders in this study), who can only be punished by correctional measures and security measures. Older juveniles (older children/child offenders in this study), aged from 16-18 that can be punished with correctional measures, security measures and juvenile imprisonment.

Correctional measures have the purpose of providing protection, care, help and supervision and, by providing general and specific education to convicted children. They should have a positive impact on offenders' education, development, and personality in order to strengthen them and enable him/her to refrain from committing new offences.

The types of correctional measures are:

- court reprimand<sup>109</sup>;
- special obligations such as: apologising to the injured party, compensation or remedy of the damage inflicted by the criminal offence to the extent possible for the child, regular schooling, training and work qualification, accepting a job and persisting in it, supervised usage of child offender's income, involvement in the work of humanitarian organisations or activities of municipal or ecological significance, refraining from visiting certain places, events or company with certain individuals, submission to medical treatments such as detoxification from drugs or other addictions, counselling or psychosocial treatments, professional training courses etc.;
- heightened care and supervision;
- heightened care and supervision with day-stay in correctional facility when he/she does not need to be excluded from his/her home and daily surroundings;
- assignment to correctional facility;
- assignment to correctional institution;
- assignment to special correctional institution; and

<sup>109</sup> A court reprimand shall be issued when the minor's attitude toward the offence committed, as well as his or her willingness never to commit any offences again indicate that the reprimand itself will accomplish the purpose of correctional measures. In issuing a reprimand, the court shall demonstrate to the minor the social unacceptability and harmfulness of his or her behaviour and the consequences of such behaviour for him or her. The court shall also warn the minor that in case of a repeated offence, a more severe sanction may be imposed on him or her (article 8. of the YCA)



- assignment to disciplinary centres when the convicted child needs to be temporarily excluded from his/her home and daily surroundings.

In addition to correctional measures and ‘juvenile prison’, security measures can be sentenced in accordance with the provisions of the Criminal Code<sup>110</sup>. As a security measure, older children may be prohibited from driving any motor vehicle. In addition, as a security measure, an obligatory psychiatric treatment or treatment of an addiction can be sentenced. A child cannot be sentenced to a security measure that prohibits the performance of some duties or activities, or orders the child to leave his/her home.

Older children may be sentenced to ‘juvenile prison’ in a facility specialised in ‘juvenile detention’ or exceptionally, in a specialised department for ‘juvenile detention’, under special conditions prescribed by the Youth Courts Act. For more details on conditions related to ‘juvenile prison’, please see below under [3.1.3](#).

Another special right that is applicable to older children is in the case, when he/she is sentenced for a crime that is punishable with long-term imprisonment or several crimes combined for which the punishment would be imprisonment over 10 years. In both these cases, the Youth Courts Act restricts the imprisonment of older children to a maximum of 10 years.

The purpose of correctional measures is to make an impact, by providing protection, care, assistance and supervision and by ensuring general and professional education, on the upbringing, personal development and the strengthening of personal responsibility of a child offender, so that he/she might refrain from repeating a criminal offence<sup>111</sup>.

The purpose of juvenile prison is to make an impact, by taking correctional, educational and professional training measures with respect to a child offender, on further personal development and the strengthening of personal responsibility, so that the child offender might refrain from repeating a criminal offence and that he/she might influence others to refrain from committing criminal offences<sup>112</sup>.

In selecting the correctional measure, the court must take into account the child's age, his/her mental and physical development and characteristics, the seriousness and nature of the crime committed, the motives and circumstances under which he/she committed the act, his/her behaviour after the act was committed and in particular whether he/she, if he/she could, tried to prevent the harmful consequences or tried to remedy the damages, his/her relationship towards the injured party and the victim, his/her personal and family circumstances, whether he/she had committed criminal offences before and whether he/she was subject to juvenile sanctions etc<sup>113</sup>.

Adults may be subject to the issuing of the correctional measure of special obligations, the correctional measure of heightened supervision and the punishment of juvenile prison for a criminal offence committed as a child, where the perpetrator at the time of the trial was under twenty-one years of age.

At the time of deciding which sanctions to issue, the court should take into account all circumstances existing at the time the offence was committed, especially the seriousness and nature of the offence, the time expired from the time it was committed, the conduct of the perpetrator, family circumstances, the way in which the perpetrator adapted to regular life and the purpose which should be achieved through such sanctions.

