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

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The Slovenian criminal justice system has several elements of child-friendly justice though the greatest specificities are to be found with respect to child suspects and defendants. In this area, the criminal justice system for children is parallel to the general justice system: cases involving child defendants are dealt with by specialised children's judges under specific rules. Only where issues are not regulated by these specific rules are the general criminal procedure rules applied. One of the key specificities is that social services are included in the criminal procedure by having the right to be informed about the procedure and to actively participate in it by giving proposals and opinions.

The age of criminal responsibility starts at 14 years of age and a person is considered a child until they reach 18 years old. The approach of the Slovenian criminal justice system to child defendants is a protective one, meaning that the main purpose of sanctions imposed on child defendants is education, re-education and correctional development, and not retribution for crimes they committed. This has practical effects as a child between 14 and 16 years of age may only be issued with educational measures (and there are a number of different possibilities provided for), while children between 16 and 18 years of age may only be imprisoned exceptionally. If imprisonment is imposed, a child is imprisoned in a child-specific unit within an adult prison which is regulated under specific norms and which pays specific attention to the child's education, re-education and development. Slovenian sentencing policy has ensured that as Slovenia has one of the lowest incarceration rates in Europe[1].

While there is a parallel criminal justice system in place for child defendants, this is not the case for child victims and witnesses. In law there are only a few additional norms that pay special attention to these two groups. There are rules according to which hearings of child witnesses may be carried out with the assistance of a pedagogue if this is needed. The court may decide to remove the child from the courtroom as soon as his/her presence is no longer necessary. Also the court may close the hearing to the public based on the best interests of the child. Also, in practice, a child witness younger than 10 years of age is never questioned in the court. If the defendant so demands, at most, only the statement that the child gave in previous phases of the procedure is read aloud – and the child will not have to attend court again[2].

Child victims enjoy adapted treatment within the criminal justice system. For example, child victims who are victims of certain very serious crimes have the right to a lawyer paid for by the state throughout the procedure. Also, in practice, there is a notable development of child-friendly interview rooms which enable a child to express him or herself in a child-friendly environment without the presence of judges, prosecutors, police, or lawyers who observe the hearing from another room. As the hearing is recorded, the recording is available for later use and the testimony does not need to be repeated, this avoiding secondary victimisation. These rooms are, however, not available throughout the country and are still not part of a standard procedure. Children who are victims of domestic violence have access to additional specific protection measures and are therefore more protected compared to children who are victims of other types of crimes.

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

Any child may report a crime on his/her own[3]. A child victim/witness above the age of 16 may give statements on his/her own. For child victims under the age of 16 the law states that their legal representative is entitled to carry out all procedural activities on behalf of the crime victim.

In Slovenia, there are no provisions in law providing for a child, whether as victim or witness, to be heard. To address this gap, a pilot project has been set up called "The Advocate –The Voice of a Child" carried out by the Human Rights Ombudsman. The advocates trained within this project are

[1] Filipčič, Katja. Slovenia. V: Dünkel, Frieder (ed.), *Juvenile justice system in Europe: current situation and reform developments*, (*Schriften zum Strafvollzug*, *Jugendstrafrecht und zur Kriminologie*, 36). Mönchengladbach: Forum Verlag Godesberg, 2010, p. 1263-1286.

[2] Interview, prosecutor, 17 December 2012.

[3] Interview, prosecutor, 17 December 2012.

impartial persons who make sure that the voice of the child is heard and taken into account. This is particularly needed in cases that include conflicts of interest between children and their parents. In the field of criminal justice advocates can play an important role when children are victims of crimes committed by their parents. Since the institute of the Advocate of a Child is not yet regulated by the law, the advocate's involvement is not yet automatic or institutionalised.

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

In practice the courts are increasingly aware of the fact that child witnesses have specific needs and for this purpose child-friendly booklets are issued to help prepare a child to testify. These booklets are available both in print and on the internet and are prepared for different age groups. Often when a new child-friendly interview room is opened in Slovenia, the media is informed and reports on the event which contributes to the promotion of a child-friendly approach to criminal justice.

There is a lot of discussion about the concept of the right of the child to be heard within the pilot project of the Human Rights Ombudsman "The Advocate – The Voice of a Child". In particular, the Human Rights Ombudsman organises public events and symposiums on the issue and publishes materials prepared by the speakers.

Within the study, several strengths of the children's justice system were identified. Slovenia still takes a protective approach towards child defendants which provides opportunities for re-education. Pre-trial detention of children may be imposed only exceptionally. When it is imposed, children have to be separated from adults. In cases of a procedure against a child defendant, involvement of social services for the entire duration of the criminal proceedings is mandatory. For children between 14 and 16 years of age only educational measures (and no sanctions) are possible. There is a widely defined scope of possible educational measures that can be imposed, based on what the child needs. Educational measures are flexible, meaning that they can be changed in the course of their application if necessary. Imprisonment of children is imposed only exceptionally; when it is imposed, children are separated from adults. There are alternatives to criminal proceedings in place which are often used in practice. Child-friendly interview rooms are increasingly used for obtaining information from child victims/witnesses.

There were also some gaps identified in the Slovenian children's justice system. There seems to be a lack of support to child witnesses who are not also victims of crimes. Gaps were also identified with regard to the duty to provide information to child victims, child witnesses and child defendants; there is only a duty to provide assistance which could include information but not necessarily. The problem is also that child-friendly interview rooms are not yet institutionalised and widespread, but depend on pilot projects. There is also an issue with the insufficient respect for the right of children to be heard. This problem is consistently pointed out by the Human Rights Ombudsman which has been advocating for years to institutionalise the Advocate of the Child who would assist and support the child throughout the procedure in an impartial way.

Abbreviations

CA	Competent Authority
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

Cases involving child suspects are dealt with by chambers of the district courts consisting of one children's judge for minors and two lay judges. The chambers in higher courts and the Supreme Court consist of three judges. Lay judges are professors, teachers and other persons with experience in dealing with children[4]. The cases must conform with specific rules relating to child defendants as established in the Criminal Procedure Act. Only where issues are not regulated by these specific rules are the general criminal procedure rules used[5]. State Prosecutors' offices are not specialised in handling cases involving children, except for the State Prosecutor's office in Ljubljana, which has a special department for crimes committed by 'minors', family crimes and sex crimes[6]. In cases of crimes committed by children social services get involved but they do not have any special departments organised for this purpose. There are also no special departments for dealing with child victims and witnesses, either at courts, the prosecutor's office or social services.

The approach to **child victims** differs if the child is a victim of domestic violence or some other type of violence. Namely, stricter and more specific rules are in place for the protection of a child who is a victim of domestic violence, where specific and more detailed duties to protect the child victim are imposed on social services, educational institutions, health institutions and non-governmental organisations[7]. In terms of other types of crimes not necessarily related to domestic violence, children who are victims of certain crimes (e.g. violation of sexual integrity) also enjoy a higher level of protection as they are entitled to a lawyer from the beginning of the criminal procedure. In such cases, the court appoints a lawyer for the child from a list of specialised lawyers[8]. Other child victims may receive support through social services which are generally responsible for providing assistance to families, but there are no specific measures in place for other child victims.

There are hardly any specific rules in place for **child witnesses**, meaning that child witnesses are mostly dealt with under the same rules as witnesses in general. The only specific provisions that are in place refer to the capacity of the child to understand the meaning of his/her testimony. Namely, under the Criminal Procedure Act certain witnesses are defined as "privileged witnesses" who have the right to refuse to testify (for example a spouse or a child of the defendant)[9]. The law also states that a witness may refuse to answer a specific question if, by testifying, serious harm would be caused to the reputation of the witness or a close relative, if it would result in the witness or a close relative facing criminal prosecution or if the testimony would cause serious material damage to the witness or a close relative[10]. Accordingly, if the court assesses that a child witness who could invoke the rights of a privileged witness cannot understand the meaning of his/her testimony, he/she may not be questioned as a witness[11].

In recent years, Slovenia has seen a development of **child-friendly interview rooms** which, however, are not institutionalised and are therefore not yet available in every criminal

[4] Article 462 of the Criminal Procedure Act, *Zakon o kazenskem postopku – uradno prečiščeno besedilo*, Official Journal of the Republic of Slovenia, No. 32/2012.

[5] Article 451 (1) of the Criminal Procedure Act.

[6] Official website of the State Prosecutor's Office of the Republic of Slovenia, <http://www.dt-rs.si/sl/okrozna_drzavna_tozilstva/okrozno_drzavno_tozilstvo_v_ljubljani/> (last accessed on 23.12. 2012).

[7] These measures are regulated in the Prevention of Family Violence Act, *Zakon o preprečevanju nasilja v družini*, Official Journal of the Republic of Slovenia No. 16/2008.

[8] Article 65 (3) of the Criminal Procedure Act.

[9] Ibid., Article 236.

[10] Ibid., Article 238.

[11] Ibid., Article 236 (3).

procedure. However, when they are used they protect a child from secondary victimisation as the child can be questioned once, the testimony is recorded and the recording is available for later stages of the procedure[12]. Also, the courts are increasingly aware that children are particularly sensitive when they are called to testify in courts. For that reason the Supreme Court of the Republic of Slovenia issued child-friendly booklets for two age groups which can assist children to prepare for the hearings[13].

There are some provisions in place which instruct the stakeholders in the criminal procedure to take into account the **child's best interests**. For example, the court may decide to close the hearing to the public if this is in the best interest of the child[14]. Another provision which mentions the best interests of the child is that a child may only be detained together with adults if this is in his/her best interests[15].

The Slovenian children's justice system takes a protective approach to **child defendants**. This means that the main purpose of criminal proceedings against a child defendant is not punishment for the crime but education, re-education and correctional development of the child. This is reflected in the fact that only older children (16-18 years of age) may be imprisoned and even then only exceptionally. The preferred method of treatment of child offenders is through educational measures[16]. There is a wide range of possible educational measures taking into account a number of circumstances of the child's personal situation and the crime[17]. For children who are convicted, there is a separate unit in one of the adult prisons as they may not be imprisoned together with adults[18].

The treatment of child defendants is regulated in a special part of the Criminal Procedure Act, a special part of the Enforcement of Criminal Sanctions Act which was formerly treated separately in the 1994 Penal Code. In 2008, a new Penal Code was adopted, but it does not include a special section on child defendants. However, it foresees that a special Penal Code will be adopted for child defendants but this has not yet happened. Consequently, for children the 1994 Penal Code is still in force. Adopting a special Penal Code for minors is an idea welcomed by some authors as this could protect children from an otherwise toughening sentencing policy[19].

Multidisciplinary approach in dealing with children in judicial proceedings is ensured in various ways. In the case of child defendants, social services where social workers, pedagogues and other professionals work are included in proceedings[20]. Also, the law provides that in carrying out the hearings, if necessary, the child may be questioned with the assistance of a pedagogue or another professional equipped to deal with children[21]. Another example of a multidisciplinary approach is the multifunctional teams working within social

[12] *Beli obroč, Prijazna soba z razlogom* [Friendly room with a reason], a leaflet issued by Beli obroč. See also Kline, Mirjam: *Tožilski pogled na primer "Otrok v vrtincu odločitev institucij"*, in "*Otrok v vrtincu odločitev institucij*", State Council, 2009, http://www.ds-rs.si/dokumenti/publikacije/Zbornik_09-1.pdf (6.12.2012), p. 35.

