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PROTECTING CHILD VICTIMS OF CRIME AND THE EU VICTIM'S DIRECTIVE: THE CASE OF NORTH MACEDONIA

by *Jasmina Dimitrieva** and *Jelena Ristic***

SUMMARY: 1. Introduction. – 2. Terms, Scope and Methodology. – 3. A Reflection of the Child-Sensitive Approach in the EU Victims' Directive. – 4. Approach of the European Court of Human Rights in Cases Concerning Child Victims. – 5. Child Victims' Protection in North Macedonia Examined from a Legislative Angle. – 6. Child Victims' Protection in North Macedonia in Court Proceedings. – 7. Conclusions and Recommendations. – 7.1 The Legislative Aspects. – 7.2 The Practical Application Aspects.

1. Introduction

Children are by nature tender and vulnerable, being in a process of development and in need of constant protection, love and care¹. This has been recognized by the United Nations Convention on the Rights of the Child and its optional protocols². They set out the universal rights of the child that, among other, include the right to life, the state responsibility to protect the child from violence and all types of exploitation. These rights must be implemented based on the best interest of the child. The Convention has been ratified by 196 countries, including North Macedonia. One of the main messages the Convention contains is that all children are entitled to a free-care life without violence, abuse and exploitation.

According to the Global Status Report on Preventing Violence against Children 2020, the estimates are: “*that one out of two children aged 2 – 17 years suffer some form of violence each year*”³. Research shows that children aged 12 - 15 are more exposed to violence than adults. In particular, 22 percent of the children aged 10 - 15 reported being victims of violence, while 35 percent reported being victims of different types of crimes⁴. Half of the individuals having experienced trauma in their lifetime, reported that the trauma was suffered in their childhood⁵.

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¹ D. FINKELHOR, H. TURNER, R. ORMRUD, S. HAMBY K. KRACKE, *Children's Exposure to Violence: A Comprehensive National Survey*, in U.S. Department of Justice Juvenile Justice Bulletin, 2009.

² Resolution A/RES/44/25 of 20 November 1989, *Convention on the Right of the Child*, of 2 September 1990.

³ WHO AND OTHER, Geneva, 2020, *cit.*, p. 1; See also S. HILIS, J. MERCY, A. AMOBI, H. KRESS, *Global Prevalence of Past-year Violence against Children: A Systematic Review and Minimum Estimates*, in *Pediatrics*, 2016, 137(3): pp. 1 -13.

⁴ M. MAGUIRE AND OTHER, *The Oxford Handbook of Criminology* [Macedonian translation], Skopje, 2010, pp. 593-594.

⁵ J. COSTELLO, A. ERKANLI, J.A. FAIRBANK, A. ANGOLD, *The Prevalence of Traumatic Events in Childhood and Adolescence*, in *Journal of Traumatic Stress*, 2002.

In 2014, in North Macedonia 43 child victims accounted for 100,000 children¹. According to Megjashi - the First Children's Embassy, many children in North Macedonia risk becoming victims of violence². According to the annual reports of the National Anti - trafficking Commission there were 16 identified child victims of human trafficking and 95 potential child trafficking victims between 2019 - 2021³.

Child victims are experiencing trauma, struggling with their mental and physical health and suffer from social stigma and exclusion⁴. They suffer serious and long-term consequences, which affect their lives as adults⁵. Not letting go of trauma and its consequences makes the child victims even more vulnerable, which may eventually lead to their revictimization. The child victims' recovery depends on the full support by the child welfare system, specialized health services, safe and adequate accommodation, inclusion in education and/or employment programs, as well as adequate criminal justice protection and response. Some theories in the Victimology, focus on the contribution of the victim to the harm and injury suffered⁶. Based on this theory, measuring the contribution of the victim is often used by the competent bodies, at least in North Macedonia, when determining sanctions and the compensation. However, the above approach cannot be applied in the case of the child victim, protected by definition due to their immaturity.

Protecting and helping children, and the child victim, in particular, is interlinked with the law⁷. The European Union (EU) *acquis* set forth protection of the rights of the child in art. 3 par. 3 of the Treaty of the European Union⁸. Furthermore, the EU Charter of Fundamental Rights stipulates, *inter alia*, the best interest of the child as one of the tenets. It also entitles children to obtain protection and care as necessary for their well-being, as well as to enjoy the freedom of expression⁹.

In this context it is also worth to mention the instruments for the protection of the rights of the child in procedural matters, which were prepared under the auspices of the Council of Europe. In particular, the Guidelines of the Committee of Ministers on child-friendly justice represent detailed, but non-legally binding instrument for protection of the rights of the child in judicial and non-judicial proceedings¹⁰. The Guidelines set forth in clear manner standards also for the child victims, *inter alia*, in terms of safeguarding their best interest, protection of their privacy and safety, access to court, the right to be heard and legally represented. Another Council of Europe's instrument dealing with procedural rights of the child is the European Convention on the Exercise of Children's Rights¹¹. However, its scope is limited to proceedings in family matters.

¹ AKADEMIK, *Child Victims of Crimes and Children in Conflict with Law*, Skopje, 2015.

² FIRST CHILDREN'S EMBASSY MEGJASHI, *Annual Report*, 2021, Skopje, p. 95.

³ NATIONAL ANTI-TRAFFICKING COMMISSION OF NORTH MACEDONIA, *Annual Reports 2019–2021*, Skopje, 2022.

⁴ M. RANDAL, L. HASKELL, *Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping*, in *The Dalhousie Law Journal*, 2013, p. 512.

⁵ M. MAGUIRE AND OTHER, *The Oxford Handbook of Criminology*, Macedonian translation, Skopje, 2010, pp. 468-470.

⁶ *Id.*, p. 463.

⁷ M. RANDAL, L. HASKELL, *op. cit.*, p. 503.

⁸ Treaty on European Union of 7 February 1992, in OJ C/326 of 26 October 2012.

⁹ Charter of Fundamental Rights of the European Union of 18 December 2000, in OJ 2000/C 364/1, Explanations relating to the Charter of Fundamental Rights, in OJ 2007/C 303/02 of 14 December 2007.

¹⁰ COUNCIL OF EUROPE, *Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice of 17 November 2010 and Explanatory Memorandum*, Strasbourg 2011, Part IV.

¹¹ COUNCIL OF EUROPE, *European Convention on the Exercise of Children's Rights*, ETS no. 160 of 25 January 1996, art. 1, par. 3, Explanatory Memorandum, p. 42.

Legally-binding instruments defining the European dimension of the child victims' protection, highlighted in the paper encompass the legally-binding 2012 Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, in following text "the EU Victim's Directive"¹², *infra*, recital 11 and the European Convention on Human Rights (ECHR)¹³. These European, *par excellence*, human rights instruments are analyzed for the child victims' rights and protection, as well as their reflection in the legislation and court practice in North Macedonia. The aim is to define advantages and disadvantages in the existing legislation and practice relevant for protecting the child victims and identify possible improvement in light of the European human rights' instruments.

