



## **CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN SLOVENIA**

**National Report for AIMJF's Comparative and Collaborative Research.**

*La participación de niños como víctimas o testigos en causas penales en Eslovenia*

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Slovénie*

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

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**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Slovenia.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Eslovenia

**Résumé :** Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Slovénie

### **Introduction**

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

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To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

## Questionnaire

### 1. **Right to be heard**

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?

Yes, children are presumed to be capable witnesses.

**The Criminal Procedure Act (CPA)** sets out specific restrictions on the testimony of children and minors. Minors under the age of sixteen shall be summoned as witnesses through their parents or legal representatives, unless this is not possible due to the need for urgency or other circumstances. (Art. 239/2). This means that there is a certain age limit for the ability to be a witness without a direct summons issued to a minor, namely 16 years. However, this does not mean that minors under the age of 16 cannot be witnesses in criminal proceedings; in such cases, the summons to testify is sent to their parents or legal representatives.

In the context of testimony and treatment of minors in criminal proceedings, the CPA therefore provides for specific age-based restrictions and safeguards, with the aim of ensuring that minors are treated in a manner appropriate to their age and stage of development.



**Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act** regulates the manner of and conditions for the comprehensive treatment of minor victims and witnesses in pre-trial and criminal proceedings concerning specific criminal offences in the Children's House. Article 1 reads as follows:

“Article 1

(Subject and purpose of the Act)

(1) In order to protect the best interests of the child, this Act regulates the manner of and conditions for the comprehensive treatment of minor victims and witnesses in pre-trial and criminal proceedings concerning specific criminal offences in the Children's House (hereinafter: comprehensive treatment).

(2) If the best interests of the child so require and under the conditions laid down by this Act, comprehensive treatment may also be provided to a child who is a victim of or witness to other criminal offences or, by applying this Act mutatis mutandis, to a minor under 18 years of age against whom pre-trial or criminal proceedings are conducted.

(3) If the best interests of the child so require, the police and social work centres may perform their tasks in proceedings concerning the minor victims of and minor witnesses to criminal offences as part of the comprehensive treatment in the Children's House under the conditions and in the manner provided by this Act.”

## 1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?

Yes, there are several provisions that regulate how the right of children and minors to make a statement in criminal proceedings can be carried out in order to protect their best interests.

- **The Criminal Procedure Act** (as indicated above under 1.1.). Further provisions read as follows:

“Article 65

(1) A private prosecutor, an injured party and an injured party acting as prosecutor, as well as their legal representatives, may also exercise their rights in proceedings through a counsel.

(2) (Ceased to be in force).

(3) In criminal proceedings conducted for crimes against sexual integrity under Chapter XIX, crimes against marriage, family and youth under Chapter XXI of the Criminal Code, the crimes of enslavement under Article 112 and the criminal offence of trafficking in human beings under Article 113 of the Criminal Code, an injured party who is a minor must have, throughout the criminal proceedings, a counsel to ensure his or her rights, particularly regarding the protection of his or her integrity during the hearing before the court and the enforcement of pecuniary claims.



Minors as victims of criminal offences referred to in the preceding sentence must also have a counsel during the hearing in pre-trial proceedings. Minors as victims who do not have a counsel shall be assigned one by the court ex officio from among the attorneys.

(4) In pre-trial and criminal proceedings, a minor as victim, an injured party who is a victim of violence or another injured party, if so required by the nature and gravity of the crime, his or her personal circumstances or the degree of threat to his or her life and body, may be accompanied by a person of his or her choosing, unless this is contrary to the interests of the successful implementation of pre-trial or criminal proceedings or the benefit of the injured party.

(5) The authority conducting pre-trial and criminal proceedings shall ensure that the injured party does not come into unwanted contact with the suspect or the accused person, unless such contact is indispensable for the successful implementation of pre-trial or criminal proceedings.

#### Article 240

(4) The hearing of a minor, especially if such person has suffered harm from the criminal offence concerned, must be conducted with particular care in order to avoid possible detrimental consequences to his or her mental state. If necessary, the hearing of a minor shall be carried out with the assistance of an educational or other expert. In hearing a witness who is younger than 15 years, a person whom the witness trusts may be present.

#### Article 331

(1) Regarding the questioning of witnesses and expert witnesses at the main hearing, the provisions applying to the hearing of these persons during the investigation shall apply mutatis mutandis, unless otherwise provided by this Chapter.