[13] See, for example, information booklets *Jan gre na sodišče* (Jan goes to court, http://www.sodisce.si/mma_bin.php?static_id=20101001114156 56) and *Jana gre na sodišče* (Jane goes to court, http://www.sodisce.si/mma_bin.php?static_id=20101001114232 31) which are aimed at younger children aged between 5 and 8. There is also a booklet aimed at older children aged between 9 and 13, prepared in a Q&A form *Ko moraš na sodiče kot priča* (When you have to go to court as a witness, http://www.sodisce.si/mma_bin.php?static_id=20101207115110 71).

[14] Article 295 of the Criminal Procedure Act.

[15] Ibid., Article 473.

[16] Article 72 of the 1994 Penal Code. *Kazenski zakonik – Uradno prečiščeno besedilo* (official consolidated text), Official Journal of the Republic of Slovenia, No. 50/2012.

[17] Article 484 of the Criminal Procedure Act.

[18] Filipčič, Katja. Slovenia. V: Dünkel, Frieder (ed.), *Juvenile justice system in Europe: current situation and reform developments*, (*Schriften zum Strafvollzug*, *Jugendstrafrecht und zur Kriminologie*, 36). Mönchengladbach: Forum Verlag Godesberg, 2010, p. 1263-1286.

[19] Ibid.

[20] Article 458 of the Criminal Procedure Act.

[21] Ibid., Article 240 (4).

services that are competent to deal with children who are victims of domestic violence. Multifunctional teams are composed of social workers, health workers and educators and their task is to provide support and assistance to children who need continuous measures to recover from the crime. To guide the functioning of the multifunctional teams there are implementing acts in place which have been adopted following the Prevention of Family Violence Act[22]. These implementing acts are:

- Rules on the organisation and work of multidisciplinary teams and regional services and on the actions of social work centres in dealing with domestic violence[23];
- Rules on the treatment of domestic violence for educational Institutions[24];
- Rules on cooperation between the police and other authorities in the detection and prevention of domestic violence[25];
- Rules on procedures for dealing with domestic violence in the implementation of health activities[26].

All persons involved in the procedures are bound to respect the principle of confidentiality[27].

There are **neither specific provisions in place on training nor vetting** of people who are working with children in judicial proceedings. In practice, however, judges for minors and Public Administration do attend specialised training. The training is provided by the Centre for Judicial Training of the Ministry of Justice.

As mentioned previously, the Slovenian justice system takes a **protective approach** towards children in judicial proceedings. There are only a few cases when a child may participate in proceedings on his/her own without the need of a legal representative. This means, in fact, that a child may waive his/her right to legal representation (by parents or guardians) only when he/she is above the age of 16. Children below the age of 16 cannot waive this right and have to be represented by their parents or guardians. For example, the law states that a child above the age of sixteen is entitled to give statements in the procedure and to carry out all procedural deeds on his own. For child victims under the age of 16 the law states that their legal representative is entitled to carry out all procedural activities on behalf of the crime victim[28].

In terms of the **definition of the child**, the law mainly uses the term “minor” meaning a person below the age of 18. Within this group the law specifies several further age groups which also depend on the role that the child has in the procedure. For example, in terms of child defendants, children are divided into three groups – children below the age of 14 who cannot be held criminally responsible; ‘younger minors’ aged between 14 and 16; and ‘older minors’ aged between 16 and 18[29]. With respect to child witnesses, the law states that only children over 16 can give statements on their own while a child below the age of 16 may do

[22] The Prevention of Family Violence Act.

[23] *Pravilnik o sodelovanju organov ter o delovanju centrov za socialno delo, multidisciplinarnih timov in regijskih služb pri obravnavi nasilja v družini* [Rules on the organization and work of multidisciplinary teams and regional services and on actions of the social work centres in dealing with domestic violence], Official Journal of the Republic of Slovenia No. 31/2009.

[24] *Pravilnik o obravnavi nasilja v družini za vzgojno-izobraževalne zavode* [Rules on the treatment of domestic violence for educational institutions], Official Journal of the Republic of Slovenia No. 104/2009.

[25] *Pravilnik o sodelovanju policije z drugimi organi in organizacijami pri odkrivanju in preprečevanju nasilja v družini* [Rules on cooperation between the police and other autorites in the detection and prevention of domestic violence], Official Journal of the Republic of Slovenia No. 25/2010.

[26] *Pravilnik o pravilih in postopkih pri obravnavanju nasilja v družini pri izvajanju zdravstvene dejavnosti* [Rules on procedures for dealing with domestic violence in the implementation of health activities], Official Journal of the Republic of Slovenia No. 38/2011.

[27] Article 93 of the Social Security Act, *Zakon o socialnem varstvu – uradno prečiščeno besedilo*, Official Journal of the Republic of Slovenia, No. 23/2007.

[28] Article 64 of the Criminal Procedure Act.

[29] Article 72 of the 1994 Penal Code.

so only through a legal representative[30]. With respect to the hearing of the child, if the questioned child is younger than 14 years of age, a person whom the child trusts may be present at the hearing. This means that children below the age of 14 may also testify and there is an additional possibility (and not a requirement) for a person whom the child trusts to be present at the hearing. The court decides whether this person can be present at the court or not.

A crime can be reported by any child, regardless of age. Namely, if a child mentions something that indicates a crime, the prosecutor's office will investigate it regardless of the age of the child and regardless of whether the report was given with or without a legal representative[31].

The **evolving capacities** of the child are reflected in the law. In the case of child defendants, they are assessed by social services that have to be informed about each case and have the right to participate in each procedure and the duty to cooperate with the court in assessing the personal situation of the child (for further details please see section 2.3.3)[32]. In the case of child victims, the courts may involve various professionals to assess the evolving capacities of the child, such as expert witnesses or pedagogues with whose assistance they can carry out the hearings. The law does not set any age limits below which the principle of maturity is not applied, however in practice the courts do not carry out hearings of children who are less than 10 years old. If the defendant and his/her lawyer so require, the court only reads the statement of the child given in previous stages of the procedure[33].

The legislation concerning criminal procedure does not contain any provisions on the **prohibition of discrimination**. Such provisions are included in the Constitution (Article 14) and the umbrella act in the field of non-discrimination[34]. If the child is discriminated against he/she may use the measures which are generally in place in cases of discrimination: criminal complaint due to violation of Article 131 of the Penal Code (crime of violation of equality)[35], claim for damages under the Code of Obligations[36], a complaint to the Human Rights Ombudsman[37] and a complaint to the Advocate of the Principle of Equality[38].

Apart from the measures in place for children who are victims of family violence and children who are victims of specific crimes (e.g. violation of sexual integrity) there are no specific measures in place in criminal procedure legislation providing protection and assistance to vulnerable children.

[30] Article 64 of the Criminal Procedure Act.

[31] Interview, prosecutor, 17 December 2012.

[32] Article 458 of the Criminal Procedure Act.

[33] Interview, prosecutor, 17 December 2012.

[34] *Zakon o uresničevanju načela enakega obravnavanja – Uradno prečiščeno besedilo* [Act Implementing the Principle of Equal Treatment – official consolidated version], Official Journal of the Republic of Slovenia, No. 93/2007.

[35] *Kazenski zakonik – Uradno prečiščeno besedilo* [Penal Code – official consolidated text], Official Journal of the Republic of Slovenia, No. 50/2012.

[36] *Obligacijski zakonik – uradno prečiščeno besedilo* [Code of Obligations – official consolidated version], Official Journal of the Republic of Slovenia, No. 97/2007.

[37] The Human Rights Ombudsman Act [*Zakon o varuhu človekovih pravic*], Official Journal of the Republic of Slovenia, No. 71/1993.

[38] The Act Implementing the Principle of Equal Treatment.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

A crime may be reported by any child, regardless of age. If a child mentions something that indicates a crime, the prosecutor's office will investigate it regardless of the age of the child and regardless of whether the report was given with or without a legal representative. Usually a child uses "SOS signals" which are noticed by parents, guardians, school or kindergarten, or are noticed by health services. An older child may also report a crime directly, either to the police, to the school personnel or they can call an SOS helpline[39]. There are no rules in place on how the child is assisted in this process.

The law also provides a specific duty to report a crime against a child victim in cases of domestic (family) violence. Everyone, but in particular workers in healthcare, educational and 'up-bringing institutions' (these are institutions that are responsible not only for the education of the child but also the upbringing of the child and provision of guidance in place of the parents) have to immediately inform social services, the police or the state prosecutor's office when they suspect that a child is a victim of domestic violence. This obligation applies regardless of any duty to protect private information that a professional receives during the course of his professional activity[40]. In cases of child victims, this duty is absolute and has to be respected even if the child opposes the reporting of the crime (this contrasts with adult victims of crime who may oppose the reporting of the crime).

For other types of offences, there is no specific duty to report a crime. There are only general rules in place on the duty of any person to report a crime which is punishable with imprisonment of at least fifteen years. A person who knows about the crime or the offender and does not report it also commits a crime and can be punished by up to three years of imprisonment, provided that filing a report by this person is crucial to finding the offender and investigating the crime[41].

There is a stricter duty in place for officials who intentionally omit to report a crime of which they learn during their work, if the punishment foreseen for this crime is at least three years imprisonment. This duty is in place only for crimes prosecuted by official duty *(ex proprio motu)*. The punishment foreseen for such intentional omission is up to three years imprisonment[42].

There is an exception to this rule, namely there is no duty to report the crime for persons who have a personal relation to the offender, namely, if the offender is a person's spouse, life partner, registered same-sex partner, blood relative in a straight line (which includes children of the offender), brother or sister, adopter or adoptee (and also the spouses, life partners and registered same-sex partners of these persons), legal representative, doctor or confessor[43].

2.1.2 Provision of information

There are no legal requirements in Slovenia to provide information to victims of crimes. If the child victim has a lawyer (it is mandatory that one is appointed to him/her by the court in cases of sexual crimes, see section 2.1.7.), the primary responsibility to provide information to the child victim is on the lawyer. Also, an advocate can be appointed for the child (within

[39] Interview with the NGO, 19 December 2012.

[40] Article 6 (2) of the Protection of Family Violence Act.

[41] Article 281 (1) of the 2008 Penal Code.

[42] Ibid., Article 281 (2).

[43] Ibid., Article 281 (3).

the pilot project of the Human Rights Ombudsman) and in this case the advocate has a responsibility to provide information to the child[44]. There are no provisions in the law specifying the duty of the police or the state prosecutor's office to provide information to victims of crimes. There are also no provisions in the law specifying what kind of information lawyers have to provide to their clients and whether they have to provide information to children in a child-friendly way. However, lawyers are appointed to children from a special list of lawyers specialised in children's cases who receive specific training on how to deal with child victims[45].

The Social Security Act defines a general duty to provide assistance for social services. In practice social services are one of the main sources of information to a child victim about a criminal procedure[46].

In addition, the Prevention of Family Violence Act imposes an obligation on social services (called centres for social work) to provide assistance, which may include information, to all victims of domestic violence. It also contains specific provisions on assistance to child victims of domestic violence. The means by which the duty to provide assistance should be accomplished is regulated according to the Social Security Act. This act specifies that social services have to assess if there is a need to set up a plan of assistance for the victim, whether child or adult, and if yes, such a plan has to be designed together with the victim of the crime.

The plan is designed if there is a need for a number of measures of assistance or for continuous assistance, or in other cases. The plan for assistance is prepared within multifunctional teams. These teams operate within social services and are composed of representatives of various bodies – e.g. health care or educational bodies – whose cooperation is needed in each individual case. If the social services ask other bodies to participate in preparation of the assistance plan, these bodies have a duty to appoint a representative who participates in this task.