The correctional measures issued may last until the perpetrator turns 23 years of age. By way of derogation from the above mentioned measures, the court may issue the punishment of imprisonment, in place of juvenile prison, against an adult who at the time of the trial was over 21 years of age. If at the time of the trial the person was over 23 years of age, the court

<sup>110</sup> Articles 68, 69, 70, 72, 73 and 75 of the Criminal Code.

<sup>111</sup> Article 6 of the Youth Courts Act.

<sup>112</sup> Article 6 of the Youth Courts Act.

<sup>113</sup> Article 8 of the Youth Courts Act.



shall issue the punishment of imprisonment or a conditional sentence instead of juvenile prison. At the time of issuing the punishment of imprisonment, the court shall determine the punishment of imprisonment within the limits set out in Article 25 of the Youth Courts Act, and for the concurrence of criminal offences also under Article 26, paragraph 1 of the same Act. The punishment of imprisonment will have the same legal effect as the punishment of juvenile prison in terms of rehabilitation and the legal consequences of conviction<sup>114</sup>.

### 3.1.3 Deprivation of liberty

Detention of children is aimed at having a positive impact on the child offender's education, development, and personality and to reduce their likelihood of reoffending. It is also used to discourage others from committing crimes.

In the event that a child offender, through his/her own fault, fails to complete a correctional measure or hinders the enforcement of a heightened supervision measure, the court may assign him/her to a disciplinary centre, specialised in the education and upbringing of children, for an uninterrupted stay of a maximum duration of one month. The child offender will either have to attend for a certain number of hours on certain days but may return home in the evenings, or the child may have to stay at weekends or for a certain number of days, including in the evening. Where the child does not attend or absconds, the centre must notify the parents/legal representatives of the child, the youth judge, the state attorney, the centre for social care and the police<sup>115</sup>.

The court may assign a child offender to a correctional facility, where exclusion from the environment in which the child lives is necessary and where the assistance, care and supervision of carers and other experts is required to ensure a more long-lasting influence on the child's personality, behaviour, development and upbringing, in particular through education and work training.

Centres for social care are authorised to provide correctional facilities and may do so in collaboration with other institutions specialising in children with behavioural problems. The child offender must be assigned to stay there for at least six months, with a maximum duration of two years. The court assesses every six months, whether there are grounds for ending the assignment or replacing it with another correctional measure.

The court may also assign a child offender to a correctional institute, especially when it is determined that the child has certain behavioural problems and is not ready to accept other correctional measures aimed at influencing his/her behaviour. These institutes are operated by the centres for social care and are specially established for this purpose. Assignment is for a minimum duration of six months and a maximum duration of three years. The court assesses every six months whether there are grounds for ending the assignment or replacing it with another correctional measure.

Finally, a child may be assigned to a special correctional facility where the child offender has mental and physical impairments. This is usually issued in place of compulsory psychiatric treatment if it is possible to ensure treatment of the child in the special facility and thus achieve the purpose of the security measure. The assignment may be imposed for as long as necessary for the purposes of the treatment, protection or training, but cannot exceed three years. As with the above measures, the court assesses the measure every six months.

Conditions of detention in correctional facilities or institutes are in some ways comparable to conditions of detention in prison and are specifically regulated by the Law on the Execution of Sanctions Imposed on Juveniles Convicted of Crimes and Offences<sup>116</sup> as well as provisions in the Youth Courts Act and the Law on the Execution of Prison Sentences.

<sup>114</sup> Article 33 of the Youth Courts Act.

<sup>115</sup> Article 29-34 of the Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences O.J. 133/12.

<sup>116</sup> Articles 45-52 of the Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences O.J. No. 133/12.

Security, order and discipline within these facilities and institutions are provided by justice department officials specially trained in the treatment of child offenders. Child offenders are submitted to correctional measures within systematic programmes. They are separated into groups, each designed with a special correctional and/or educational programme and objective.

Security measures are less strict than prison facilities though discipline and order are consistently enforced. Any forms of punishment (e.g. isolation), torture or abuse are strictly forbidden. Where officers are attacked by the child or where others are in danger, only defensive skills and techniques should be used, though a baton may be used. Police assistance may be requested and all competent authorities, including the youth judge and the child's parents/legal representatives, must be informed of the incident and the need to assess the measures already imposed on the child<sup>117</sup>.