(2) As a rule, a witness who has not yet been heard may not attend the evidence-taking procedure, and an expert witness who has not yet submitted his or her findings and opinion may not attend the main hearing while another expert witness is giving testimony on the same issue.

(3) If a person under the age of eighteen is heard as a witness, the panel may order that the public be excluded from the hearing.

(4) If a minor participates in the main hearing as a witness or the injured party, he or she shall be removed from the courtroom as soon as his or her presence is no longer required.

(5) Direct questioning of persons under 15 years of age who are the injured party of criminal offences referred to in paragraph three of Article 65 of this Act shall not be permitted at the main hearing. In such cases, the court must decide that the record of the previous questioning of such persons be read out. If necessary, the court shall proceed in the same manner regarding other minors who are victims and regarding an injured party with special needs for protection.



(6) In the cases referred to in the preceding paragraph, parties may ask indirect questions. If the panel finds that the questions are reasonable and necessary for the clarification of the factual situation, it shall proceed according to the provisions of Article 338 of this Act.”

**- Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children’s House Act**

A child under this Act shall mean a natural person under 18 years of age. The restrictions on the interview of a child include several key provisions. They read as follows:

“Article 15

(Application of provisions of the Act governing the criminal procedure)

The provisions of the Act governing the criminal procedure concerning the examination of witnesses and expert examination shall apply to the interviews and physical examinations of children, unless otherwise provided by this Act.

1. Interviews of children

Article 16

(Professional)

(1) An interview of a child under this Act shall be carried out with the assistance of a professional.

(2) The professional referred to in the preceding paragraph must have educational qualifications of at least level eight in accordance with the Act governing the Slovenian qualification framework in the field of psychology or medicine, social work or special education disciplines and at least five years of work experience in working with children, and must have completed additional training for conducting interviews of children in accordance with Article 38 of this Act.

Article 17

(Order of an interview)

(1) An interview under this Act shall be carried out on the basis of a written order issued by a court ex officio or on the proposal of the authorised prosecutor, the suspected or accused person, the defence counsel, the statutory representative of the child, the child over 16 years of age or the authorised person of a minor victim.

(2) In the order, the court shall state the following:

- that the expert examination concerning the interview of the child shall be entrusted to the Children's House;
- that the Children's House shall assign one or several professionals to carry out the interview;
- that the Children's House shall be allowed to inspect and transcribe the criminal file and, upon request, be provided with additional clarifications needed for the expert examination;
- the personal data of the child;



- the facts and circumstances on which the child is to be interviewed;
  - the date of the preparatory meeting and the date of the interview of the child.
- (3) The court shall notify the Children's House, the authorised prosecutor, the suspected or accused person and the defence counsel, if the suspected or accused person has one, the child over 16 years of age, the statutory representative of the child, a child advocate under the Human Rights Ombudsman Act, the authorised person of a minor victim and the competent social work centre of the order and the time and place of preparatory meeting. This notification shall be recorded in the file.
- (4) The court shall also instruct a suspected or accused person without a defence counsel that they have the right to freely choose a defence counsel, who may participate in the interview of the child in accordance with this Act, and about the right to state legal aid. The suspected or accused person must notify the court of their choice of defence counsel within three days of receiving the notification of the order and preparatory meeting, otherwise the court shall act in accordance with Article 18 of this Act. The court shall instruct the suspected or accused person that, together with this notification, they may propose that the court postpone the preparatory meeting or the interview of the child to allow the preparation of defence, but for no more than eight days.

#### Article 18

##### (Appointment of a professional)

- (1) The Children's House shall, in accordance with the Act governing the criminal procedure, without delay appoint a professional from among the employees of the Children's House to assist in the conduct of the interview.
- (2) In exceptional circumstances, the Children's House may appoint a professional who is not employed by the Children's House, if the professionals employed by the Children's House are otherwise engaged or if other circumstances so require and it may be dangerous to delay the interview.

#### Article 19

##### (Appointment of a defence counsel)

- (1) The court shall appoint a defence counsel for a suspected or accused person without a defence counsel who does not notify the court of a chosen defence counsel within three days of receiving the notification of order and preparatory meeting.
- (2) If, after the appointment of a defence counsel, the suspected or accused person retains another defence counsel, the appointed defence counsel shall perform their tasks until the interview of the child is concluded, together with the chosen defence counsel.