Concerning the preparation of the assistance plan there is only one provision in this act that refers directly to child victims. Namely, in the case of child victims, the assistance plan must include measures such as foster families, adoption, or limitation of parental rights. The law also foresees a role for non-governmental organisations which may participate with social services in dealing with individual cases of victims. If they carry out programmes in the field of violence, they may provide protection to victims of violence directly.

The courts are increasingly aware that a child's attendance at court can be particularly stressful and unpleasant for them. In order to reduce this stress and help the child prepare for the hearing, the Supreme Court has issued information booklets for children that explain the procedure of testifying in court in a child-friendly manner[47].

2.1.3 Protection from harm and protection of private and family life

Protection from harm

The main duty to protect the child from harm is entrusted to social services. To make sure that social services are informed about the fact that a child needs protection, there is a duty in place for all state bodies, institutions and other organisations which learn about the fact

[44] Interview with the NGO, 19 December 2012.

[45] Interview, prosecutor, 17 December 2012.

[46] Interview with the NGO, 19 December 2012.

[47] See, for example, information booklets *Jan gre na sodišče* (Jan goes to court, http://www.sodisce.si/mma_bin.php?static_id=2010100111415656) and *Jana gre na sodišče* (Jane goes to court, http://www.sodisce.si/mma_bin.php?static_id=2010100111423231) which are aimed at younger children aged between 5 and 8. There is also a booklet aimed at older children aged between 9 and 13, prepared in a Q&A form *Ko moraš na sodiče kot priča* (When you have to go to court as a witness, http://www.sodisce.si/mma_bin.php?static_id=2010120711511071).

that the child is endangered in the course of performing their activities, to inform social services of this fact[48].

The Social Security Act provides a duty to grant assistance within the remit of social services[49]. The forms of assistance do not refer specifically to victims or child victims of crimes but are generally defined as first social aid, personal assistance, assistance to the family and some other forms of assistance. First social aid comprises of assistance in recognising social difficulties, assessment of possible solutions and informing the beneficiary about all possible forms of social services and benefits which he or she can claim and about duties which are related to these services and benefits, as well as informing the beneficiary about the network and programs of providers who offer social services and benefits[50].

In the field of domestic violence, a child family member enjoys special protection from violence. It is considered that a child is a victim of violence also if he/she is present while the perpetrator is violent towards other family members or when he/she lives in an environment of violence[51].

Protection from harm is a general principle adopted in the Prevention of Family Violence Act. It states that the bodies and organisations have a duty to carry out all procedures and provide measures that are needed to protect a victim of family violence. They must take into account the level of danger the victim is at risk of and what should be done to protect his/her interests. At the same time they have to protect the integrity of the victim. This is a provision in place in the Prevention of Family Violence Act generally for all victims of domestic violence. But there is also a specific provision in place for child victims of domestic violence, where the child's interest and rights have priority over the interests and rights of other people involved in the case[52]. This is determined by social services.

The Prevention of Family Violence Act imposes an obligation on social services (called centres for social work) to provide assistance to all victims of domestic violence. It also contains specific provisions on assistance to child victims of domestic violence. The means by which the duty to provide assistance should be accomplished is regulated by the Social Security Act. This act specifies that social services must assess if there is a need to set up a plan of assistance for any victim, whether child or adult, and if yes, such a plan has to be designed together with the victim of crime.

The plan is designed if there is a need for a number of measures of assistance or for continuous assistance, or in other cases determined on a case by case basis in accordance with the needs of the child. The plan for assistance is prepared by multifunctional teams. These teams operate within social services and are composed of representatives of various bodies such as health care or educational bodies – whose cooperation is needed in each individual case. If social services ask other bodies to participate in the preparation of the assistance plan, these bodies have a duty to appoint a representative who participates in this task[53]. With respect to child victims, the assistance plan must also consider whether there is a need to place the child with a foster family, whether adoption is an appropriate measure or whether a limitation on parental rights should be imposed[54]. The law also foresees a role for non-governmental organisations which may participate with social services in dealing with individual cases of victims. If they carry out programmes in the field of violence, they may provide protection to victims of violence directly[55]. The type of protection depends on the NGO programme, which can be provision of safe housing, accompanying the victim to court or arranging legal representation.

[48] Article 91(2) of the Social Security Act.

[49] Ibid., Article 10.

[50] Article 12 of the Social Security Act.

[51] Article 4 of the Prevention of Family Violence Act.

[52] Ibid., Article 5.

[53] Ibid., Article 15 (1) and (2).

[54] Ibid., Article (3).

[55] Ibid., Article 17 (2).

The Prevention of Family Violence Act includes several protective measures in place for all victims, whether adults or children. This includes restraining orders imposed on family members who carry out domestic violence. A child may claim such a restraining order on his/her own if he/she has reached the age of 15. Social services may also apply for the restraining order. If the restraining order is adopted for the protection of the child, social services have the duty to supervise the implementation of the restraining order[56]. The motion to issue a restraining order has to be submitted to the court. The court may issue restraining orders which prohibit the perpetrator of violence from entering the apartment where the victim lives, be present in the vicinity of this apartment, be present near places that the victim regularly visits (e.g. school), contact the victim in any way, or meet the victim in any way[57]. There is no legal obligation on authorities to inform the child of any restraint measures.

There are specific provisions in place for the protection of the identity of victims as witnesses in case the witness's life and body would be endangered, but they are not child-specific. These measures include the following: erasure of all personal data from the case file, marking certain personal information of the witness confidential, issuing an order to certain stakeholders in the procedure to keep certain personal data of the witness confidential, giving a pseudonym to the witness, hearings conducted by various technical means (a protection wall, changing the voice, audio transmission from another room)[58]. The decision on these protective measures is made by the investigative judge upon the request of the state prosecutor, witness, victim, defendant, their legal representatives or by official duty[59]. The decision on these protection measures may be appealed in eight days[60].

Protection of private and family life

Regardless of the role that a child has in criminal proceedings, the court may decide that in order to protect their best interests, the public (e.g. the audience and journalists) will not be allowed to attend the hearing[61]. In such cases, both the identity and the circumstances of the case are not revealed to the public and may not be accessed. According to the law, the public may be excluded by official duty or upon the request of the parties (which does not include the victim or his/her representative)[62].

In addition to this general possibility, more detailed provisions are included in the legislation in the field of family violence. Namely, it is forbidden to publicly reveal information about a victim of domestic violence which could lead to the identification of the victim or her family members. Transmission of information is allowed only if an adult victim gives permission. Transmission of information to the public is never allowed for child victims even where permission is given by the legal representative of the child. The parents or carers of children are also under a general duty in law to protect the child from public exposure[63]. The Prevention of Family Violence Act does not include any sanctions in cases of a breach of this rule, but if there is a breach, a complaint may be lodged with the Information Commissioner[64].

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

The Criminal Procedure Act provides that where a child attends a public hearing of a criminal law case as a witness or a victim, the child must be removed from the courtroom as soon as

[56] Ibid., Articles 19 and 20.

[57] Ibid., Article 19 (1).

[58] Article 240.a of the Criminal Procedure Act.

[59] Ibid.

[60] Ibid., Article 399 and 400.

[61] Ibid., Article 295.

[62] Ibid.

[63] Article 9 of the Family Violence Prevention Act.

[64] *Zakon o Informacijskem pooblaščencu* [Information Commissioner Act], Official Journal of the Republic of Slovenia, No. 113/2005.

his presence is no longer necessary[65]. This also refers to children who are involved in criminal proceedings as victims[66]. Protection from secondary victimisation is one of the reasons for this provision.

Direct questioning of persons under 15 years of age who are victims of certain criminal offences[67] is not permitted in the main hearing. However, in the main hearing, the court can decide that the records of previous interviews of such persons are read out or that parties pose indirect questions to the child. If the court recognises that the questions are reasonably grounded and necessary for clarification of the factual situation, it may, upon hearing the opinion of the parties, decide to ask the investigating judge to perform those actions that are necessary to clarify the facts[68].

Other aspects of protection from secondary victimisation are not regulated by the law but have started to develop in practice. Among such developments are **child-friendly hearing rooms** – special rooms furnished in a non-intimidating way aimed at child-friendly questioning of children who are victims of crimes. The child-friendly rooms are often not managed by the state but are opened and managed within pilot projects carried out by civil society organisations, such as *Beli obroč*, although some rooms are also situated within social services run by the state. The rooms are a response to official-looking courtrooms and their aim is to be able to carry out a hearing of a child while he or she is playing. The State provides some funding with respect to technical equipment.

The aim is also to ensure the presence of professionals specialised in dealing with children, and for the questioning to be carried out only once (and not be repeated first before the police, then before the investigative judge and again before a court, which is normal procedure). Only an assigned profession is present in the room with the child during questioning. All other practitioners such as police, lawyers, legal representative observe the interview from another room. Both audio and video recording are used so the child is questioned only once. The recorded hearing is securely stored for the needs of the court and other bodies taking part in the procedure[69]. So far there are only a few such rooms in Slovenia (e.g. in Ljubljana, Maribor, Celje, Krško, Trbovlje, Radovljica, Murska Sobota),[70] but one is available in the area of each of the eleven district courts in Slovenia, two are in Ljubljana and there are two mobile units that can be used anywhere in Slovenia. The technical equipment for the rooms was provided for by the resources of the Ministry of Justice and Public Administration[71]. Some of them are situated in private premises and some in the premises of social services; new rooms are opened every year. But this also means that they are still not part of the standard criminal procedure. It depends on the police, the prosecutor and a judge whether a child-friendly room is used for questioning[72].

When the child-friendly interview rooms are not used, the child is questioned by the same persons who question adult victims, but they are required to do so in a child-friendly manner. The persons responsible for questioning may also ask a professional trained to question children to perform the questioning[73].

There are several NGOs that provide support for child victims of crimes, such as telephone lines organised within 'centres for youth' ("TOM – *Telefon za otroke in mladostnike, Zveza prijateljev mladine*"), the Association SOS for women and children and the Association for

[65] Article 331 (4) of the Criminal Procedure Act.

[66] Ibid.

[67] Such offences are described in Article 65 of the Criminal Procedure Act.

[68] Information gathered in writing from Slovenian authorities.

[69] *Beli obroč, Prijazna soba z razlogom* [Friendly room with a reason], a leaflet issued by *Beli obroč*. See also Kline, Mirjam: *Tožilski pogled na primer "Otrok v vrtincu odločitev institucij",* in "*Otrok v vrtincu odločitev institucij*", State Council, 2009, http://www.ds-rs.si/dokumenti/publikacije/Zbornik_09-1.pdf (6.12.2012), p. 35.

[70] Ibid.

[71] Interview with the NGO, 19 December 2012.

[72] Ibid.

[73] Interview, prosecutor, 17 December 2012.

non-violent communication. There are also a number of safe houses supported by state funding.

In spite of these positive developments, some reports also indicate that there is an issue of protecting child victims from secondary victimisation, especially in cases relating to crimes against the sexual integrity of a child. As a result, for each such child victim an expert is appointed to question the child. This takes into account the difficulties in collecting evidence due to the nature of the crime in which there are usually no witnesses. In cases of child victims who are very young and cannot express themselves well, more expert witnesses are usually appointed to examine the child repeatedly. This can result in additional stress on the child[74].

To prevent secondary victimisation and assist the children in preparing for giving testimony the court issued child-friendly booklets. For more information see section 2.1.2.

2.1.5 Protecting the child during interviews and when giving testimony

Much of what has been described in the previous section on the protection of the child from secondary victimisation (section 2.1.4.) could be repeated here as child-friendly questioning rooms are also a way to protect the child victim of a crime during an interview. When the child is questioned in a child-friendly room the questioning is carried out by a person who is specialised in working with children, and not by a judge, a prosecutor or a lawyer. It should be noted that this is not established in law but is consistent in practice.