Imprisonment in a juvenile prison may also be imposed as a last measure and subject to specific conditions with regard to the use of such a measure, its duration, purpose and content. Only older child offenders (aged from 16-18) may be sentenced to juvenile prison and only for a criminal offence punishable by a term of imprisonment of three years or more, where due to the nature and seriousness of the offence and 'high level of guilt' (for example where there has been extreme persistence in committing the crime or the action has been particularly inhumane), a correctional measure cannot be justified.

A sentence to juvenile prison cannot be for a term of less than six months or more than five years and is issued in full years and months. If the punishment of long-term imprisonment is stipulated for a particular criminal offence, or in the case of accumulation of at least two criminal offences for which the punishment of imprisonment is over 10 years, juvenile prison cannot last longer than 10 years.

Children may not be sentenced to imprisonment for longer than the period prescribed for adults, but the court is not bound by the minimum prescribed measure of such a punishment. When deciding on the duration of the juvenile imprisonment, the court must take into account all circumstances including the level of maturity of the child, the time necessary for his/her upbringing, education and professional training etc. Furthermore, any deprivation of freedom already executed in relation to a criminal offence, must be taken into account in the term of imprisonment.

Child detention takes place in a specialised 'juvenile prison' or, exceptionally, in a children's department within an adult prison. A child prisoner can only be accommodated with another child. In exceptional cases, the child may be accommodated with younger adults (aged 18-21) but never more than three prisoners may share the cell. All the provisions of the Law on the Execution of the Prison Sentence<sup>118</sup> are applicable, if not specifically regulated by the Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences<sup>119</sup> or AYC.

Prison rules determine the child's schedule and daily activities. They are entitled by the law<sup>120</sup> to at least four visits per month by their family for a duration of at least two hours per visit, including on holidays. Upon special approval of the prison warden, the child may be visited by other persons at least twice per month, for a duration of at least one hour per visit.

The facility must also provide the possibility for the child to go outside every day for at least three hours.

The use of special safety and security measures is also restricted with respect to child prisoners. Isolation is forbidden and the special measure separating one prisoner from other

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<sup>117</sup> Articles 45-52 of the Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences O.J. No. 133/12.

<sup>118</sup> O.J. 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 11/02, 190/03, 76/07, 27/08, 83/09, 18/11, 48/11.

<sup>119</sup> O.J. NN 133/12.

<sup>120</sup> Articles 55-57 of the Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences O.J. 133/12.

is allowed for a maximum duration of seven days. The use of firearms is also forbidden, unless it is necessary to prevent or stop a direct life-threatening attack by a child against another person.

#### **3.1.4 Criminal records**

According to the Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences, any data on child offenders and/or data on the execution of the sentence are subject to confidentiality according to the regulation on protection of personal data and protection of confidentiality of data<sup>121</sup>.

Only officials working and involved in the execution of the sentence, authorities in charge of monitoring and supervision (such as the Ombudsman for Children or the youth judge), the child and his/her parents or legal representatives may have access to the data.

Access to data on certain expert evaluations or analysis can be restricted to the child and his/her parents or legal representatives, whenever that is in the interest of executing the sanction or for the benefit of the child. Access to data must be allowed for the purpose of disclosure and prosecution of criminal offenders (in the same case or in other ones) upon request of the State Attorney's Office.

Data on the progress of the execution of the sanction cannot be disclosed without special approval of the competent authority in charge of monitoring the execution of the sanction (the Youth Court). Even then, only approved data can be published but never the name of the child or any other data enabling identification of the child (such as nickname)<sup>122</sup>.

Upon the ending of the criminal proceedings, information on a child who was a party to the criminal proceedings is confidential and any person acquainted with this data has a duty to maintain confidentiality. Furthermore, recordings gathered during court interviews will be destroyed after five years from the ruling.

For the purpose of additional protection of child victims, data from criminal records on convicted offenders committing crimes related to sexual abuse and violence will be available to the institutions that are providing care, security and education to victims.

In cases of special security measures on prohibition of certain types of professions, jobs or activities of sentenced criminal offenders will also be in, under special circumstances, displayed to authorities competent to keep the records on those professions, jobs or activities.

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<sup>121</sup> Provisions of the Law on the Protection of Personal Data O.J. No 103/03, 118/06, 41/08, 130/11 are applicable.