(3) The court shall also act in accordance with paragraph one if it establishes that the suspected or accused person is abusing the right to freely chose a defence counsel.

#### Article 20

##### (Postponement of preparatory meeting or interview)

The court may, on the proposal of the authorised prosecutor, the suspected or accused person, the child over 16 years of age, the statutory representative of the child, the authorised person of a minor victim, the defence counsel or the professional of the Children's House, postpone a preparatory meeting or the interview of a child for no more than eight days. The court shall concurrently determine a new date for the meeting or interview.

#### Article 21

##### (Summons)

(1) The child shall be orally informed of summons to an interview. The child is informed of the summons by the staff of the Children's House, their statutory representative or other person appointed by the court.

(2) The provisions of the Act governing the criminal procedure concerning instructions about the consequences of an unjustified absence shall not apply to the summons issued to a child.

(3) The court shall be immediately notified of the successful delivery of summons and shall make a note thereof in the file.

#### Article 22

##### (Preparatory meeting)

(1) The preparatory meeting shall be held on the premises of the Children's House. The preparatory meeting shall be led by the investigating judge.

(2) The participants in the preparatory meeting shall be the professional of the Children's House who will assist in the interview of the child, the authorised prosecutor, a representative of the police, the suspected or accused person, the defence counsel, the statutory representative of the child, the authorised person of the minor victim, the child's counsellor, a child advocate under the Human Rights Ombudsman Act and a professional worker from a social work centre.

(3) At the preparatory meeting, the participants shall give their statements on the facts and circumstances relevant to the conduct of the interview, on the questions to be posed to the child and on the method of conducting the interview.

(4) After the preparatory meeting the court may amend the order on the interview of the child. The court shall without delay inform the participants in the preparatory meeting of any amendments to the order.

(5) A record of the preparatory meeting shall be made in accordance with the provisions of the Act governing the criminal procedure.



#### Article 23

(Spatial requirements and the prohibition of personal contact)

- (1) The interview space shall consist of two separate rooms connected via audio and video systems.
- (2) The room in which the child is must be equipped in accordance with the principle of due care and consideration of vulnerable participants in criminal proceedings. The equipment of the room must not influence the content of the child's testimony.
- (3) The Children's House shall ensure that there is no unwanted personal contact between the child and the suspected or accused person immediately before, during and after the interview.
- (4) The Children's House shall ensure that before the interview there is no direct personal contact between the child and other participants in the proceedings, including the professional who will carry out the interview.

#### Article 24

(Persons present during an interview)

- (1) The court may allow one person chosen by the child in accordance with the provisions of the Act governing the criminal procedure and, if necessary, an interpreter to be present in the room besides the child and the professional who assists in the conduct of the interview.
- (2) The presence of other persons shall be ensured in a separate room through an audio and video connection. In addition to the judge conducting the proceedings and the necessary court staff, the authorised prosecutor, the suspected or accused person, the defence counsel, the statutory representative of the child, the authorised representative of a minor victim, a professional worker from a social work centre, the child's counsellor and the technical staff of the Children's House may be present in a separate room, as well as other persons whose presence is permitted by the court for the performance of the activities of the Children's House. The court may order a person to temporarily leave the room, if their presence is against the interests of successful implementation of pre-trial or criminal proceedings.
- (3) If the court assesses that this is necessary to protect the interests of the child, it shall order one or more participants referred to in the preceding paragraph to observe the interview by using technical means for voice and image transmission (videoconference).

#### Article 25

(Interview)

- (1) The interview of a child shall be carried out so that the principles of this Act are observed to the greatest extent possible. The interview shall be carried out by a professional from the





Children's House. In carrying out the interview, the professional shall follow the starting points determined at the preparatory meeting.

(2) During the interview, the professional assisting in the interview and the judge leading the interview shall communicate using electronic communications equipment or in another appropriate way.

(3) During the interview, the participants may propose that certain additional questions be posed to the child or additional circumstances be examined. The court shall decide whether a particular question is to be allowed and shall communicate it in an appropriate manner to the professional carrying out the interview.

(4) If the professional assisting in the interview assesses that a particular question would be detrimental to the integrity of the child, they shall inform the judge thereof. The judge shall either prohibit the question or permit this part of the interview to be carried out in a way that would not affect the integrity of the child.