"The EU Victim's Directive" has been selected for this examination, for it is a general legislative instrument striving to protect the rights of the victims, including those below the age of 18. Moreover, it is not limited only to a certain category of victims, such as the victims of human trafficking, or terrorism. "The EU Victim's Directive" has a wide scope of application, and thus provides a good general overview of the child victims' rights, *de minimus*, and the level of the consent that the EU states have reached in this regard.

The ECHR and the case-law of the European Court of Human Rights (ECtHR) are relevant because of their central role in the European system for protection of fundamental rights and freedoms, including children's rights. Namely, although the ECHR contains few express references to children's rights, the ECtHR has developed a vast body of case-law in regard to children's rights by using various interpretative approaches and formulated a number of principles and standards that lay the foundation for securing protection of the rights of the child victims. Moreover, the ECHR is directly applicable within the legal system of North Macedonia, together with the ECtHR case-law, while the EU progress reports on North Macedonia have highlighted many times the need to use the ECtHR case-law in the context of legislative improvements and achieving greater consistency of the domestic court practice.

2. Terms, Scope and Methodology

Victims are individuals who have suffered physical or mental injury or have been killed as a result of criminal offence. Recognition of victimhood is necessary for a person to be able to enjoy legal, health and social rights envisaged for the victims¹⁴. The child victim has been defined as children and adolescents under the age of 18, who are victims of crime¹⁵.

Primary victimization is the process of the traumatic experience with its consequences and the victims' suffering. Revictimization happens when the child victim is returned in the violence and abuse spiral. Secondary victimization refers to an increased intensity of suffering due to inadequate criminal justice response¹⁶.

The examination of the rights of the child victim takes into consideration dignity and empowerment of the child victim in "the EU Victim's Directive" and the ECHR. The

¹² Directive 2012/29/EU of the European Parliament and the Council, *establishing minimum standards on the rights, support and protection of victims of crime replacing Council Framework Decision 2001/220/JHA*, of 25 October 2012, in OJ L 315, of 14 November 2012, pp. 57-73.

¹³ COUNCIL OF EUROPE, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, ETS No. 005, of 4 November 1950.

¹⁴ ECPAT INTERNATIONAL, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, Luxemburg, 2016, p. 77.

¹⁵ *Ibidem*.

¹⁶ M. RISTIC, *Secondary Victimization and other Barriers to Women to Access Justice*, 2019, p. 3.

scope of this paper is limited to the examination of the rights of the child victims set out in “the EU Victim’s Directive” and the ECtHR case-law. The aim of this paper is to offer recommendations for a strengthened criminal justice response and protection of the child victims in North Macedonia based on the analysis of current legislation and court practice, and a guidance for their compliance with the “the EU Victim’s Directive” and the ECtHR case-law.

The novelty is in a comparative examination of the Macedonian legislation and practice applicable to the child victim with “the EU Victim’s Directive” and the ECtHR case-law. The paper also offers recommendations for strengthened protection and assistance of the child victims in North Macedonia based on the standards prescribed in “the EU Victim’s Directive” and the ECtHR relevant case-law. The main research question is whether or not the law and practice for the child victims’ protection in North Macedonia is compliant with the requirements of the EU Victim’s Directive and the ECtHR case-law.

The methodology is primarily based on desk research, a review of the relevant legislation and policy documents. It also relies on literature significant for defining the concept of the child victims and profiling the child victims. Analysis of the judgments of domestic courts in North Macedonia and the ECtHR provide a practical overview of the implementation of the rights of the child victim set out in the relevant domestic and European legislation. Targeted consultations, as well as recommendations from workshops and trainings devoted to protection of the child victims’ rights in North Macedonia have further informed the discussion in the paper.

The paper looks first at the manner of protection of the most vulnerable ones - the children, envisaged by “the EU Victim’s Directive”. Then it looks at how the child victim’s protection is strengthened by the ECHR and the ECtHR case-law. It analyses the situation with the child victim’s protection in North Macedonia based on the selected perimeters from “the EU Victim’s Directive”. It also examines how the child victim’s rights are enjoyed and protected during trial. Finally, it offers conclusions and recommendations for enhanced protection of the child victims in North Macedonia based on the “EU Victim’s Directive” and the ECtHR case-law.

3. A Reflection of the Child-Sensitive Approach in the EU Victims’ Directive

Victims have been more and more considered as one of the key actors in the criminal proceedings¹⁷. Therefore, it has been necessary to define well their status in the criminal proceedings in view of their individual circumstances, their needs and human rights’ guarantees.

“The EU Victim’s Directive” sets out the minimum standards in different aspects of protection of all victims of crimes and respect for their rights based on the non-discrimination principle. It reflects the paradigm of a victim - based criminal justice response. “The EU Victim’s Directive” follows the categorization between victims’ services and victims’ procedural rights¹⁸. The victims’ services encompass the right to information and communication, victims’ safety, referral and support during criminal proceedings. The victims’ procedural rights encompass representation in proceedings,

¹⁷ M. MAGUIRE AND OTHER, *op. cit.*, pp. 473, 474.

¹⁸ *Id.*, pp. 474-479

right to appeal, the right to be heard and the decision on compensation in criminal proceedings¹⁹.

Turning to the examination of the child victim's rights set out in "the EU Victim's Directive", the wording makes it clear that it has been based on the UN Convention on the Rights of the Child (CRC). In particular, it contains the same definition of a child – a person below 18 years of age (art. 2, par.1, sub-par. c) and seeks to promote "*the rights of the child*" (recital 66). "The EU Victim's Directive" further affirms the best interest of the child (recital 14 and art. 1.2) as the bases of individualized actions and assistance measures.

"The EU Victim's Directive" (art. 1, par. 2) prescribes a child-sensitive approach, which takes due account of the child's age, maturity, views, needs and concerns. Practical arrangements in the context of criminal proceedings include:

- communication adjusted to the maturity and age of the victim (art. 3);
- information about one's rights in accordance with the needs and specific circumstances of the victim (art. 4, par. 2);
- provision of support services that are confidential and free of charge (art. 8 and recital 38).

Although child victims are not explicitly mentioned in all articles, from the Directive's recitals and general provisions it follows that all these rights and measures shall be enjoyed by the child victims based on an individual assessment of their needs, age, level of maturity and other personal circumstances and characteristics. Moreover, the recital 19 and art. 1, par. 2 of "the EU Victim's Directive" clearly state that the rights set out therein are to be exercised by the child, or his parent/legal guardian who shall be informed of.

As to the participation in criminal proceedings, "the EU Victim's Directive" sets out the following procedural rights in greater detail:

- the right to be heard (art. 10 and recital 42);
- the right to be informed of prosecutor's decision not to prosecute (art. 11);
- the safeguards with respect to restorative justice (art. 12);
- access to legal aid (art. 13);
- the reimbursement of costs, return of property and access to compensation (art. 14 - 16).