<sup>122</sup> Article 4 of the Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences, O.J. 133/12.

## 4 Strengths and potential gaps

Overall it can be concluded that an extensive range of child protection legislation (both national and international legislation to which Croatia is a signatory party and therefore is also applicable in national courts) is in place, which largely covers all key aspects of a child's involvement in criminal proceedings whether as a victim, witness or suspect.

Nevertheless, a number of concerns have been raised mostly with respect to the practical implementation of the legislation. In particular, concerns have been raised over:

- insufficient funds for continuous education and training for all experts involved in criminal proceedings within all competent state authorities;
- insufficient number of experts involved in gathering and processing data (in particular insufficient number of expert assistants at Youth Courts that are non-legal professionals i.e. social workers, pedagogues etc.);
- professional help to children in need is rarely received in time or is not provided at all as a result of the insufficient number of professionally trained counsellors<sup>123</sup>;
- insufficient child-friendly premises and equipment especially at Youth Courts; or
- frequently obsolete video-link equipment which is required for children's interviews and testimonies.

The Croatian Ombudsman's Office for Children<sup>124</sup>, has also provided detailed information on the situation of children in criminal proceedings including with respect to complaints. The Ombudsman has for example indicated that, in Croatia, every year more than 5000 children are involved in criminal proceedings. The same authority reported in 2011 receiving 55 individual complaints related to violations of children's rights in judicial proceedings; 21 complaints regarding police and judicial misconduct, 10 regarding the protection of a child's right to minimum guarantees in cases where the child is suspected of a crime, indicted, prosecuted or found guilty, while eight regarded the protection of the right to a trial within reasonable time. Four complaints regarded the protection of child witnesses, three regarded the right to protection from sexual exploitation and abuse and another three regarded the right to immediate legal assistance. Only a small number of complaints regarded the right to be protected from abduction, sale or trafficking and the protection of their rights in cases where a child is the injured party<sup>125</sup>.

Furthermore, most of these complaints regarded the inappropriate conduct of police officers towards children suspected of having committed a felony or a misdemeanour. Nevertheless the Ombudsman was reassured that the police are aware of these problems and see the raising of the level of lawful and professional conduct and training of their officers as a primary goal and necessary in their activities<sup>126</sup>.

The Ombudsman concluded in its Annual Report on the Activities of the Ombudsperson for Children 2011, that it is necessary to improve the status of child victims and witnesses so as to protect them from secondary victimisation and to reduce the discomfort and stress they experience while undergoing judicial proceedings. New implementing regulations governing the application of correctional measures need to be adopted, need to be better adjusted to international instruments and need to introduce innovations in the procedure for the imposition of sanctions. The Ombudsman also concluded that the new Youth Courts Act

<sup>123</sup> Source: "Annual Report on the Activities of the Ombudsperson for Children 2011 – SUMMARY", page 2 available at: <http://www.dijete.hr/en/reportsdoc/reports-of-the-ombudsman-for-children.html>.

<sup>124</sup> Source: Mila Jelavic, Ombudsman for children, the opening speech of the round table "Protection of the child witness in criminal investigation and criminal and offence procedures" held in Zagreb on 14.12.2011.

<sup>125</sup> Source: "Annual Report on the Activities of the Ombudsperson for Children 2011 – SUMMARY", page 16, available at: <http://www.dijete.hr/en/reportsdoc/reports-of-the-ombudsman-for-children.html>.

<sup>126</sup> Source: "Annual Report on the Activities of the Ombudsperson for Children 2011 – SUMMARY", page 17, available at: <http://www.dijete.hr/en/reportsdoc/reports-of-the-ombudsman-for-children.html>.

brings a series of procedural changes which should considerably reduce the length of proceedings and ensure better protection of the rights of children placed in 'juvenile custody'.

For the purpose of a better quality of protection of the rights of children in conflict with the law, the Ombudsman pointed out that it is necessary to conduct systematic and organised training of all juvenile court judges, state attorneys and lawyers, who would be permitted to work in the juvenile justice system only upon receiving a license at the completion of training<sup>127</sup>.

In the Ombudsman's view, professional paralegal assistants in courts and the State Attorney's Office for Youth (expert assistants) are not given sufficient authority. Moreover, the Ombudsman identified several problems in the enforcement of remedial measures in 'juvenile correctional facilities'<sup>128</sup>.