In cases where a child is attending a hearing in a courtroom, the court can make use of the already mentioned possibility to close the hearing to the public, in order to protect the best interests of the child. This can be done both by the courts on their own initiative and upon the initiative of the parties to the procedure.[75] In the case of small children, the hearings are also done in less formal premises, such as court offices where the judge, the prosecutor and the attorney do not wear gowns[76].

Also, the courts are obliged to make sure the questioning of the child, in particular if the child was also a victim of the crime, proceeds with care so that the hearing does not have a damaging effect on the child's psychological state[77]. If it is necessary, the child may be questioned with the assistance of a pedagogue or another professional equipped to deal with children. If the questioned child is younger than fourteen, a person whom the child trusts can be present at the hearing[78]. These decisions are made by the court which also appoints a pedagogue or another professional to assist with the hearing.

2.1.6 Right to be heard and to participate in criminal proceedings

There is no absolute right of crime victims to be heard. The law states that victims of crimes may be heard as witnesses[79]. The right to be heard is defined in relation to the question whether a child victim has the right to be heard in person or through the legal guardian or legal representative. The law states that a child above the age of sixteen is entitled to give statements in the procedure and to carry out all procedural deeds on his own[80]. For child victims under the age of sixteen the law states that their legal representative (parent or guardian) is entitled to carry out all procedural activities on behalf of the crime victim[81].

[74] Kline, Mirjam: *Tožilski pogled na primer "Otrok v vrtincu odločitev institucij"*, in "*Otrok v vrtincu odločitev institucij*", State Council, 2009, http://www.ds-rs.si/dokumenti/publikacije/Zbornik_09-1.pdf (6.12.2012), p. 35.

[75] Article 295 of the Criminal Procedure Act.

[76] Interview, prosecutor, 17 December 2012.

[77] Article 240 (4) of the Criminal Procedure Act.

[78] Ibid.

[79] Ibid., Article 234 (2).

[80] Ibid., Article 64 (2).

[81] Ibid., Article 64 (1).

In Slovenia, the right of children to be heard is also addressed through a pilot project "The Advocate –The Voice of a Child" carried out by the Human Rights Ombudsman. Within the project, the Ombudsman trained 88 persons as advocates who are now able to participate in various procedures as impartial persons who make sure that the voice of the child is heard and taken into account.

The advocate does so by ensuring impartiality and confidentiality in their relationship with the child; assistance which is provided to those children who wish to receive it and when they need it; building cooperation with the child on the basis of their relationship and not on the basis that the advocate "knows best"; providing information to the child, supporting his/her acceptance and understanding of information; representing the opinion of the child; taking care that the opinion of the child is not ignored in decision-making; not assuming the capacity of the child to form his/her opinion but discovering his/her feelings, views and opinion; and "being there", ready when the child needs the advocate and informing the child about the available possibilities.

This is particularly needed in cases that include conflicts of interest between children and their parents. In the field of criminal justice the advocates can play an important role when children are victims of crimes committed by their parents. The institute of the Advocate of a Child is not yet regulated by the law which means that the advocate's involvement is not yet automatic or institutionalised[82].

There is no law providing for appointment of an advocate to the child, however, this can be done if this is required to secure the best interest of the child. The advocate is appointed with the consent of the child's parents and with a decision of social services. So far an advocate has been appointed to 237 children since 2006 (65 in 2011 and 58 in 2012), in various Slovenian cities. The request for the advocate to be appointed is lodged by parents, other relatives of the child, children themselves, social services, schools, courts and other institutions. The advocates have been appointed in very different cases, including in cases of family violence, suspicion of sexual abuse, neglect of children, children endangered by one of the parents[83].

2.1.7 Right to legal counsel, legal assistance and representation

In general all crime victims (and their legal guardians) have the right to be represented by a lawyer in the course of the criminal procedure[84]. This includes child victims. There are also cases when a lawyer is mandatory and free of charge, which is the case when a child is a victim of crimes against sexual integrity[85], a crime of neglect and cruel treatment of a child[86], or a crime of trafficking in human beings[87]. In these cases it is mandatory for a child victim to have a lawyer free of charge for the entire duration of the criminal proceedings.

The duty of the lawyer is to take care of the child victim's rights, in particular with regard to protection of personal integrity of the child during the hearing before the court and in relation to claiming damages for the harm caused by the crime. If the child victim does not have a l lawyer, the court has a duty to nominate one[88]. The lawyers nominated by the court are

[82] For more information see the Human Rights Ombudsman of the Republic of Slovenia, *Special Report about the Project The Advocate – The Voice of a Child*, November 2012, http://www.varuh-rs.si/fileadmin/user_upload/pdf/posebna_porocila/ZAGOVORNIK_-_POSEBNO_POROCILO_-_celo.pdf (6.12.2012).

[83] For more information see the Human Rights Ombudsman of the Republic of Slovenia, *Special Report about the Project The Advocate – The Voice of a Child*, November 2012, http://www.varuh-rs.si/fileadmin/user_upload/pdf/posebna_porocila/ZAGOVORNIK_-_POSEBNO_POROCILO_-_celo.pdf (6.12.2012).

[84] Article 65 (1) of the Criminal Procedure Act.

[85] Chapter XIX of the Penal Code.

[86] Article 192 of the Penal Code.

[87] Ibid., Article 113.

[88] Article 65 (3) of the Criminal Procedure Act.

selected from a special list of lawyers who have had to attend special training on representing child victims[89].

This duty is in place only from the initiation of the criminal proceeding (i.e. when the indictment is lodged to the court and the case goes to trial). Before the procedure is initiated, in the investigative part of the procedure (when the case is dealt with by the police and the investigative judge) there is no mandatory representation of the child victim (in the above mentioned cases). However, the child still has an option of a lawyer, and there is also a specific right of the child to be assisted by a person he/she trusts[90].

Crime victims (including child victims) who do not have resources to hire a lawyer, are not entitled to free legal aid under the free legal system in place for people with low incomes who cannot afford a lawyer (a person may apply for free legal aid at a district court and in making a decision on the application, the court reviews the income and other property of the applicant).

The exception is child victims of the specific crimes as mentioned above, as well as child victims of family violence, as the right to free legal aid is provided to all victims of family violence who are endangered[91]. The assessment of which victim of crime is endangered is done by social services on a case by case basis. No guidelines or rules on the assessment have been identified.

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

The child victim can use remedies that are generally available in various procedures: Victims of crimes have the right to lodge an appeal against the decision of the court but must cover the expenses of the court procedure. The victim may appeal the verdict only if the prosecutor took over the prosecution from the victim[92]. In the latter case, the victim may claim that the verdict be annulled and that the case be returned to the first instance court, or that the verdict of the first instance court be changed. This possibility is useful for a child victim whose rights (to be heard, to protect his private and family life, to representation) were violated during the court procedure.

If the social services did not provide sufficient assistance to a crime victim, the victim (including child victim) may lodge a complaint to the social inspectorate. Namely, it is the social inspectorate that carries out control on the work of social services and other social protection bodies[93]. The inspection procedure is regulated by the Inspection Control Act[94]. If the person lodges a complaint against the inspectorate and the inspectorate does not find a violation, there is no possibility to appeal. If the inspectorate finds a violation, only the person who has been found responsible for the violation may appeal.

If the bodies dealing with a child victim cause any damage to the child he/she may lodge a compensation claim in the criminal procedure in accordance with the general rules of compensation law defined in the Obligations Code. Under the Obligations Code the person may claim compensation for pecuniary (including lost income and expenses) and non-pecuniary damages (including physical pain, mental pain and fear)[95]. The child has to lodge the claim through his parents or legal representatives. In cases where the child has a mandatory lawyer, it is the lawyer who has the specific duty to advise the child on the

[89] Kline, Mirjam: *Tožilski pogled na primer "Otrok v vrtincu odločitev institucij"*, in "*Otrok v vrtincu odločitev institucij*", State Council, 2009, http://www.ds-rs.si/dokumenti/publikacije/Zbornik_09-1.pdf (6.12.2012), p. 33.

[90] Article 65 (4) of the Criminal Procedure Act.

[91] Articles 25 and 26 of the Family Violence Prevention Act.

[92] Article 367 of the Criminal Procedure Act.

[93] Article 102 of the Social Security Act.

[94] *Zakon o inšpekcijskem nadzoru – uradno prečiščeno besedilo* [Inspection Act - official consolidated version], Official Journal of the Republic of Slovenia, No. 43/2007.

[95] The Code of Obligations.

possibility to claim compensation in the criminal procedure[96]. The claim has to be lodged within the statutory periods defined in the Obligations Code.

The criminal court examines the compensation claim if this would not cause too long a delay for the criminal procedure[97]. The compensation claim has to be lodged either with the prosecutor's office or with the court which adjudicates the case. It has to be lodged before the court by the end of the public hearing at the latest. In the claim, the child has to prove the damages and submit evidence of the damages. If the victim does not lodge a compensation claim, the court has to inform him/her about this possibility and the deadline[98]. If gathering evidence to decide upon the compensation claim in the criminal procedure would delay the criminal procedure too much, the court limits gathering evidence to those facts that would be difficult or impossible to establish later[99]. The criminal court may decide upon the claim for damages in its entirety, or it can award only partial damages and refer the victim to claim the rest before the civil court. If the information gathered in the criminal procedure does not suffice for a decision upon the claim for damages in its entirety, the criminal court refers the victim to lodge a compensation claim in a civil procedure. If the court finds the defendant not guilty or if the criminal procedure is stopped, the criminal court also refers the victim to a civil court to lodge a compensation claim[100]. Usually, however, the criminal courts do not decide on the compensation claim of the victims (any victims, not just child victims) after they have completed the criminal procedure, but second the victims in using the civil procedure and in lodging a separate claim for compensation[101].

Slovenian legislation also enables child victims, of violent intentional crimes (considered a vulnerable group) to access state compensation, if they meet the formal[102] conditions[103]. Compensation is recognised for physical pains, suffering, loss of maintenance, medical and hospitalisation expenses, funeral expenses, damages for destroyed medical devices and expenses for compensation claims. The authority in charge of taking decisions concerning criminal victim compensation is the Commission of the Government of the Republic of Slovenia deciding on the compensation to victims of criminal acts. The damage must be paid 30 days after the decision on the amount to be refund has become final and after the interested person receives such decision. Written claims must be addressed to the Ministry of Justice[104].

2.2 The child as a witness

2.2.1 Reporting a crime

There are no specific provisions in place on the duty of children who are witnesses to crimes to report a crime. Only the general duty exists to report severe crimes (see above section 2.1.1.). Failure to report is a crime in itself but it does not apply to children below the age of 14 as they cannot be criminally responsible below that age. The general duty of state bodies to report crime also does not apply to children. There are also no rules in place on how children should be assisted to report a crime. For more information please see section 2.1.1.).

[96] Article 65 (2) of the Criminal Procedure Act.

[97] Ibid., Article 100.

[98] Ibid., Article 102.

[99] Ibid., Article 104.

[100] Ibid., Article 105.

[101] Interview with the NGO, 19 December 2012.

[102] Children must be citizens of the Republic of Slovenia or citizens of any other Member State of the European Union

[103] The Crime Victim Compensation Act, Official Gazette of the Republic of Slovenia, n. 101/5 and 86/10.

[104] Information gathered in writing from Slovenian authorities.