(5) The provisions of the Act governing the criminal procedure concerning confrontation with other witnesses or the suspected or accused person and provisions concerning the measures for ensuring attendance and maintaining order during hearings shall not apply to the interviews of children under this Act.

#### Article 26

##### (Recordings)

(1) All interviews of a child are audio and video recorded, of which the professional shall inform the child at the beginning of the interview explaining the importance of recording.

(2) In making a recording, the provisions of the Act governing the criminal procedure concerning the request of the interrogated person to play the recording and the right to give explanations and comments to the recording shall not apply.

(3) The audio and video recording of the interview may be used in criminal proceedings and other court proceedings and to provide crisis and psychosocial support to the child.

(4) If the court orders a transcript of the recording to be made, the recording shall be transcribed in full.

#### Article 27

##### (Records)

(1) The record of the preparatory meeting and the recording and transcription of the interview shall be the constituent parts of the record of the child's interview.



(2) The provisions of the Act governing the criminal procedure concerning the signing of the record shall not apply to the records of the interviews of children under this Act.

#### Article 28

##### (Additional interview)

(1) If a child who has been interviewed under this Act needs to be interviewed again, this Act shall apply. The judge shall not allow an interview about the circumstances that were the subject of the first interview.

(2) The additional interview of the child shall be carried out by the same professional as previously, unless there is a justified reason for the Children's House to appoint another professional.

## 2. Physical examination of a child

#### Article 29

##### (Assistance of the Children's House)

The Children's House shall provide the space and other assistance for physical examinations to ensure to the greatest extent possible that the child is treated with care and consideration.

#### Article 30

##### (Expert examination of physical injuries)

With regard to the expert examination of physical injuries, the court shall take particular care in assessing whether the expert examination is to be made on the basis of medical documents and other information contained in the file or is also to include an examination of the child.

#### Article 31

##### (Duty to disclose information)

Before a physical examination, the importance and nature of medical procedures relevant to the analysis and establishment of the facts important for the criminal proceedings shall be explained to the child with due care and attention.

#### Article 32

##### (Child's opposition)

(1) If despite careful explanations the child opposes the examination, the expert examination of physical injuries shall be carried out through the examination of medical documents and the information contained in the file, unless this would be against the interests of the successful implementation of pre-trial or criminal proceedings.

(2) The provisions of the Act governing the criminal procedure concerning the measures to maintain order during investigative procedures shall not apply to the physical examinations of children under this Act.

### 1.3. Are children allowed to refuse to make a statement? If so, in which cases?

Specific provisions regarding this issue are as follows:

Article 236 of the **Criminal Procedure Act** reads as follows:

#### “Article 236

(1) The following persons shall be exempt from the duty to testify:

- 1) the spouse of the accused person or the person with whom they live in extra-marital cohabitation;
  - 2) **the accused person's blood relatives in the direct line, relatives in the collateral line up to the third degree and relatives by marriage up to the second degree;**
  - 3) **the adopter or adoptee of the accused person;**
  - 4) a religious confessor, on matters confessed to him or her by the accused person or by another person;
  - 5) an attorney, doctor, social worker, psychologist or another person, on the facts they learned in a professional capacity, if bound by the duty of maintaining the confidentiality of information acquired in their professional capacity, except in the cases referred to in paragraph three of Article 65 of this Act, or unless conditions prescribed by an Act are fulfilled under which such persons are released from the duty of protecting confidentiality and/or are bound to disclose confidential information to the competent bodies;
- (3) **Minors who in view of their age and mental development are not capable of understanding the significance of the right of not having to testify may not be heard as witnesses, except if the accused person so demands or if the court assesses that this is in the minor's best interest.**

#### **Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children’s House Act:**

##### “Article 17

##### (Order of an interview)

(1) An interview under this Act shall be carried out on the basis of a written order issued by a court ex officio or on the proposal of the authorised prosecutor, the suspected or accused person, the



defence counsel, the statutory representative of the child, the child over 16 years of age or the authorised person of a minor victim.

#### Article 20

(Postponement of preparatory meeting or interview)

The court may, on the proposal of the authorised prosecutor, the suspected or accused person, the child over 16 years of age, the statutory representative of the child, the authorised person of a minor victim, the defence counsel or the professional of the Children's House, postpone a preparatory meeting or the interview of a child for no more than eight days. The court shall concurrently determine a new date for the meeting or interview.”