The child victims are mentioned in the context of the right to be heard based on an individual assessment. The EU Victim's Directive warns against practices when children are precluded from their right to be heard based on their age. It goes without saying that when the child victims are interviewed, all applicable safeguards must be in place, including properly trained officials, avoidance of secondary victimization, covering basic needs of the child, interviews which are not prolonged and tiring, presence of a parent/legal guardian, accessible information about the process and outcomes, consideration of the relationship between the child victim and the perpetrator. In fact, all the rights guaranteed by "the EU Victim's Directive" are applicable since the child victims fall within the category of the right bearers under the Directive, *supra*, recital 19.

A whole chapter 4 is devoted to the protection of victims and recognition of victims who have special needs. Member states must make available protection measures to ensure security of victims and their families from revictimization and retaliation, as well as from secondary victimization and prevent any harm they may suffer during

¹⁹ EUROPEAN COMMISSION, *DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime replacing Council Framework Decision 2001/220/JHA*, Ref. Ares(2013)3763804, 2013.

proceedings. Moreover, their dignity must be protected during hearings. The same protection rights apply to children who should have full access to those rights in view of their vulnerability and inherent protection needs. Art. 19 and art. 20 provide detailed obligations regarding witness' questioning and protection during criminal investigation. Furthermore, protection of the victim's personal data is the key to effective protection of victims, as highlighted by "the EU Victim's Directive" when the safety of children is at stake (art. 21 and recital 56).

Due to the child victims' vulnerability, "the EU Victim's Directive" affords special protection to children. As a rule, the special protection should be based on the individual assessment (art. 22, par. 4). Special protection envisages various measures to prevent revictimization, secondary victimization, retaliation and further harm caused to the child victims during criminal proceedings (art. 23, recitals 53 and 57).

Art. 24 is of special interest for the research, as it sets out specific requirements for the child victims in criminal proceedings. In particular, it foresees:

- audiovisual recording of the interview with a child, which can be used as evidence;
- appointment of a special representative, if parents cannot take up that role;
- legal representation in the child's name, if there is a conflict of interest with the holder of parental responsibility;
- a presumption that the victim is a child, if age cannot be determined.

Other provisions envisage trainings for legal professionals to be able to recognize and treat victims respectfully with no discrimination, then coordination and cooperation among EU States and finally a public awareness raising.

As a bottom line, "the EU Victim's Directive" sets out a well-developed concrete scheme for victims' treatment in all stages of criminal proceedings. It provides for detailed individualized measures based on the victim's needs for safety and, prevention of further injury and harm.

Its real value is in that it places the victim in the center of the criminal justice response. The victim is no longer considered only as a factor for meting out justice, but as a human being with dignity who is entitled to the enjoyment of the universal human rights. The victim-centered approach changes the whole paradigm of the victims' concept, making the victim central to the criminal justice response. Such a change is especially needed in North Macedonia, where understanding of the victims' role, needs and status in criminal proceedings must be strengthened. Anecdotal evidence suggests that the child victims often go unprotected and unfairly treated by the institutions. They may be considered contributors to their own injury and harm, and thus, blamed and stigmatized²⁰. Such approach is opposite to a child-sensitive approach and it is asserted as a defense for the perpetrators of heinous crimes against children. Discussions among experts for child rights protection suggest that there is no appropriate resocialization and reintegration process in the country for the child victims and they are often left to their own devices²¹. The Commission Staff working document on North Macedonia 2022 Report identifies the need: "*to provide adequate support and community service to vulnerable categories of children, especially children victims of violence (...)*"²². It also

²⁰ M. ASLI, *Introducing a General Theory of Victimology in Criminal Science*, in *International Journal of the Humanities*, Vol. 20, Issue 3, 2013, pp. 53-79, p. 61. See also UNICEF, *Forgotten and Stigmatized, Analysis of the Situation: Sexual Abuse of Children*, Skopje, 2010, pp. 10, 50-58.

²¹ Conclusions from the National Seminar on Resocialisation and Reintegration of Child Trafficking Victims, September 2020, Skopje with participation of experts from NGOs "Open Gate/La Strada", "For Happy Childhood", "Association of Journalists for Human Rights in North Macedonia" and centres for social work.

²² EUROPEAN COMMISSION, *Commission Staff Working Document on North Macedonia 2022 Report*, SWD(2022)337 final, 2022, *cit.*, p. 24.

pinpoints that the country: “needs to bring in the programmes to support the rehabilitation, resocialization or reintegration of children victims of violence”²³.

4. Approach of the European Court of Human Rights in Cases Concerning Child Victims

The potential of the ECHR for protection of children's rights is not evident at first glance²⁴ as it contains few references in this regard²⁵. Namely, it has just two provisions that contain express references to children: art. 5, par.1, lett. d), which stipulates that “the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority” is one of the cases when an individual can be deprived of his liberty, and art. 6, par. 1, where within the frames of the right to a fair trial guaranteed by this article it is foreseen that “press and public may be excluded from all or part of the trial (...) where the interests of juveniles (...) so require”²⁶. In addition, there are also few provisions in the supplementing protocols to the ECHR that provide for protection to children's substantive rights²⁷.

There is no definition of the term “child” in the ECHR. On the other hand, art. 1 of the ECHR obliges states to secure Convention rights to “everyone” within their jurisdiction, while art. 14 of the ECHR provides for the enjoyment of the Convention rights “without discrimination on any ground”, including grounds of age²⁸.

Although the ECHR and its Protocols contain just few provisions that provide for specific references to children and lack a definition of a child, the ECtHR has nevertheless managed to develop a vast body of case-law concerning children's rights by using a variety of interpretative methods that focus predominantly on the positive obligations inherent in the ECHR provisions²⁹. Namely, having in mind art. 1 and art. 14 of the ECHR, besides the few provisions that contain specific references to children, all the other provisions of the ECHR are, in general, applicable to everyone, including children³⁰. In this sense, the ECtHR has accepted a number of applications by and on behalf of children, regardless of their age³¹.

²³ *Ibid.*, p. 33.

²⁴ J. RISTIC, *Protection of Children's Rights under the European Convention on Human Rights, in Proceedings from International scientific conference “Thirty years following the adoption of the Convention on the Rights of the Child: Challenges and Perspectives”*, 10 December 2019, Sofia, 2021, p. 552.

²⁵ U. KILKELLY, *The Child and the European Convention on Human Rights*, New York, 2016, p. 3.

²⁶ U. KILKELLY, *Protecting Children's Rights under the ECHR: the Role of Positive Obligations*, in *Northern Ireland Legal Quarterly*, Vol. 61, Issue 3, 2011, p. 247.