2.2.2 Provision of information

There are no specific rules in place on the duty to provide information to children who witnessed a crime and there are also no specific provisions to provide information to witnesses of crimes in general. The exception is information that is provided by the court to each witness on their rights, for example a witness who is in a certain relationship with the offender (e.g. blood relative in a straight line, adopted child) is not obliged to testify (for more information see section 2.1.2.)[105]. The court is also obliged to inform any witness (not just a child witness) that he/she is not obliged to answer a specific question if by testifying, serious harm would be caused to the reputation of the child or a close relative, if it would result in the child facing criminal prosecution or if the testimony would cause serious material damage to the child or a close relative[106].

To prevent secondary victimisation and assist the child in preparing to give testimony, the court issued child-friendly booklets. For more information see section 2.1.2.

2.2.3 Protection from harm and protection of private and family life

Witnesses do not have the right to preventive protective measures such as restraining orders. There are, however, specific provisions in place for the protection of the identity of the witness in cases where the witness's life and body would be endangered, but they are not child-specific. For more information see section 2.1.3.

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

Similarly, as in the case of child victims (see section 2.1.4.), the court must remove the child witness from the courtroom as soon as his/her presence is no longer necessary[107]. As has already been described in section 2.1.4., there are also more and more opportunities to carry out the questioning of the child in child-friendly rooms organised outside the courts. These rooms are not used only for hearings of child victims but also other child witnesses. No provisions have been identified aimed at reducing delays for child witnesses.

2.2.5 Protecting the child during interviews and when giving testimony

There is a specific provision in the law that obliges the court to protect the child during court hearings. Namely, the court is obliged to make sure that during the questioning of the child, in particular if the child was also a victim of the crime, it is necessary to proceed with care so that the hearing would not have a damaging effect on the child's psychological state. If it is necessary, the child may be questioned with the assistance of a pedagogue or another professional equipped to deal with children. If the questioned child is younger than 14, a person whom the child trusts can be present at the hearing[108]. These rules are also relevant for child victims who are invited to testify as witnesses (see section 2.1.5.).

As has already been mentioned in section 2.1.5., the court has the option to close the hearing to the public in order to protect the best interests of the child[109].

The law takes into account the evolving capacities of the child as a witness. It states that 'minors' who, according to their age and psychological development, cannot understand the meaning of the right not to testify may not be heard as witnesses, unless the defendant explicitly demands that[110]. In implementation of this provision, the court deems that a child younger than ten years of age is not capable of understanding the meaning of his testimony. The court does not question such children unless the defendant or his lawyer specifically demands it. If the child is also a victim of the crime, the court never questions the child at the

[105] Article 236 (2) of the Criminal Procedure Act.

[106] Ibid., Article 238.

[107] Ibid., Article 331 (4).

[108] Ibid., Article 240 (4).

[109] Article 295 of the Criminal Procedure Act.

[110] Ibid., Article 236 (3).

court hearing, only the child's statement from the investigation phase is read aloud[111]. If a child was heard as a witness but could not understand the meaning of his testimony such evidence may not be taken into account by the court in adjudication of the case[112].

2.2.6 Right to be heard and to participate in criminal proceedings

No specific provisions are in place in relation to the right of children to participate as witnesses to crimes in criminal proceedings. As has already been described in section 2.1.5., there is no absolute right of witnesses to be heard. The court invites those witnesses, whose testimony could contribute to clarifying the circumstances of the crime to testify.

The law states that a child above the age of sixteen is entitled to give statements in the procedure and to carry out all procedural deeds on his own[113]. For child victims under the age of sixteen, the law states that their legal representative is entitled to carry out all procedural activities on behalf of the crime victim[114].

Similarly to children who are victims of a crime, child witnesses can also have an appointed Advocate of a Child, which is an institute developed within a pilot project of the Human Rights Ombudsman, described in 2.1.6.

2.2.7 Right to legal counsel, legal assistance and representation

There are no special provisions or limitations in the law on the right of a child witness to counsel, legal assistance and representation. Children below the age of 16 are represented by their parents or legal guardians, and are also invited to testify as witnesses through their parents or legal guardians. There is only one exception, which is that they can be directly invited (not through their parents or legal guardians) when it is necessary to proceed quickly or in other appropriate circumstances[115]. This also means that children above the age of 16 are invited directly.

They have the right to choose a legal representative of their own choice but they do not have the right to free legal aid as witnesses, unless they are also victims of the crime (for this case see section 2.1.7.).

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

Witnesses do not have the right to appeal the decision of the court concerning the criminal case they testified in. There are also no specific remedies in place for witnesses in criminal procedures, and also not for child witnesses. The child witnesses can only use general remedies, such as compensation claims under the general conditions of tort law. Only the witness (including a child witness) who is also a victim of the crime and who experienced damage due to the crime has the right to lodge a claim for compensation. Even though claims for compensation by witnesses who are also victims may already be lodged within the criminal procedure, the criminal courts do not decide on the compensation claims, as already mentioned in section 2.1.8.

2.3 The child as a suspect/ defendant

In the Slovenian legal system there are no special courts for children, but there are judges who are specialised in handling cases where the defendant is a child. These judges, however, also deal with adult cases since the number of cases involving child defendants is not sufficient to fill their full caseload.

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[111] Kline, Mirjam: *Tožilski pogled na primer "Otrok v vrtincu odločitev institucij"*, in "*Otrok v vrtincu odločitev institucij*", State Council, 2009, http://www.ds-rs.si/dokumenti/publikacije/Zbornik_09-1.pdf, (6.12.2012), p. 33.

[112] Article 237 of the Criminal Procedure Act.

[113] Ibid., Article 64 (2).

[114] Ibid., Article 64 (1).

[115] Ibid., Article 239 (2).

If an offence is committed by a child, the matter is dealt with by chambers of the district courts consisting of one children's judge and two lay judges. The chambers in higher courts and the Supreme Court consist of three judges. Lay judges are professors, teachers and other persons with experience in dealing with children[116].

There are special provisions in the Criminal Procedure Act for criminal procedures related to child defendants[117].

2.3.1 Age of criminal responsibility

The age of criminal responsibility in Slovenia is 14 years old[118]. Courts handle cases of child defendants between the ages of 14 and 18, while social services deal with perpetrators below the age of 14[119]. Judicial proceedings relevant to children below 14 years of age are dealt with in the civil and administrative reports.

Child defendants dealt with by courts are divided into two age groups: the group between 14 and 16 years of age (*younger juveniles*) may only receive educational measures, while the group between 16 and 18 years of age (*older juveniles*) may receive either educational measures or (exceptionally) a sanction of a fine or a children's prison sentence[120]. If during the procedure the court finds out that the child committed a crime before reaching the age of 14, it must terminate the procedure and inform social services[121].

The rules in place for children are also used for defendants below the age of 21 who committed the crime while they were still children aged between 16 and 18. For crimes they committed between 14 and 16 years of age, they can be held on trial only if these crimes are so serious that the foreseen imprisonment for them is more than five years. In this case only educational measures may be imposed on such young adults[122].

If the child committed a crime together with an adult, his involvement in the proceedings should be separated from the others and dealt with according to the rules in place for criminal procedures against children. Only exceptionally may all defendants of the crime - adults and children, be dealt with in one procedure and only where this is necessary for clarification of the facts[123].

2.3.2 Provision of information

There are no provisions in the law on the duty to provide information specifically focussed on the child defendant. However, there are a number of general provisions in place on the duty to provide information to any defendant about his rights in the course of a criminal procedure.

The main provision specifying this duty states that the court has a general duty to inform the defendant about the rights he/she has under the Criminal Procedure Act and the consequences of defendant's failure to carry out certain acts. The court must always inform the defendant of these consequences when the defendant could omit to carry out a certain act which could result in the defendant not being able to exercise their rights[124]. Also, each decision issued in the course of the criminal procedure has to contain information on whether or not an appeal is allowed, the time limit for an appeal and where it should be lodged.

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[116] Article 462 of the Criminal Procedure Act.

[117] Ibid., Articles 451-490.

[118] Article 21 of the 2008 Penal Code.

[119] Filipčič, Katja. Slovenia. V: Dünkel, Frieder (ed.), *Juvenile justice system in Europe: current situation and reform developments*, (*Schriften zum Strafvollzug*, *Jugendstrafrecht und zur Kriminologie*, 36). Mönchengladbach: Forum Verlag Godesberg, 2010, p. 1263-1286.

[120] Article 72 of the 1994 Penal Code.

[121] Article 452 of the Criminal Procedure Act.

[122] Article 92 of the 1994 Penal Code.

[123] Article 456 of the Criminal Procedure Act.

[124] Article 14 of the Criminal Procedure Act.

The police have a duty to provide information to defendants about their rights. When the police have reasonable grounds to suspect that a person committed or participated in the commission of a crime they must inform the suspect:

- about the crime he/she is suspected of having committed;
- the basis for suspicion;
- that he/she has the right to remain silent and not answer questions;
- that if he/she intends to defend himself/herself that he/she is not obliged to say anything against himself/herself or his/her close ones or confess to a crime;
- that he/she has the right to a lawyer of his/her free choice who may be present at the hearing (i.e. the police interview);
- that anything the person will say can be used in a court of law against him/her[125].

This information must be provided before the police start to collect information. The information must also be provided to the defendant by the court at the first hearing[126].

When the police arrest a child and put him/her in custody, they must inform the child in their mother tongue or in a language that he/she understands about:

- the reasons for custody;
- the right to remain silent;
- the right to legal assistance of a lawyer of his choice;
- the duty of the police to inform his/her close ones about custody if he/she so requires[127].

When the child is first invited to attend a hearing before the investigative judge through a court invitation, the invitation must include information about the right of the defendant to have a lawyer and be accompanied at the hearing by a lawyer. At the first hearing, the court must inform the defendant that he/she must communicate to the court any change of address and the consequences of failing to inform the court about the change of address[128].

When the case is being dealt with by the investigative judge, the court has the duty to inform the defendant about the right to translation if the defendant does not speak or understand Slovenian[129]. When the indictment is lodged against the defendant, the court has to inform the defendant that he/she has the right to appeal the indictment[130].

After the indictment is final (i.e. when there are no ordinary legal remedies – appeals – that could be lodged against it) the court proceeding begins and the court invites the defendant to a hearing. The invitation must inform the child defendant that they must tell the court whether he/she will plead guilty or not, that the attendance at the hearing is mandatory and if he/she fails to attend they can be forced to attend or pre-trial detention can be imposed; and that the child defendant will be allowed to request the judge be changed, request exclusion of evidence, present evidence to the court and propose other procedural motions, and make a statement about the manner in which the hearing is conducted. The child must also be informed that he or she will be allowed to claim in subsequent hearings that the judge or evidence be excluded only if he or she provides justified reasons why these proposals were not given in the first hearing. The defendant will also be informed that by pleading guilty the defendant renounces the right to a public hearing and that evidential proceedings will be carried out only regarding circumstances that are important for sentencing. Finally, the

[125] Ibid., Article 148 (4).
[126] Ibid., Article 227.
[127] Ibid., Article 4 (1).
[128] Ibid., Article 193.
[129] Ibid., Article 8 (2).
[130] Ibid., Article 274 (1).

defendant is again informed that he/she has the right to a lawyer who can be present at the hearing[131].

The same information is repeated at the hearing of the defendant[132]. At the hearing, the president of the chamber (a judge) has to warn the defendant to carefully follow the proceedings. The judge must also inform the defendant of the right to state facts and propose evidence in his/her defence, that he/she may ask questions to co-defendants, witnesses, and expert witnesses and that he/she may comment on and seek clarification on their statements[133].