Despite these concerns, it should be noted that Croatia is continuing an intense period of amending and/or adopting new legislation in general and with a view to improving the situation of children in criminal proceedings<sup>129</sup>.

<sup>127</sup> Source: "Annual Report on the Activities of the Ombudsperson for Children 2011 – SUMMARY", page 16, available at: <http://www.dijete.hr/en/reportsdoc/reports-of-the-ombudsman-for-children.html>.

<sup>128</sup> Source: "Annual Report on the Activities of the Ombudsperson for Children 2011 – SUMMARY", page 16, available at: <http://www.dijete.hr/en/reportsdoc/reports-of-the-ombudsman-for-children.html>.

<sup>129</sup> The following amendments have been made or are envisaged:

- Adoption in 2012 of new Criminal Code; entry into force on 1 January 2013;
- Amendment in 2012 of Youth Courts Act; entry into force on 1 September 2012;
- Adoption in 2012 of new Social Welfare Act;
- Adoption in 2012 of new Law on the Execution of Sanctions Imposed on Juveniles for Crimes and Offences ; entry into the force on 1 January 2013;
- In 2013 envisaged amendments to the new Criminal Procedure Act (currently in drafting procedure);
- Drafting and adoption in first half of the 2013 of further secondary legislation as envisaged by the Youth Courts Act and the new Law on the Execution of Sanctions Imposed on Juveniles Convicted of Crimes and Offences such as (currently in drafting procedure):
  - a) Rulebook on the requirements for non-legal professionals working on 'juvenile' delinquency and legal protection of children involved in criminal proceedings;
  - b) Rulebook on assignment to correctional institutions;
  - c) Rulebook on the execution of the juvenile prison;
    - a) Rulebook on the execution of special obligation correctional measures, assignment to disciplinary centres and to increased care and supervision;
    - b) Rulebook on the execution of security measures requiring psychiatric treatment and detoxification;
    - c) Rulebook on obligatory psychosocial treatment;
    - d) Rulebook on treatment of 'juveniles' whilst in temporary detention in prison; and
    - e) Rulebook on facilitating the establishment of special rooms with technical audio-video equipment for recording the testimony of children.

## Conclusions

In general, Croatia has a well-developed institutional and legal framework of child-friendly justice in criminal proceedings.

With respect to the legal framework, Croatia is a signatory party to all relevant international conventions in this matter and has adopted numerous laws and secondary legislation to ensure and promote protection of the rights and interests of children in criminal proceedings.

The most important piece of legislation in this field is the Youth Courts Act but a number of other legislative acts are also relevant such as: the Family Act, the Criminal Procedure Act, the Criminal Code, the Protection against Domestic Violence Act, the Social Welfare Act, the Law on the Execution of Sanctions Imposed on Juveniles for crimes and offences.

Regarding the institutional framework, there are numerous institutions at the governmental level such as the Ministry of Social Welfare and Youth, the Ministry of the Interior and the Ministry of Justice which specifically focus on children in criminal proceedings. In addition, there are a number of specialised bodies such as: the Ombudsman for Children, specialised police officers within the Ministry of the Interior, trained in dealing with both child victims and offenders, Youth Courts are specialised courts for criminal proceedings involving children, Youth Judges are specialised judges working in Youth Courts, there is a specialised State Attorney for Youth working within the State Attorney's Office, specialised lawyers in children proceedings, an extensive network of social workers and centres for social care with a significant role in criminal proceedings involving children etc.

Competencies among main stakeholders and competent authorities are clearly divided without any significant overlap or gaps in the system identified.

A child victim and witness is any person below the age of 18. Children can only be held criminally responsible from the age of 14. Child suspects/ offenders from 14-18 years of age (at the time of committing the offence) are subject to different procedures and safeguards than adults and there is a further differentiation between children from 14-15 ('younger juveniles') and 16-18 ('older juveniles').

Children are protected and treated with special care from their first contact with authorities operating within the criminal proceeding and throughout the whole proceeding including after proceedings within the context of the execution of any sanction.

Procedures with respect to the investigation, interview and testimony of children are conducted under special conditions in order to prevent any additional stress or secondary victimisation of the child.