²⁷ *Ibid.*; Art. 2 of Protocol 1 to the ECHR guarantees an individual right to education as well as the right of parents to have their children educated in conformity with their religious and philosophical convictions. Furthermore, under art. 5 of Protocol 7 to the ECHR, spouses enjoy equality of rights and responsibilities in their relations with their children. However, this fact does not prevent the States from taking measures that are necessary in the interests of the children.

²⁸ EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS AND COUNCIL OF EUROPE, *Handbook on European Law Relating to the Rights of the Child*, Luxemburg, 2022, p. 20.

²⁹ *Ibid.*, p. 25

³⁰ *Ibid.*

³¹ The applicant child was six years old when the ECtHR delivered the judgment in the case of the European Court of Human Rights, Judgment of 13 June 1979, Application No. 6833/74, *Marckx v. Belgium*.

Furthermore, the ECtHR has accepted in its case-law the definition of a child foreseen by the CRC³². In fact, the ECtHR's case-law dealing with children's rights includes frequent references to the CRC as it often refers to the CRC when dealing with applications submitted by or on behalf of children³³. Moreover, the obligations that the Convention imposes on its Member States regarding children's rights more specifically must be interpreted in the light of the CRC³⁴. In its interpretation and application of the ECHR in cases concerning children's rights, the ECtHR takes into account as well other applicable international instruments, such as the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (so-called "Lanzarote Convention")³⁵.

The ECtHR's case law relating to children's rights also contains cases that concern protection of child victims, including victims who participate as witnesses in criminal proceedings. One of the most recent and very important cases in terms of child victims' protection is the Grand Chamber case *X and Others v. Bulgaria*³⁶, which concerned allegations of child sexual abuse in an orphanage.

Namely, the applicants in this case are three children (siblings-a brother and two younger sisters), who were abandoned by their mother and placed in an orphanage in Bulgaria. In June 2012, the children (then aged 12, 10 and 9) were adopted by an Italian couple and moved to Italy. Several months later, the children revealed to their adoptive parents that they had been subjected to sexual abuse at the orphanage. The adopted parents reported the complaint to the Italian authorities, while the Bulgarian authorities became aware of the complaints in 2013 and subsequently opened an investigation. As the public prosecutor's office considered that there is no sufficient evidence in order to establish any offences, the case was discontinued.

Relying on art. 3, 6, 8 and 13 of the ECHR, the applicants claimed before the ECtHR that they had been victims of sexual abuse while they were staying in the orphanage, and that the Bulgarian authorities had failed in their positive obligation to protect them against that treatment and in their obligation to conduct an effective investigation into those allegations³⁷. In its Chamber judgment from 2019, the ECtHR considered only the complaints under art. 3 and art. 8 and held that there had been no violation of these articles.

The complaint was later accepted by the Grand Chamber in 2019 and heard in 2020. In its judgment from 2021, the Grand Chamber considered it was more appropriate to examine the complaints only under art. 3 and found that there had been a violation of the procedural limb of art. 3, which requires authorities to conduct an effective investigation into arguable claims of torture or inhuman or degrading treatment.

³² European Court of Human Rights, Judgment of 20 January 2009, Application No. 70337/01, *Güveç v. Turkey*; European Court of Human Rights, Judgment of 9 October 2012, Application No. 1413/07, *Çoşelav v. Turkey*.

³³ U. KILKELLY, *The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child*, in *Human Rights Quarterly*, Vol. 23, Issue 2, 2001, pp. 308-326.

³⁴ European Court of Human Rights, Judgment of 4 October 2012, Application No.43631/09, *Harroudj v. France*, para. 42.

³⁵ COUNCIL OF EUROPE, *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, ETS No. 201 of 25 October 2007; European Court of Human Rights, Judgment of 2 February 2021, Application No. 22457/16, *X and Others v. Bulgaria*; European Court of Human Rights, Judgment of 7 January 2019, Application No. 22457/16, *X and Others v. Bulgaria*.

³⁶ European Court of Human Rights, Judgment of 2 February 2021, Application No. 22457/16, *X and Others v. Bulgaria*.

³⁷ *Ibid.*, para. 148.

Namely, the ECtHR found that although the authorities took a number of investigative measures in a speedy manner in terms of the circumstances³⁸, the investigation was not thorough enough³⁹. According to the Court, the on-site checks conducted by the child protection services and police officials did not respect the standards foreseen in the Lanzarote Convention: children were not interviewed in a way adapted to their age and level of maturity; interviews were not video-recorded; and one child had to be interviewed twice (contrary to art. 35, par. 1 and 2 of the Lanzarote Convention on the manner in which interviews with the child should be conducted). In addition, the authorities also failed to follow certain lines of inquiry: no attempt was made to assess the need to interview the applicants and their parents⁴⁰; put measures in place to assist and support the applicants⁴¹; request a medical examination of the applicants⁴²; interview other children who had left the orphanage in the meantime⁴³; and consider, given the nature and seriousness of the alleged abuse, investigatory measures of a more covert nature⁴⁴.

Namely, in its assessment of the procedural limb of art. 3, the ECtHR relies in large part on the standards foreseen in the Lanzarote Convention: art. 12 on reporting suspicion of sexual exploitation or sexual abuse; art. 13 on helplines; art. 14 on assistance to victims; arts. 30-36 on various standards regarding investigation, prosecution and procedural law; art. 37 on recording and storing of national data on convicted sexual offenders; art. 38 on general principles and measures for international co-operation. It also notes that the procedural obligation to conduct an effective investigation is set out in other international instruments, including the CRC.

The ECtHR also emphasizes the need to enable child victims “*to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered*”, in accordance with art. 31, par. 1, pt. c of the Lanzarote Convention⁴⁵. In addition, it highlights the dual capacity of children as victims and witnesses, and in that regard, it notes the need to assist and support the children in their role as witnesses as well. In this context, the Court confirms the existence of risks as regards hearing children in such cases, including the existence of the potential to exacerbate trauma that they may have suffered. Despite the risks, it notes that the authorities should have assessed the need to request such interviews, which was apparently not considered by the authorities.

Having again in consideration art. 31, par. 1 of the Lanzarote Convention, the ECtHR notes that it is “*regrettable*” that the Bulgarian authorities did not contact the applicants’ adoptive parents to provide necessary information and support, and that this prolonged the proceedings and prevented the parents from lodging a timely appeal⁴⁶. In this regard, the ECtHR suggests that the authorities, regarding their doubts about the allegations, could have put measures in place to assist and support the applicants; travelled to Italy for legal assistance; filed a request to interview the applicants and their adoptive parents; and asked the professionals who had heard the children’s statements for relevant information.

³⁸ *Ibid.*, para. 203-206.

³⁹ *Ibid.*, para. 211.

⁴⁰ *Ibid.*, para. 215.

⁴¹ *Ibid.*, para. 216.