After the judgment is delivered, the court has to inform the defendant of the right to lodge an appeal within eight days. If no appeal is made within that period the right is lost[134]. The child may only lodge an appeal through his/her parents. Namely, there are no provisions in the law that would allow the child to lodge an appeal on his/her own.

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

Two key actions are relevant in the early stages of an investigation into a crime committed by a child. When a state prosecutor suspects that a child has committed an offence, but prior to the formal initiation of proceedings, the prosecutor must inform social services of his suspicion[135].

Social services will then talk to the child and his/her parents to find out how to assist and support the child. They may also visit the child's home and find out about the environment in which the child lives. They will then send a report and an opinion to the state prosecutor about whether or not a criminal procedure against the child would be sensible. This procedure is called treatment of the child outside the court procedure[136]. No legal provisions have been identified with respect to determining whether proceeding with a case would be 'sensible'.

The prosecutor must next decide whether to demand the initiation of proceedings. This contrasts with offences committed by adults where criminal proceedings must be initiated[137]. When such a demand is made, the competent social services must be informed by the prosecutor. Social services are entrusted with specific rights in criminal proceedings against a child, such as the right to follow the proceedings, to make proposals (the nature of such proposals are not specified in law) in the course of the procedure and to point out the facts and evidence that are important for a correct decision[138].

In the preparatory procedure, before the indictment is lodged, social services should get to know the child, his/her parents and environment so that they can make proposals in the course of the criminal procedure on the treatment of the child[139].

If the procedure is for any reason terminated, the state prosecutor has to inform social services[140].

[131] Article 285 (3) of the Criminal Procedure Act.

[132] Ibid., Article 285.b (4).

[133] Ibid., Article 320.

[134] Ibid., Article 362 (1).

[135] Ibid., Article 458 (2).

[136] Official website of the Association of Centres for Social Work, http://www.scsd.si/obravnava-otrok-izven-sodnega-postopka.html (6.12.2012).

[137] Article 465 (1) of the Criminal Procedure Act.

[138] Ibid., Article 458.

[139] Official website of the Association of Centres for Social Work, http://www.scsd.si/obravnava-mladoletnih-v-sodnem-postopku.html (6.12.2012).

[140] Article 475 of the Criminal Procedure Act.

2.3.4 Conditions for pre-trial detention/custody

There are specific legal provisions in place in terms of pre-trial detention of child suspects. First, the law states that pre-trial detention may be imposed on a child only exceptionally. However, the reasons for which pre-trial detention may be imposed are the same as for adults. In the exceptional cases where pre-trial detention is imposed, it may last for a maximum of one month and may be extended for justified reasons for two more months, meaning that it can last for a maximum of three months in total[141]. Therefore, the only difference with adults is in the duration of pre-trial detention[142].

If a child is detained by law he/she must be detained separately from adults. However, the children's judge may exceptionally decide that the minor be detained together with adults if this is in the best interest of the child, taking into account his personality and other circumstances in the concrete case. A child in pre-trial detention must receive care, protection and any individual assistance that he/she might need considering his/her age, sex and personality[143].

There are no special pre-trial detention facilities for children so they are placed in a separate unit in one of the eight prisons for adults.

2.3.5 Protection of private and family life

For child defendants there are stricter rules in place to protect their private life compared to their adult counterparts. Namely, it is forbidden to publish either the information about the procedure against them or the judgment that was issued in such a procedure, without the permission of the court. In cases where the court permits information to be published, only the information explicitly allowed by the court may be published, and even in such a case it is forbidden to publish the child's name and other information that could enable the identification of the child[144]. Specific rules explaining the circumstances in which publication may be allowed have not been identified.

Furthermore, trials involving child defendants must always be closed to the public. The chamber may only allow the presence of certain persons at the hearing, for example professionals dealing with the protection and upbringing of children, professionals dealing with prevention of juvenile crime, and scientific workers. During the hearing the court may demand that all or certain persons are removed, except for the state prosecutor, the defendant's lawyer and the representative of social services[145].

One of the rules that also reflects the need to protect the private and family life of the child defendant is a prohibition of serving the documents of the court intended for the child defendant by putting them on the public blackboard of the court[146].

2.3.6 Alternatives to judicial proceedings

There are several alternatives to judicial proceedings that can be used by state prosecutors or courts.

In cases of crimes punishable by a fine or imprisonment for up to three years, the state prosecutor (and never the police) may decide to **dismiss** a case of a child defendant. In making such a decision, the state prosecutor must consider the nature of the crime, the circumstances in which it was committed, the previous life of the child and his personal characteristics. In order to assess these circumstances, the state prosecutor may request

[141] Article 427 of the Criminal Procedure Act.

[142] Filipčič, Katja. Slovenia. V: Dünkel, Frieder (ed.), *Juvenile justice system in Europe: current situation and reform developments*, (*Schriften zum Strafvollzug*, *Jugendstrafrecht und zur Kriminologie*, 36). Mönchengladbach: Forum Verlag Godesberg, 2010, p. 1263-1286..

[143] Article 473 of the Criminal Procedure Act.

[144] Ibid., Article 460.

[145] Ibid., Article 480.

[146] Ibid., Article 459 (2).

information from the child's parents or guardians, social services and from other persons and institutions. The state prosecutor may also invite these persons to a face to face interview[147]. This option is in place only for child defendants.

There is also a possibility for the state prosecutor to refer the case for settlement or to defer the prosecution. These two options are in place for all defendants, not only minors. However, if the criminal report is submitted against a minor, they may also apply to criminal offences for which the Criminal Code prescribes a prison sentence of up to five years and for offences, such as aggravated bodily harm, grievous bodily harm, grand larceny, disavowal, damage to property (settlement). Deferred prosecution is applied in case of facilitating of drug-taking, grand larceny, disavowal, blackmail, business fraud, damage to property, misappropriation and the presentation of bad cheques and the abuse of bank or credit cards[148].

Settlement is carried out by an independent professional mediator (*poravnalec*) and may only be carried out with the consent of the defendant and the victim. The mediator assists and encourages the parties to reach an agreement. If the agreement includes the duty of the defendant to participate in community work, the implementation of the agreement is coordinated by social services. When the state prosecutor receives notification that the agreement has been fulfilled he/she dismisses the criminal report lodged against the defendant[149].

Deferment of the procedure is possible when the defendant (adults and children) is willing to follow the instructions of the state prosecutor and to fulfil certain tasks to reduce or eliminate the harmful consequences of the crime. The possible tasks are provided in table below.

- remedying or eliminating the damage;
- payment of a contribution to the benefit of a public institution or charity or into the fund for remedying the damage of crime victims;
- carrying out community work (these three tasks are coordinated by social services);
- paying alimonies;
- submission to health treatment in one of the health institutions;
- visiting psychological or another type of counseling;
- respecting the restraining order issued for the victim, another person or place

If the defendant carries out the task within the set deadline and pays the costs, the prosecutor dismisses the criminal report[150].

In addition to the general conditions for settlement and deferment of prosecution in criminal cases, the conditions for the dismissal of the case (described in the previous paragraph) apply[151].

If the child is already subject to criminal sanctions for previous crimes, and the child committed other crimes for which he/she has not yet been tried, the state prosecutor may decide not to initiate another procedure for this other crime if he/she considers that due to the nature of the crime and the type of sentence or educational measure which is being carried out, the new procedure and a new sentence would not be sensible for the child (this notion takes into account the best interests of the child)[152]. If in such cases (and in cases of dismissal) the state prosecutor concludes that the initiation of the procedure against a child

[147] Ibid., Article 466 (1).

[148] Information gathered in writing from Slovenian authorities.

[149] Article 161.a of the Criminal Procedure Act.

[150] Ibid., Article 162.

[151] Ibid., Articles 466 (2) in conjunction with Articles 161.a and 162.

[152] Article 466 (3) of the Criminal Procedure Act.

would not reach its goals, the state prosecutor informs social services about this and informs them of his decision[153]. There is no right of the child to be heard specified in the law with regard to these decisions.

Where the preparatory phase of the criminal procedure has reached the court, the state prosecutor may no longer make the decision to dismiss the procedure but may only propose this to the court. If the court finds the proposal of the prosecutor justified it may terminate the procedure, if the conditions for dismissal as mentioned above are met[154].

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

One of the key means of minimising the burden of the procedure on the child is through the possibility for the court to remove the child from the courtroom whilst witnesses are being heard or other evidence is presented[155].

To protect the child, the law states that in all phases of the procedure in which the child is present (especially at the hearing) all bodies and persons participating in the procedure have to act with caution and take into account the child's mental development, sensitivity and personal characteristics so that the criminal procedure would not affect the child's development. At the same time the competent bodies have to prevent through appropriate measures any undisciplined behaviour of the child[156]. As previously mentioned, this approach is consolidated through the involvement in proceedings of social services[157].

In order to learn as much as possible about the personality of the child, there is also a rule that no one may be excused from testifying about circumstances that are important to assess the child's mental development, personality and life circumstances[158].

There is also a general duty of all bodies involved in a procedure against a child to act quickly in order to complete the procedure as soon as possible (this requirement does not apply with respect to child victims and witnesses)[159]. In practice however, the procedures are still slow and lengthy even though they should have priority[160].

When the case is appealed and it is dealt with by the second instance chamber of judges, the court invites the child defendant to attend the hearing only if his presence would be beneficial[161]. The presence at the hearing is therefore not mandatory which can be read in light of minimising the burden of the procedure. No additional protection measures have been identified.

2.3.8 Protecting the child during interviews and when giving testimony

As mentioned above, to protect the child all bodies and persons participating in the procedure have to act with caution (especially at hearings of the child) and take into account the child's mental development, sensitivity and personal characteristics so that the criminal procedure would not affect the child's development[162].

The court may also close the hearing or the procedure as a whole to the public at any phase of the procedure, which is also crucial for protecting the child during interviews and giving

[153] Ibid., Article 466 (4).

[154] Article 475 (1) of the Criminal Procedure Act.

[155] Ibid., Article 480 (4).

[156] Ibid., Article 453.

[157] Official website of the Association of Centres for Social Work, http://www.scsd.si/obravnava-mladoletnih-v-sodnem-postopku.html (6.12.2012).

[158] Article 455 of the Criminal Procedure Act.

[159] Ibid., Article 461.

[160] Kline, Mirjam: *Tožilski pogled na primer "Otrok v vrtincu odločitev institucij"*, in "*Otrok v vrtincu odločitev institucij*", State Council, 2009, http://www.ds-rs.si/dokumenti/publikacije/Zbornik_09-1.pdf, (6.12.2012), p. 33.

[161] Article 485 (4) of the Criminal Procedure Act.

[162] Ibid., Article 453.

testimony. In particular the court may do this where it is in the best interests of the child[163]. This means that the best interests of the child may prevail over the general constitutional principle that court hearings are public[164].

Furthermore, as previously mentioned, the Court may require the assistance of a pedagogue or another professional during a court hearing in the preparatory phase of the proceeding. The children's judge may also permit the presence of social services and parents or guardians of the child[165].

2.3.9 Right to be heard and to participate in criminal proceedings

There is only a general rule in place relating to the right to be heard. Namely, each defendant (adult or child) has the right to express himself/herself regarding all facts and evidence against him/her and to state all facts and evidence that are in his/her favour[166].

In addition, a key rule to ensure participation is the prohibition on the trial taking place in the absence of the child defendant[167].

As a rule, the child is invited to court through his parents or legal guardians. Only exceptionally may he/she be invited to court directly when there is a need to act quickly or when invitation through parents or legal guardians is not possible[168].