In accordance with the general rules on criminal proceedings, a child victim, witness or a child suspect/offender has the right to be heard, to testify and to participate in criminal proceedings. They have a right to give relevant facts and propose evidence relevant to the proceedings, as well as a general right to seek remedies for breach of their rights. As such, they may question suspects, witnesses and expert witnesses during court sessions and submit comments and explanations regarding their testimony, access the case files etc. In general, they have the right to perform all actions to which, according to the Criminal Procedure Act, a party of the criminal proceeding is entitled. Children aged 16 years and older can exercise the above-mentioned rights personally whereas all children below the age of 16 need to be represented by their legal representative.

A child victim and suspect has the right to free legal assistance, including legal counsel, throughout the criminal proceeding. Any interview of the child suspect without the presence of his/her lawyer or without the interview having been recorded cannot be used as evidence in the proceedings.

In addition, child victims or offenders in the criminal proceedings are entitled to the following: a right to a legal representative free of charge, confidentiality of personal data and exclusion of the public from the trial, as well the progression of the case as a matter of urgency. Children may not be forced to attend interviews or hearings and cannot be punished for refusing to do so.

Child suspects may only be detained as a measure of last resort as a precautionary measure or as temporary accommodation.

Alternatives to judicial proceedings are possible where the state attorney determines that there are no grounds for conducting criminal procedures (for reason of determining that the crime is not serious



enough) and going to trial, although there might be a justified reason to believe that the child suspect committed the criminal offence.

Furthermore, there is an extensive legislative and institutional framework related to the scope and conditions of protection of child offenders when they are serving their sentence, including detention, rehabilitation and reintegration into society.

Whilst there is a good legal framework in place for the protection of children in criminal proceedings, and whilst there appears to be relatively effective implementation of legislation, gaps and practical difficulties have nevertheless also been identified.

For example, the treatment of child victims after the completion of judicial proceedings is not subject to specific regulations or legally prescribed actions. Rather the child's parents or legal representatives must seek out post-trial assistance.

Furthermore, in practice, a child might be interviewed more than once (as prescribed by the law) while discussing the crime with different competent authorities such as the police, social worker etc. and therefore causing possible secondary victimisation of the child.

According to the experts, frequent problems also occurring in practice are;

- insufficient funds for continuous education and training for all experts involved in criminal proceedings within all competent state authorities;
- insufficient number of experts involved in gathering and processing data (in particular insufficient number of experts assistants in Youth Courts that are non-legal professionals i.e. social workers, pedagogues etc);
- insufficient child-friendly premises and equipment especially at Youth Courts, and
- frequently obsolete video-link equipment which are required for children's interviews and testimonies.

Finally it is also noteworthy that at the moment, Croatia is going through an intense period of amending and/or adopting new pieces of legislation, relevant to children in criminal proceedings as part of its EU accession and international obligations.



## Annex – Legislation reviewed during the writing of this report

- The Social Welfare Act NN 33/12
- Law on the execution of sanctions imposed to juvenile for crimes and offences NN 133/12
- Youth Courts Acts NN 84/11, 143/12
- New Criminal Code NN 125/11, (entered into force 01.01.2013)
- National Strategy on prevention of disturbing of behaviour of children and juveniles 2009-2012
- The Protection against Domestic Violence Act NN 137/09, 14/10, 60/10
- Law on Public Institutions NN 35/08
- National Strategy on protection against violence in family from 2008 to 2011
- Criminal Procedure Act NN 152/08, 76/09, 80/11, 121/11
- Act on financial compensations to victims of crimes NN 80/08, 27/11
- Free Legal Aid Act NN 62/08, 44/11, 81/11
- National Plan on activities on rights and interests of children 2006-2012
- Law on Media NN 59/04, 84/11
- The Family Act NN 116/03, 17/04, 136/04, 107/07, 57/11, 61/11
- Law on protection of personal data NN 172/03, 144/10, 37/11, 77/11
- Law on protection of personal data NN 103/03, 118/06, 41/08, 130/11
- Law on Ombudsman for Children NN 96/03
- Law on Execution of the Prison Sentence NN 128/99, 55/00, 59/00, 129/00, 59/01, 67/01, 190/03, 76/07, 27/08, 83/09, 18/11, 48/11
- Law on Protection of Challenged Person NN 111/97 , 27/98 , 128/99, 79/02