⁴² *Ibid.*, para. 219.

⁴³ *Ibid.*, para. 220.

⁴⁴ *Ibid.*, para. 221.

⁴⁵ *Ibid.*, para. 214.

⁴⁶ *Ibid.*, para. 208.

According to the ECtHR's conclusion, all these considerations suggest that the investigating authorities, who did not make use, in particular, of the available investigation and international cooperation mechanisms, did not take all reasonable measures to shed light on the facts of the present case and did not undertake a full and careful analysis of the evidence before them⁴⁷.

5. Child Victims' Protection in North Macedonia Examined from a Legislative Angle

North Macedonia passed the Law on Justice for Children, *lex specialis*, for the procedures on how to treat the child victim⁴⁸. This Law asserts confidence regarding basic principles, which are its foundation. In particular, the best interest of the child, the right to life and development, non-discrimination, participation in the decisions affecting the child, urgency of proceedings foreseen in the Law are compatible with "the EU Victim's Directive" wording and spirit⁴⁹.

The scope of the rights afforded to the child victim depends on the interpretation of the definition of the child victim. The child victim is defined as a person below the age of 18 who suffered damage, which includes physical or mental injury, emotional suffering, material loss, or other consequences, or child's rights and interest have been endangered, as a consequence of a criminal act proscribed by law. This definition in the Law, *supra*, art. 19, is more comprehensive than the one set out in "the EU Victim's Directive", as it takes into consideration also "*endangering the rights and interest of the child*" in correlation with a legally proscribed act. The latter wording may be more difficult to comprehend, as it is not clear and precise. It would need an interpretation guidance for practitioners to make its application more consistent to ensure an equal treatment of children in a similar situation. Furthermore, the Law has to make it clear that in the case of a doubt about the age of the victim, the presumption that she or he is a child should apply, as set out in "the EU Victim's Directive", *supra*, art. 24, par. 2.

While the above Law is mostly regulating procedural aspects when children are in the role of a perpetrator, a whole chapter is devoted to the child victims and witnesses of a crime in criminal proceedings. A review of these provisions shows that the child victims enjoy strengthened protection, which goes hand in hand with the special protection foreseen in "the EU Victim's Directive". The above Law requires the competent institutions to take a due care of and pay attention to the child victim and its interests. However, it does not at all mention the child-sensitive approach, which is wider in a scope and requires institutions to take due account of the child's age, maturity, views, needs and concerns.

Regarding the right to be informed, the child victims must receive information about their rights in a language accessible for their age (art.145). Their parents/guardians must have information about the proceedings (art. 145). While the victim support services are the responsible ones for providing information in "the EU Victim's Directive" (art 9), the onus to inform in the above Law is placed on the police, prosecutors and courts without any further precisions as to what, where, when and to whom this information has to be relayed (art.145-146). This Law does not mention translation and interpretation rights for

⁴⁷ *Ibid.*, para. 228.

⁴⁸ The Law on Justice of Children, of 29 October 2013, and its amendments, in Official Gazette of the Republic of Macedonia, No. 148/2013, Official Gazette of the Republic of North Macedonia, Nos. 152/2019, 275/2019.

⁴⁹ L. NANEV, J. ILIEVSKI, L. JAKOVCHEVSKA, *Procedures for Treatment of Child Victims*, 2014, p. 13.

a child victim who does not speak the state language, although this right is clearly set out in “the EU Victim’s Directive” (art.7).

Unlike “the EU Victim’s Directive” (art. 21), which provides a detailed protection of the right to privacy, including by the media, the above Law barely mentions the right to privacy. The only specific measure in this regard is the possibility to exclude public when statements/questioning of the child victim are reproduced, and when procedural activities are undertaken that may be damaging to the child’s development and personality. The wording of the second part of the sentence is imprecise. Moreover, it is unclear why the competent bodies would undertake detrimental activities for the child victim and how they would be justified. While the current Law on Criminal Procedure⁵⁰ is also imprecise in this regard, there is a new draft of this Law⁵¹ aiming to harmonize it with “the EU Victim’s Directive”. It remains to see when the Parliament will adopt this new Law on Criminal Procedure and to which extent will transpose “the EU Victim’s Directive”.

While the Law on Justice for Children, *supra*, art. 145, foresees the right to safety for the child victim and its family, as well as protection from revictimization, threats and retaliation, it does not provide more detail as to how to ask for and receive such a right. It simply states that: “*as needed the court will impose special measures for protection of psychical and phycological integrity of the child victim*”. The Law on Criminal Procedure gives the right to the victim to request special protection measures to be ordered by the court (art. 54). Moreover, it specifies that the court will always order special protection measures when the child victim needs a special care, or is victim of trafficking, sexual abuse or violence (art. 54).

The Law on Justice for Children does provide for special measures to protect the child victim from a secondary victimization during criminal proceedings, by introducing a possibility for video and audio recording of the child victim when giving its statement/testimony, use of teleconference, disguise its appearance, etc. The Law, *supra*, art. 150 stipulates that: “*The child victim of trafficking, violence, sexual abuse, of other crimes which make the child especially vulnerable shall not face the accused*”. It envisages prevention of any harm when the child victims are heard, based on its personal characteristics and attributes. Police, prosecutors and judges are under a duty to protect the interest of the child in court proceedings.

The Law on Criminal Procedure prescribes the video and audio recording of the child victim’s questioning to be ordered by the court, if the child victim needs special help, or is a victim of trafficking, sexual abuse or violence (art. 54). It sets out the procedure to protect vulnerable victims and child victims of trafficking, sexual abuse and violence, provided that questioning can affect the victims, adversely. Specific measures include a prohibition of a direct communication between the child victim of trafficking, sexual abuse and violence and the defendant or from facing each other. The duty to conduct the proceedings with a specific attention and care for the victims is also included in this provision, as well as the use of a telecommunication equipment and the possibility that an expert (psychologist, social worker, etc.) conducts a direct interview with the child victim.

Unlike the Law on the Justice for Children, “the EU Victim’s Directive” brings more clarity as to the necessity to keep the interviews with the child victim to a minimum. However, the Law on Criminal Procedure makes it clear that when the child victim needs special help, or is a victim of trafficking, sexual abuse or violence it can be interviewed

⁵⁰ The Law on Criminal Procedure, of 18 November 2010, and its amendments, in Official Gazette of the Republic of Macedonia, Nos. 150/2010, 100/2012, 198/2018.

⁵¹ The Draft Law on Criminal Procedure is available at <https://ener.gov.mk/Default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=76038>.

for a second time, only if there is a great need in this regard (art. 54). The Law remains silent as to the more precise interpretation of the above wording “*great need*”.

“The EU Victim’s Directive” stipulates that the same official should conduct all interviews, and the person should have the same sex as the child victim (art. 23). While such provisions are absent from the Law on Justice for Children, the Law on Criminal Procedure requires interviews to be conducted by the official of the same sex, but only for the victims of sexual crimes and crimes against humanity and international law (art. 55).