As with child victims, child defendants can also have an appointed Advocate of a Child, which is an institute developed within a pilot project of the Human Rights Ombudsman (see section 2.1.6 for further details).

2.3.10 Right to legal counsel, legal assistance and representation

The child defendant may have a lawyer from the beginning of the preparatory phase taking place at the court (the preparatory court phase in a procedure against child defendants is the same as investigative court procedure in cases of adult defendants; it takes place after the police procedure and before the indictment is lodged). But it is mandatory for the child to have a lawyer in cases where he/she is charged with crimes punishable by a sentence of more than three years of imprisonment. In cases of other (less serious) crimes the judge may also decide that it is mandatory for the child defendant to have a lawyer. In cases where a lawyer is mandatory and the child's relatives or legal guardians do not appoint one, the court does so of its own motion and the state pays the costs[169].

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

For child defendants, the same remedies are available as for adult defendants, which include the right to appeal if the defendant was not informed about his rights in the course of the procedure. In the section on the procedure for minors, the law further includes some specific provisions (different from the general ones) on remedies that apply to child defendants. It is possible to launch a complaint against a judgment resulting in a sentence, educational measure or termination of the proceeding within 8 days of receiving the judgment. Whilst this is also available to adult defendants, this time limit is shorter than in the case of adult defendants who have the right to appeal within fifteen days[170].

There is a special provision in place regulating the situation when a child does not agree with the appeal even though the appeal would be in his best interest. In such cases, the lawyer,

[163] Ibid., Article 295.

[164] Article 24 of the Constitution.

[165] Article 470 of the Criminal Procedure Act.

[166] Ibid., Article 5 (2).

[167] Ibid., Article 453 (1).

[168] Ibid., Article 459.

[169] Ibid., Article 454.

[170] Ibid., Article 485 (1).

the state prosecutor, spouse, next of kin, adoptive parent, guardian, brother, sister or foster parent may lodge an appeal which is in the best interests of the child even if the child opposes it[171]. The views of the child or his/her representative need not been sought.

The general rule of legal remedies against judgments in the criminal procedure is that they have a suspensive effect. However, there is an exception to this rule in the case of a child against whom the court issued an educational measure of placement in an educational institution. The rule in this case is that the appeal against the judgment with an educational measure does not have a suspensive effect, unless the court – in consent with the child's parents – decides otherwise[172].

[171] Ibid., Article 485 (2).

[172] Article 485 (3) of the Criminal Procedure Act.

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

The law does not include any child-specific provisions on the duty to provide information to either child victim or child offender after the judicial proceedings are completed. There are also no requirements to provide information to the child in a child-friendly manner. However, as has already been mentioned in sections 2.1.2. and 2.3.2., social services have the duty to provide assistance to the child and this duty does not end with the completion of the criminal proceedings.

For all defendants, children and adults, the information on the right to lodge a complaint is provided by the court which informs the defendant about this immediately after pronouncing the judgment. The information on the right to appeal is also included in the judgment itself[173].

As the child is by rule invited to the court through his/her parents or legal guardians the latter are always informed about the proceedings.

3.1.2 Sentencing

The main purpose of sentencing of children is still assistance, education and re-education of child perpetrators[174], which reflects a protective approach. In the last twenty years, Slovenia has been toughening its sentencing policy. However, this toughening has not yet affected child offenders. The reasons for this are that the crime rate of children has remained steady and that the types of crimes have not changed. The Slovenian model of dealing with child offenders is protective, thus, 90% of the sentences imposed are educational measures, this means placement in an educational institution without deprivation of liberty. The courts place only about 7% of child offenders in institutions, and impose a sentence of imprisonment only on 1-2% of child offenders[175].

As mentioned in section 2.3.1., younger children may only be subjected to educational measures, while older children may exceptionally receive a sanction of a fine or a children's prison sentence. If the child is issued with a sanction, the court may also charge the child with the expenses of the court procedure, while if the child receives only an educational measure, the court expenses are paid by the state. As an exception, when the child is receiving income or has property, the court may require the child to pay the court expenses even if he/she was issued with only an educational measure[176].

There are six sets of educational measures that can be issued to child offenders. These are:

- admonishment;
- instructions and prohibitions;
- supervision of social services;
- placement in an educational institution;
- placement in a re-educational institution (i.e. correctional home);
- placement in a professional training institution.

[173] Article 362 of the Criminal Procedure Act.

[174] Article 73 of the 1994 Penal Code.

[175] Filipčič, Katja. Slovenia. V: Dünkel, Frieder (ed.), *Juvenile justice system in Europe: current situation and reform developments*, (*Schriften zum Strafvollzug*, *Jugendstrafrecht und zur Kriminologie*, 36). Mönchengladbach: Forum Verlag Godesberg, 2010, p. 1263-1286.

[176] Article 484 of the Criminal Procedure Act.

The above institutions are open and semi-open facilities. In Slovenia, there are seven open-style facilities which are run by the Ministry of Labour, Family and Social Affairs and one semi-open institution run by the Ministry of Justice and Public Administration. Placement in the semi-open style of institution is usually a consequence of a drug or alcohol problem of the child. When placed in a re-educational institution, the child can be placed in semi-open, drug-free or open unit[177].

The first three measures, which do not require placement, are issued to a child who needs to be warned about the wrongfulness of his actions and in cases where there is a need to ensure the child's education, re-education and correctional development in the environment where the child lives. They are used as both short and long-term measures. This contrasts with the measures that require placement in an institution which are imposed by the court in cases when there is a need for long-term educational, re-educational and professional training measures as well as for the child's total or partial removal from his/her normal home environment. The measures that require placement are used only exceptionally and may last only until the goals of the measure are reached but no longer than the maximum period of time prescribed by law[178].

When the court is selecting the measure for the child defendant, it has to take into account his/her age, the level of mental development, his/her psychological characteristics, inclinations, motives for committing the crime, upbringing, environment and conditions in which the child lived, the weight and nature of the crime, whether such measures were already issued on the child before and all other circumstances that need to be taken into account for reaching the goals of the measure in the best way[179].

The court may only issue admonishment if it finds that this measure will suffice to reach the goals of the educational measures. In issuing this measure, the court explains to the child the harm caused and wrongfulness of his/her actions and warns the child that a more severe sanction can be issued if he/she re-offends[180].

If the court finds that instructions and prohibitions have to be issued to the child to influence his/her behaviour the possible instructions and prohibitions are:

- personal apology to the victim;
- reaching a settlement in a way that a child pays damages or performs certain work to remedy the damage caused (the work may not exceed 60 hours in three months and may not disturb the schooling or employment of the child; the implementation of this measure is coordinated by social services);
- go to school regularly;
- attend professional training or gain appropriate employment;
- stay with a certain family, in an institution or elsewhere;
- perform humanitarian work or work in a local community (the work may not exceed 120 hours in six months and may not disturb the schooling or employment of the child. The implementation of this measure is coordinated by social services);
- attend treatment in a health institution;
- attend educational, professional, psychological or another type of counselling;

[177] Filipčič, Katja. Slovenia. V: Dünkel, Frieder (ed.), *Juvenile justice system in Europe: current situation and reform developments*, (*Schriften zum Strafvollzug*, *Jugendstrafrecht und zur Kriminologie*, 36). Mönchengladbach: Forum Verlag Godesberg, 2010, p. 1263-1286.

[178] Article 74 of the 1994 Penal Code.

[179] Ibid., Article 75.

[180] Ibid., Article 76.

- attend social training programmes if they are needed (they cannot last for more than 4 hours a day and may not disturb the schooling or employment of the child. The implementation of this measure is coordinated by social services);
- pass a test on traffic rules;
- driving ban.

In deciding to issue instructions and prohibitions, a court must take into account the willingness of the child to cooperate. In imposing these measures, the child's dignity has to be respected. These measures may be issued for a period of one year at the most. In the meantime, the court may change or amend the measures issued. If the child does not respect the instructions and prohibitions, the court may issue the next measure which is the supervision of the child by social services[181].

Social services supervision measures are issued by the court in cases when the child needs professional assistance and supervision because there is a need to influence his education, re-education and correctional development. The measure may last between one and three years. For the duration of this measure, the child stays with his/her parents or other people who provide for him/her, while the counsellor appointed by social services carries out the supervision. Supervision entails taking care of the child's schooling, employment, removal from an environment which has a damaging influence on the child, health treatment and taking care of the child's general wellbeing. Based on the individual needs of a child, the court may complement the supervision measure with additional instructions and prohibitions[182].

If the child needs to be removed from his environment there are three options available for placement in an institution. If there is a need for the upbringing of the child under the leadership of professional educators, the child is placed in an educational institution. This placement can last from six months to three years. When a court decides to issue this measure it does not specify its duration immediately, but decides upon the duration later in the process. Instead of institutions, placement can also be carried out in an apartment where a smaller number of children live. Another way in which placement is carried out is that the child only stays in the educational institution during the day[183].

If the child needs more effective re-educational measures, the court may place him/her in a re-educational institution. The nature and weight of the crime and the fact that previous educational measures have been issued to the child are key factors influencing the use of this measure. The duration of such a placement is from one year to three years, and again, the court only decides on the duration of the measure later in the process[184].

If the court finds out that the child has physical or mental development issues, it may place the child in a professional training institution. The child stays in this institution for as long as this is needed, but not for more than three years[185].

For the child who has been placed in an educational or re-educational institution, the court may decide after one year that the child may go home (for example, through a form of parole release) if the results show that the child will not repeat the crimes. This is also a condition for the child to remain at home. After letting the child go home the court may, however, decide to impose a social services supervision measure on the child. If the child does not respect the rules and commits a new crime, the court may withdraw the parole[186].

The law also regulates a situation when new circumstances are discovered by the court after the educational measure has been imposed. In such cases, the court may replace the

[181] Article 77 of the 1994 Penal Code.
[182] Ibid., Article 78.
[183] Ibid., Article 79.
[184] Ibid., Article 80.
[185] Ibid., Article 81.
[186] Ibid., Article 82.

existing measure with a new one. The court may also change the measure if it concludes later that the goals of education and training will be better achieved through another measure. However, there are certain requirements that must be respected in such cases: the placement in an educational institution cannot be terminated prior to six months. Before that, the court can only make changes by placing the child in a re-educational institution or professional training institution. This placement may not be terminated before one year has elapsed, unless the measure is replaced by another type of institutional placement[187].

There are also cases when the educational measure is issued but its implementation does not begin immediately. In cases where one year has passed since a social services measure or a measure of institutional placement was imposed but the measure has not yet been carried out, the court has to decide whether the measure should be carried out or not. Also, the court may replace the measure with another measure if it is more appropriate[188].

If the child committed more than one crime, the court issues only one educational measure for the child[189].

The court has a duty to supervise the correct implementation of educational measures once they are imposed[190]. The institution in which the child was placed has to report the child's behaviour to the court. The judge may also visit the child in the institution. In cases where social services supervise the child, due to an educational measure or where the child received tasks through alternative procedures to the judicial procedure, social services must provide the court with a six monthly report on the progress the child has made and whether the tasks were successfully or unsuccessfully fulfilled[191].

Once the court issues an educational measure there are possibilities to change this decision. The decision can be changed if the court so decides or if the change is proposed by the state prosecutor, director of the educational institution where the child is placed, or social services who carry out the supervision of the child. In making its decision, the court must hold a hearing which includes state prosecutors, the child, his/her parents or guardians or other relevant persons. In addition the court may ask for a report from the institution in which the child was placed, from social services or from other bodies relevant to the specific case. The same procedure has to be respected not only when the educational measure is changed but also when the court terminates the execution of the educational measure. The decision on the change or termination of the educational measure is entrusted to the chamber (children's judge and two lay judges). In making the decision, the chamber has to take into account the success or lack of success of the educational measure and the willingness of the child to participate in the educational process[192].

Further and more detailed procedural rules on the execution of educational measures, competence of relevant bodies and time limits are specified in the Enforcement of Criminal Sanctions Act[193].

3.1.3 Deprivation of liberty

Deprivation of liberty is imposed on a child only exceptionally, and may not be imposed on children aged between 14 and 16. There are specific provisions in place on the duration of imprisonment which is shorter than the duration of imprisonment for adults. Children of this age group may be issued with a sanction of imprisonment for crimes punishable by a sentence of imprisonment of more than five years, provided that the nature and the weight of

[187] Ibid., Article 83.

[188] Article 84 of the 1994 Penal Code.

[189] Ibid., Article 85.

[190] Ibid., Article 87.

[191] Article 489 of the Criminal Procedure Act. See also the official website of the Association of Centres for Social Work, http://www.scsd.si/obravnava-mladoletnih-v-sodnem-postopku.html (6.12.2012).

[192] Article 490 of the Criminal Procedures Act.

[193] Articles 169-200 of the Enforcement of Criminal Sanctions Act.

the crime and the high level of criminal responsibility of the child do not justify the issuing of the lesser educational measures. The sentence may last between six months and five years. The court may impose a longer imprisonment (for a maximum of ten years) for crimes for which adults may be imprisoned for up to twenty years. Also, when the definition of a certain crime includes a minimum imprisonment, the court may issue a shorter imprisonment sentence for a child[194].

When the court is deciding for how long the child should go to prison, it has to consider not only mitigating and aggravating circumstances (as in the case of adults), but also the level of maturity of the child, and the time needed for his education, re-education and professional training[195].

There are also special rules in place for determining the sentence of imprisonment when a child has committed more than one crime. If the court determines that imprisonment has to be imposed for all crimes, it imposes one sentence within the limits set by law for imposing one sentence. Also, if the child committed more than one crime and the court concludes that for some of the crimes there is a need to impose an educational measure and, for the other crimes, imprisonment, the court only imposes imprisonment[196].

There are also rules for situations when a child is already in the middle of an educational measure and the court imposes imprisonment for another crime. In such cases, the educational measure is interrupted and the child goes to prison[197].

Once the prison sentence is imposed it has to be carried out and organised in a way to ensure the training of a minor for life in freedom, so that a child will live in accordance with valid legal and moral norms[198].

Imprisonment of children is carried out in accordance with the general rules of the Enforcement of Criminal Sanctions Act. This Act also includes some specific norms in relation to imprisonment of children. Children are imprisoned in a special unit within one of the existing adult prisons[199] in which they may stay only until the age of 23. Where the sentence takes them beyond the age of 23, they must normally be transferred to the adult prison but exceptionally they may stay in the children's unit to finish school or professional training. The decision on transfer is made by the director of Administration for Enforcement of Criminal Sanctions at the Ministry of Justice and Public Administration[200]. There are various regimes for serving a prison sentence – open, semi-open and closed. Statistics show that most children serve prison sentence in closed regime which points at a more punitive approach[201].

A child has the right to work in jail, if he/she wishes to. The work is selected according to the child's competence, capabilities and interests. Work time for children has to take into account their schooling and professional training needs, and children must have enough time for exercise and leisure[202].

[194] Article 89 of the 1994 Penal Code.

[195] Ibid., Article 90 (1).

[196] Article 90 (2) of the 1994 Penal Code.

[197] Ibid., Article 91 (1).

[198] Article 14 (1) of the Enforcement of Criminal Sanctions Act, *Zakon o izvrševanju kazenskih*, Official Journal of the Republic of Slovenia, No. 22/2000, as amended.

[199] Filipčič, Katja. Slovenia. V: Dünkel, Frieder (ed.), *Juvenile justice system in Europe: current situation and reform developments*, (*Schriften zum Strafvollzug*, *Jugendstrafrecht und zur Kriminologie*, 36). Mönchengladbach: Forum Verlag Godesberg, 2010, p. 1263-1286.

[200] Article 113 of the Enforcement of Criminal Sanctions Act.

[201] Filipčič, Katja. Slovenia. V: Dünkel, Frieder (ed.), *Juvenile justice system in Europe: current situation and reform developments*, (*Schriften zum Strafvollzug*, *Jugendstrafrecht und zur Kriminologie*, 36). Mönchengladbach: Forum Verlag Godesberg, 2010, p. 1263-1286.

[202] Article 114 of the Enforcement of Criminal Sanctions Act.

The prisons for children have to pay special attention to pedagogical, psychological and therapeutic treatment of children, they have to organise classes for elementary education and professional training and provide sports and other activities for children[203]. The manager of the prison may allow the child to visit his/her parents and other close relatives and other persons if this is foreseen in the individual treatment for the child. The manager may do that under the condition that a child is hard working in his work or school[204].

The child has the right to be outside for at least three hours a day[205]. Children may not normally be put in solitary confinement. In case of serious disciplinary offences, the child may be put in solitary confinement with or without the right to work, for a maximum of seven days (serious disciplinary offences are physical attacks on another prisoner or a guard, using and selling alcohol and drugs, escape from prison, lending money for high interest rates, causing high material damage, intentionally or through negligence etc.). The manager of the prison has to inform the director of the Administration for Enforcement of Criminal Sanctions each time a child is put in such confinement[206]. Against solitary confinement, the child may lodge an appeal in three days. Appeal has a suspensive effect[207].

3.1.4 Criminal records

There are no special provisions in place for children who have been convicted for crimes, which means that criminal records for these convictions are kept under the same conditions as for adults. The body responsible for keeping criminal records is the Ministry of Justice and Public Administration. This ministry keeps a record on all educational measures for minors and young adults for crimes that were committed in Slovenia. It also keeps records on educational measures issued by foreign courts if the Ministry was informed about this[208].

The erasure of the criminal record of a child's imprisonment is subject to the same rules as adult imprisonment. The sanction of imprisonment is erased from the criminal record within a certain time limit set by law following the end of imprisonment:

- for suspended imprisonment – one year from the expiration of the time limit in which the defendant should not have committed another crime;
- for financial sanction or imprisonment up to one year – after three years;
- for imprisonment from one to three years – after five years;
- for imprisonment from three to five years – after eight years;
- for imprisonment from five to ten years – after ten years[209].

Educational measures have to be erased from the criminal record one year after the termination of the execution of the measure[210].

This means that the child's criminal records are not automatically cleared when he/she reaches the age of 18.

[203] Ibid, Article 115.

[204] Ibid., Article 116.

[205] Ibid., Article 117.

[206] Article 87 and 118 of the Enforcement of Criminal Sanctions Act.

[207] Ibid., Article 93.

[208] Article 4 (1) of the Rules on criminal records, *Pravilnik o kazenski evidenci*, Official Journal of the Republic of Slovenia, No. 34/2004 and 127/2006.

[209] Article 82 (4) of the 2008 Penal Code.

[210] Ibid., Article 375 (2).

4 Strengths and potential gaps

The strengths of Slovenian children's justice systems are:

- protective approach to child offenders;
- pre-trial detention of children may be imposed only exceptionally; when it is imposed children have to be separated from adults;
- involvement of social services in the entire duration of the criminal procedure;
- child-friendly interview rooms are increasingly used;
- for children between 14 and 16 only educational measures are possible;
- the widely defined scope of possible educational measures; flexibility in issuing educational measures;
- there are alternatives to criminal proceedings in place which are often used in practice;
- imprisonment of children is imposed only exceptionally; when it is imposed children are imprisoned separately from adults.

The gaps identified in the children's justice systems are:

- lack of support for child witnesses who are not also victims of crimes;
- lack of provisions on the duty to provide information to child victims, child witnesses and child defendants;
- child-friendly interview rooms are not yet institutionalised and wide-spread, they depend on pilot projects;
- insufficient respect for the right to be heard;
- the lack of institution of the Advocate of the Child who would assist and support the child throughout the procedure in an impartial way.

Conclusions

The Slovenian criminal justice system has several elements of child-friendly justice though the greatest specificities are to be found with respect to child suspects and defendants. In this area the criminal justice system for children is parallel to the general justice system: cases of child defendants are dealt with by specialised children's judges under specific rules.

One of the key specificities is that **social services are included in the criminal procedure** by having the right to be informed about the procedure and to actively participate in it by giving proposals and opinions.

The age of criminal responsibility starts at 14 years of age and a person is considered a child until they reach 18 years old. The approach of the Slovenian criminal justice system to child defendants is a protective one, meaning that the main purpose of sanctions imposed on child defendants is education, re-education and correctional development, and not retribution for crimes they have committed.

While there is a parallel criminal justice system in place for child defendants, this is not the case for **child victims and witnesses**. In law, there are only a few additional norms that pay special attention to these two groups such as rules according to which hearings of child witnesses may be carried out with the assistance of a pedagogue if this is needed, the court may decide to remove the child from the courtroom as soon as his/her presence is no longer necessary or the court may close the hearing to the public if so required by the best interests of the child. Also, in practice a child witness below the age of 10 is never questioned in court.

A range of strengths and gaps of the Slovenian children's justice system have been identified. In particular, this system takes a protective approach to child offenders, pre-trial detention of children may be imposed only exceptionally, child-friendly interview rooms are increasingly used (though not consistently). There is wide scope to use educational measures and there are alternatives to criminal proceedings in place which are often used in practice.

On the other hand, there are a number of gaps such as the apparent lack of support for child witnesses who are not also victims of crimes, there is a lack of provisions on the duty to provide information to child victims, child witnesses and child defendants, and it is argued that there is only a limited right to be heard.

Annex – Legislation reviewed during the writing of this report

- Act on Police Tasks and Authorities, Official Journal of the Republic of Slovenia, No. 15/2013.
- Penal Code – Official consolidated text, Official Journal of the Republic of Slovenia, No. 50/2012.
- Criminal Procedure Act – Official consolidated text, Official Journal of the Republic of Slovenia, No. 32/2012.
- Rules on procedures for dealing with domestic violence in the implementation of health activities, Official Journal of the Republic of Slovenia No. 38/2011.
- Rules on cooperation between the police and other autorites in the detection and prevention of domestic violence, Official Journal of the Republic of Slovenia No. 25/2010.
- Rules on the Treatment of Domestic Violence for Educational Institutions, Official Journal of the Republic of Slovenia No. 104/2009.
- Rules on the organization and work of multidisciplinary teams and regional services and on actions of the social work centres in dealing with domestic violence, Official Journal of the Republic of Slovenia No. 31/2009.
- Prevention of Family Violence Act, Official Journal of the Republic of Slovenia No. 16/2008.
- Act Implementing the Principle of Equal Treatment – Official Consolidated Version, Official Journal of the Republic of Slovenia, No. 93/2007.
- Code of Obligations – official consolidated version], Official Journal of the Republic of Slovenia, No. 97/2007.
- Inspection Act - official consolidated version, Official Journal of the Republic of Slovenia, No. 43/2007.
- Social Care Act – Official consolidated text, Official Journal of the Republic of Slovenia, No. 23/2007.
- Rules on criminal records, Official Journal of the Republic of Slovenia, No. 34/2004 and 127/2006.
- Information Commissioner Act, Official Journal of the Republic of Slovenia, No. 113/2005.
- Enforcement of Criminal Sanctions Act, Official Journal of the Republic of Slovenia, No. 22/2000, as amended.
- Human Rights Ombudsman Act, Official Journal of the Republic of Slovenia, No. 71/1993.