Furthermore, in the above law it is nowhere mentioned a possibility to inform the parents/guardians of the child victim, if the defendant /perpetrator is released or has escaped, which is clearly enunciated in “the EU Victim’s Directive” (art. 6).

As to the available assistance for the child victim, the Law on Justice for Children, *supra*, art. 145 says that the child victim is given the right to psychological and other help needed and that it should be provided by the institutions and bodies responsible for the child victim’s protection. However, it remains silent what happens, if the child victim needs a more specialized help, unavailable from the institutions. It is not clear, if the child victim is entitled for free to receive psychological and other assistance needed.

The above law further regulates legal aid by prescribing the right to a legal representative before first questioning, or submitting a compensation request (art. 145). Again, it is not clear, if this refers to free legal aid, as the law neither specify it nor makes a reference to another law, under which the child may be entitled to free legal aid. On the other hand, the Law on Criminal Procedure, applicable to child victims, envisages appointment of “*an advisor*” for free for the victim before first questioning, but only for criminal offenses punishable by more than 4 years of imprisonment, *supra*, art. 53, par. 3, sub-par.1. The provision is not clear if it refers to legal representative or psychological/ other type of advisor.

A participation in proceedings as an injured party for the victim and a decision of the criminal court on the compensation claim are prescribed in the Law on Justice for Children (art. 145). A state compensation is envisaged, if the child victim cannot be compensated from the perpetrator (art. 151). A state compensation law for victims of violent crimes, giving the right to the child victims to receive a compensation up to 5,000 euro for pecuniary and non-pecuniary damages suffered as a consequence of a serious crime, was passed on 16 November 2022⁵². It is an improvement, as the child victim no longer needs to prove that it was unable to obtain the compensation from the perpetrator, it is enough to report the crime to the police or prosecution to trigger the application of this provision.

Specialization and continuous education are requirements envisaged for the legal representatives of the child victim. Judges, prosecutors and police also have to undergo a special training to be able to work with the child victim.

Furthermore, there is no even mentioning of some rights set out in the “EU Victim’s Directive” in the applicable Macedonian legislation. In particular, nowhere in the law the right to be informed about decision not to prosecute has been stipulated. Although, the Law on Criminal Procedure in its heading entitled “*Victim, Injured Party and Private Prosecutor*” stipulates that police, prosecutors and courts shall take care of the interests of the victims when deciding on whether or not to raise an indictment, or impose other measures on the suspect/accused, it appears that such a wording gives more discretion to the officials than “the EU Victim’s Directive” in this regard. It is worth mentioning that the above Law requires the injured party to be notified when charges are dropped and has

⁵² Official Gazette of the Republic of North Macedonia, No. 247/2022, published on 17 November 2022. The Law will enter into force in May 2023.

the right to appeal this decision to a higher prosecutor. In the context of the child victims, this would mean their parents or legal guardians to be notified of.

The missing piece in the legal framework devoted to the child victims is the requirement of a timely and individual assessment of the special protection needs of the child victim. Furthermore, “the EU Victim’s Directive” provides for access to specialized services even in absence of an official complaint (art. 8). While restorative justice has been set out in detail in “the EU Victim’s Directive” (art. 12), there is no even mentioning of it with respect to the child victim in the Law on Justice for Children. The Law on Criminal Procedure barely mentions as a right for the injured party to participate in the settlement procedure (art. 335).

The Law on Justice for Children does not mention protection of the child witnesses who may put themselves, or their beloved in a jeopardy by testifying against a defendant. Art. 226 of the Law on Criminal Procedure sets out in general manner protection of witnesses, who may endanger themselves or beloved, if testifying against a defendant. There is a special law devoted to the protection of witnesses, which is only applicable when it will be extremely difficult for the court to decide the case without a witness’ testimony, but the witness fears reprisals⁵³. It is only applicable for several serious crimes. The above Law mentions minors only in the context of a requirement of a consent for the inclusion in the witness’ protection scheme by their parent/guardian (art. 5). While the Law on Witness’ Protection contains general rights for protected witnesses to psychological, legal and other needed help and an obligation for economic and social support for social reintegration, it is silent on the specific needs of the child witness (art. 25).

Another piece of the legislative puzzle relevant for the child victim is the Law on Social Protection⁵⁴. While this law is child-centered, it is not mentioned at all in the context of protection of the child victim in the course of criminal proceedings. It is applicable only when the child victim needs social protection (art. 15, art. 63, arts. 90-92, art.122, art. 287). This law is beneficial for the child victim, since it enunciates the principle of participation of the child in all proceedings affecting it and prescribes an individualized approach towards the child victim (art. 17 and art. 18). This Law gives the right to free health care for victims of trafficking and domestic violence, provided that they do not have other health coverage (art. 66). It also foresees other types of support (psychological support, a temporary accommodation, care provision to children without parental care, resocialization and reintegration, etc.) which may be needed by some child victims (art. 73, art. 81). Social protection, as a rule, is provided by social workers in charge with/custodians of the child victim (art. 4, art. 280 and art. 300). Therefore, a coordination is needed between social workers and legal professionals in order to enable the child victims enjoy fully their rights during criminal proceedings in North Macedonia.

As regards the ECtHR case-law concerning child victim’s rights, it is evident that it is on the same line with the rights set out in “the EU Victim’s Directive”, especially having in consideration that both the “EU Victim’s Directive” and the ECtHR case-law are heavily based and interpreted in the light of the CRC. In this sense, the above analysis on the child victims’ protection from a legislative angle is in large part also relevant in the context of compliance with the ECtHR case-law.

⁵³ The Law on Witness’ Protection, of 19 May 2005, and its amendments, in Official Gazette of the Republic of Macedonia, Nos. 38/2005, 58/2005, 71/2018.

⁵⁴ The Law on Social Protection, of 21 May 2019, and its amendments, in Official Gazette of the Republic of North Macedonia, Nos. 104/2019, 146/2019, 275/2019, 302/2020, 311/2020, 163/2021, 294/2021, 99/2022, 236/2022.

6. Child Victims' Protection in North Macedonia in Court Proceedings

Until about two decades ago, within the framework of criminal-procedural matter, the main focus was placed on the rights of the defense, while the rights of the victim were not emphasized enough⁵⁵. However, it seems that today this is no longer the case. Namely, in addition to the rights of the defense, the focus is increasingly directed towards the rights of the victim in the criminal proceedings and strengthening the mechanisms for the protection of the victim, including child victims, as shown in the abovementioned analyses of relevant legislation. In order to assess the application of relevant legislation, several judgments concerning child victims will be reviewed below.

In the first case⁵⁶, the defendant, in order to force the child victim to marry, transported the child in Belgium, together with her parents, where in the house of his relatives, by using a serious threat concerning the life of the parents, he took the child and handed her over to an unknown male person. Namely, the defendant misled the parents of the child that in Belgium they will have the opportunity to receive a higher amount of money as asylum seekers. He transported them to Antwerp, placed them with relatives and took the parents to a location, where they were supposed to seek an asylum. After they refused to register as asylum seekers, they returned to the house where they were accommodated and the defendant, in the presence of several unknown persons, threatened them that they must pay him immediately 5,000 euros for the costs incurred for their transportation, or he will force the child into marriage. The parents refused his suggestions, after which he used a serious threat concerning their life, took the child and handed her over to an unknown man who was present in the house, with whom the child left in an unknown direction. With these actions, the defendant committed a crime – Child trafficking under art. 418-d, par. 2 of the Criminal Code (CC) – and, in accordance with this article and other relevant articles of the CC, the Court convicted the defendant to imprisonment: the defendant is sentenced to 11 years in prison.

In the judgment, there is no data as regards a compensation claim of the child. Also, there is no data in the judgment on whether the victim received legal assistance and whether special procedural measures were determined. It is stated in the judgment that property has been confiscated (objects that have been used to commit a crime), such as: a vehicle, a cell phone, a laptop, etc. It seems that the judgment is not delivered to the victim as the victim is not on the list of participants for whom the judgment is to be served. The published judgment is anonymized.

In the second case⁵⁷, the first defendant, using the slight mental retardation of the child victim, sheltered her and provided others to use sexual services by the child, in order to obtain monetary compensation, while the second defendant used sexual services from the child victim, for whom he knew was a victim of human trafficking. Both defendants jointly exploited the child sexually, by taking her in a catering facility and provided unknown men with sexual services from the child for monetary compensation. The men paid money for the sexual services to the child and the money was taken from the child by the first defendant. With these actions, the first defendant committed a crime – Child trafficking under art. 418-d par. 1 of the CC – and, in accordance with this article and other relevant articles of the CC, the Court convicted the defendant to imprisonment: the defendant is sentenced to 8 years in prison. With these actions, the second defendant

⁵⁵ G. LAZETIC, I. ZDRAVKOVA, *The Rights of Victims of Human Trafficking in Court Proceedings*, Skopje, 2020.

⁵⁶ Basic Criminal Court Skopje, Judgment of 20 March 2019, KOK 35/15.

⁵⁷ Basic Criminal Court of Skopje Judgment of 25 October 2019, KOK 92/18.

committed a crime – Child trafficking under art. 418-d, par. 3 and Child trafficking under art. 418-d, par. 1 of the Criminal Code CC – and, in accordance with this article and other relevant articles of the CC, the Court convicted the defendant to imprisonment: the defendant is sentenced to 9 years in prison for the first crime and 8 years in prison for the second crime. For these crimes, the defendant is sentenced to a single sentence of 10 years in prison.

It is stated in the judgment that the victim is referred to a civil dispute as regards the compensation claim. It seems that the victim received legal assistance when giving a statement before a public prosecutor (by a lawyer). There is no data if the victim had received legal assistance during the trial. There are special procedural measures determined and conducted in this case (video and audio recording of the child's statement and examination to be used as evidence in the proceedings). There is no information if any property has been confiscated. The published judgment is not fully anonymized (the first name of the child victim is left, i.e. is not anonymized, in one paragraph of the judgment).

In the third case⁵⁸, the defendant, after a previous agreement with three persons, now convicted, sold his daughter for a price of 6,000 euros to one of the now convicted persons for the purpose of concluding a forced marriage with him. After the wedding was held, the child victim was taken to Slovenia. The child remained to live there with the now convicted person with whom the forced marriage was concluded and with his family, where she was mentally and physically abused and was not allowed to leave the home until the child managed to leave the apartment and report the case to the police. With these actions, the defendant committed a crime – Child trafficking under art. 418-d par. 1 of the CC – and, in accordance with this article and other relevant articles of the CC, the Court convicted the defendant to imprisonment: the defendant is sentenced to 7 years in prison.

There is no data in the judgment as regards a compensation claim of the child victim, nor data on whether the victim received legal assistance and whether special procedural measures were determined. There is no information that any property has been confiscated. It seems that the judgment is not delivered to the victim as the victim is not on the list of participants for whom the judgment is to be served. The published judgment is anonymized.

In the fourth case⁵⁹, the defendant, who wanted to marry the child victim although he knew about the age of the child, bought the child from her cousin-child in conflict with the law over 16 years old, who sold her for 1,600 euros, based on a previous agreement with the defendant for a forced marriage. Namely, the child was misled by her cousin that they are going for a walk in the surrounding forest, where the defendant forced her to go with him. After the defendant failed to have sexual intercourse with the child, as she resisted, she managed to escape and report the incident to the police. With these actions, the defendant committed a crime – Child trafficking under art. 418-d, par. 1 of the CC – and, in accordance with this article and other relevant articles of the CC, the Court convicted the defendants to imprisonment: the defendant is sentenced to 4 years in prison.

In this case, the criminal court partially granted the compensation claim filed by the lawyer of the victim (the victim is not referred to a civil procedure regarding the filed compensation claim as it is usually the practice). In this sense, the defendant is ordered by the Court to pay the victim a total amount of 300,000 denars (approximately 5,000 euros) of just monetary compensation for non-pecuniary damage for the violation of her

⁵⁸ Basic Criminal Court of Skopje, Judgment of 16 December 2019, KOK 66/16.

⁵⁹ Basic Criminal Court of Skopje, Judgment of 12 March 2020, KOK 86/19.

personal rights to physical and mental health. Moreover, in order to ensure the execution of the decision on the compensation claim, the Court decided that if the defendant does not pay the compensation within a certain deadline, the collection should be made from the money that was temporarily confiscated from the defendant during a search of his home by the police and handed over to the Public Prosecutor's Office, amounting to a total of 24,600 euros. After the execution of the decision in this part, the remaining amount of the total confiscated funds of 24,600 euros to be returned to the defendant, given that the Court found that they are not objects originating from the crime, nor were they intended or used for the crime. There is no information in the judgment on how the lawyer was appointed to the victim, but it is stated that the defendant is obliged to pay the costs of the victim's lawyer. The Court excluded the public throughout the main hearing, in order to protect the privacy and the interests of the child victim. The judgment is delivered to the victim's lawyer and to the legal representative of the child (her mother).

In the fifth case⁶⁰, the defendant abused her position as a parent-mother, and by using force and threatening to use force, forced her own daughter (child victim) to perform sexual acts and enabled unknown men to perform sexual acts with the child for a certain monetary compensation. The child previously lived in the home of her father after her mother – the defendant left the house, where she was continuously sexually abused by her uncle-her father's brother and about which she informed her mother – the defendant. She left her father's house and went to live with her mother first in a hotel, and then in rented apartments, where she forced her to provide sexual services to adult men. Finally, the child, unable to bear anymore the constant compulsion to provide sexual services, managed to report the incident to the police. With these actions, the defendant committed a crime – Child trafficking under art. 418-d, par. 2 of the CC – and, in accordance with this article and other relevant articles of the CC, the Court convicted the defendant to imprisonment: the defendant is sentenced to 12 years in prison.

In this case, the Criminal Court partially granted the compensation claim filed by the lawyer of the victim (the victim is not referred to a civil procedure regarding the filed compensation claim as it was usually the practice). In this sense, the defendant is ordered by the Court to pay the victim a total amount of 300,000 denars (approximately 5,000 euros) of just monetary compensation for non-pecuniary damage. The lawyer is appointed *ex officio* and provided through the Centre for Social Work. It is stated that the defendant is obliged to pay the costs of the victim's lawyer. There are special procedural measures determined in this case (video and audio recording of the child's statement and examination to be used as evidence in the proceedings). The Public Prosecutor withdrew the video and audio recording of the child's statement given before a public prosecutor, due to procedural flaws. The victim was not available to the law enforcement during the trial. There is no data on whether any property has been confiscated. The published judgment is anonymized.

7. Conclusions and Recommendations

7.1 The Legislative Aspects

From the above comparison between “the EU Victim's Directive” and the applicable Macedonian legislation, it follows that the Directive has not been fully transposed into Macedonian legislation when the child victims' rights and their protection are at stake.

⁶⁰ Basic Criminal Court of Skopje, Judgment of 5 April 2021, KOK 20/18.

Moreover, the rights of the child victim and their protection is dispersed in several pieces of legislation, which sometimes are not even referred to in the Law on Justice for Children. Such fragmentation of the legislation makes it difficult to obtain a complete picture of the child victims' rights and their protection. Another important point is that the conceptualization of the rights of the child victim is missing, since some elements are overlapping, other important elements are only being mentioned without further reference or details (*e.g.*, protection of privacy), or some elements are missing, *e.g.*, restorative justice safeguards.

The Law on Justice for children needs a paradigm shift to protect dignity of and empower the child victim. It is not enough just to mention the child's best interest, but a more detailed elaboration of the child-sensitive approach and a requirement for an individualized assessment of the child victim's needs of protection and services should be included in this Law.

Furthermore, the language of the above Law needs to be reformulated in order to be clearer, precise, so that the child victim and his/her parents/guardians have a clear picture of their rights, their realization and available resources. For example: who should inform and the content of that information need to be clarified, as well as the right to interpretation/translation and the scope of protection of the safety of the child victim. The requirement for the child victim to be interviewed by the same official and of the same sex should be also included in the Law. The missing content of the right to privacy, including media regulation, must be included in the relevant legislation for the child victims and their families to be able to enjoy it. The wording about conducting activities that might be damaging for the child's development and personality needs to be deleted, rephrased or explained better.

If the said Law is not amended to clarify the assistance spectra, it should at least make a reference to the Law on Social Protection.

A restorative justice part and adequate safeguards of the child victims when such a procedure is applied should be included and elaborated in the Law on the Justice for Children. Another missing part that needs to be included in the said Law is the notification of the parent/legal guardian of the child victim about perpetrator's escape or release. Last, but not least the Law on Justice for Children should contain provisions regulating situations when the protected witness is the child victim.

7.2 The Practical Application Aspects

From the above review and analysis of the domestic judgments concerning child victims, it is evident that the application of the legislation is not consistent. Namely, the rights of the child victims and their position in the criminal proceedings are not treated and applied equally in practice. The reason of existence of this situation of inconsistency in practical application can be partly attributed to various gaps as well as certain level of lack of consistency and clear enough provisions of the relevant legislation. However, it seems that another reason for this situation in the court proceedings is due to incomplete implementation of existing legal provisions. In addition, it is also evident and naturally expectable that the lack of full transposition of the EU Victim's Directive in the Macedonian legislation as well as a full compliance with the ECtHR case-law affects the level of respect and protection of the child victims' rights in practice.

However, it has to be noted that there are judgments that can be regarded as positive court practice from several aspects, in the context of realizing the rights of the child victims in court proceedings and their access to justice, in general. For example, in one

of the judgments⁶¹, taking into account the crime in question and the subject of protection – the child victim –, in accordance with relevant provisions of the Law on Criminal Procedure and the Law on Justice for Children, the Court made a decision to exclude the public during the entire course of the main hearing, in order to protect private life and interests of the child-victim. Furthermore, in this case, the criminal court partially adopted the property claim submitted by the victim's lawyer, whereby the defendant is obliged to pay the damaged child-victim a certain amount in the name of fair monetary compensation for non-material damage from violation of her personal rights to physical and mental health. Namely, for the reported compensation claim, the victim is not referred to civil litigation, as is the usual practice in similar cases. Moreover, an effort has been made to ensure the enforcement of the decision on the property claim, which is also not a common practice. It is also worth pointing out that the child victim in the concrete case was represented by a lawyer during the entire procedure. Namely, the analysis of similar cases above show that the latter is not always a practice, which obviously leaves room for incomplete realization of the victim's rights during the procedure, as the analysis conducted above show. At the same time, the defendant is ordered by the court to reimburse the costs of the procedure for fees and necessary expenses of the lawyer. In terms of exercising the rights of child victim in the concrete case, it is also worth noting that the judgment was delivered to the child victim through her mother as a legal representative, as well as to the victim's lawyer. Namely, from the analysis of similar cases, it follows that the delivery of judgments to the injured party-victim, with the aim of possibly further exercising her rights, is not a regular practice.

In any case, it still remains that there is space for improvement in terms of the need for effective protection of child victims in court proceedings and their equal treatment in the context of their right to access to justice. The latter, without any doubt, goes hand in hand with the previously highlighted need for full transposition of the EU Victim's Directive in the Macedonian legislation as well as full compliance with the ECtHR case-law, but also with the need for greater cooperation and communication between the court, the prosecution, the police, the victim's lawyer and all other relevant stakeholders, on which the protection of the child victim and her rights depends.

ABSTRACT

Research shows that children are often victims of various crimes, including violence. This paper seeks to examine the rights of the child victims set out in “the EU Victim’s Directive” and the ECtHR case-law and whether they have been properly transposed in the relevant legislation in North Macedonia. The methodology, inter alia, includes desk research, analysis of legislation and relevant case-law. The findings show that the Macedonian applicable legislation and the court practice needs to be improved in order to provide adequate and consistent protection of the rights of the child victims in compliance with “the EU Victim’s Directive” and the ECtHR case-law.

KEYWORDS

Case-Law, Child Victims, European Court of Human Rights, EU Victims’ Directive, Victims’ Rights.

⁶¹ Basic Criminal Court of Skopje Judgment of 12 March 2020, KOK 86/19.