Together, these two articles suggest that a child who has reached the age of 16 has the possibility to influence the hearing process, which could include refusing to give evidence if the court considers it to be in his or her best interests.

## 2. Broad perspective of the legal framework and procedure

2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

**1. Criminal Procedure Act** (as indicated above under chapter 1)

**2. Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children’s House Act** was adopted in March 2021. The establishment of the Barnahus Model in the Republic of Slovenia represents a significant change in the manner of cooperation of professionals in the field of the treatment of children victims of crime, including the procedure for conducting forensic interviews with children and the manner of cooperation among different institutions. In 2022, Slovenia established The Children's House, a public institution for children in criminal or pre-trial proceedings who are witnesses or victims of crime.

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?



The Children's House operates according to the Barnahus model, which is the leading European model for the treatment of child victims of sexual abuse and involves the coordination of criminal investigation procedures and procedures for the protection and assistance of the child. Since The Children's House was established, a Slovenian version of the NICHD protocol for forensic interviewing of children was created. Police officers were provided with cutting-edge training in the use of the protocol. According to Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act (Article 16), the police, social work centres, a professional employed in The Children's House (with educational qualifications of at least level eight in accordance with the Act governing the Slovenian qualification framework in the field of psychology or medicine, social work or special education disciplines and at least five years of work experience in working with children, and with completed additional training for conducting interviews of children in accordance the Act) and other participants involved in providing comprehensive treatment must take particular care that, while ensuring the equal protection of rights and respecting the guarantee of fair trial and the right to defence, the dignity of the child is respected and the child's best interests are protected. It is possible to conduct additional interview of a child, but with following restrictions:

“(Article 28)

- (1) If a child who has been interviewed under this Act needs to be interviewed again, this Act shall apply. The judge shall not allow an interview about the circumstances that were the subject of the first interview.
- (2) The additional interview of the child shall be carried out by the same professional as previously, unless there is a justified reason for the Children's House to appoint another professional.

### 2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

1. **Interviews of children**, as provided for in Articles 16 to 32 of Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act (cited above)
  2. **Crisis and psychosocial support**, as provided for in Articles 33 to 39 of Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act.
- They read as follows:

“Article 33

(Crisis and psychosocial support)



- (1) The Children's House shall provide crisis and psychosocial support to children.
- (2) Crisis support shall constitute, in particular, the psychological support provided to children during interviews and physical examinations.
- (3) Psychosocial support shall constitute a more permanent form of psychological, social and practical support provided to children after interviews or physical examinations.
- (4) The Children's House may also provide crisis and psychosocial support to a child's family members who are not suspected of committing a criminal offence against the child if the counsellor believes that this would benefit the child.
- (5) In order to provide crisis and psychosocial support, the Children's House may work together with other organisations providing support, in particular social work centres, healthcare providers and other professionals, as well as non-governmental organisations working in the field of Children's House activities.

#### Article 34

##### (Child's counsellor)

- (1) Crisis and psychosocial support shall be carried out by the counsellor of the child (hereinafter: counsellor).
- (2) After receiving a court order on the interview or physical examination of a child, the Director or the head of a unit of the Children's House shall appoint a counsellor without delay. The counsellor must not be the person who carries out the interview of the child in the same case (hereinafter: appointed counsellor).
- (3) The counsellor must have educational qualifications of at least level eight in accordance with the Act governing the Slovenian qualification framework in the field of psychology or medicine, social work or special education disciplines and at least three years of work experience in working with children, and must have completed additional training for providing crisis and psychosocial support to children in accordance with Article 38 of this Act.
- (4) The Children's House shall ensure that, except in exceptional cases, the child has the same counsellor throughout the treatment.
- (5) The counsellor shall have access to all the data processed by the Children's House that they need in their work.

#### Article 35

##### (Crisis support)

- (1) The appointed counsellor shall receive the child immediately before an interview or physical examination. At the first contact with the child, the counsellor shall only inform and attempt to



calm the child, and explain the procedure of the interview or physical examination and further treatment.

- (2) The appointed counsellor shall observe the child's interview from a separate room.
- (3) Immediately after the interview or physical examination of the child, the counsellor shall provide professional help and support to the child in accordance with the rules of the profession and of the Children's House, which shall constitute the start of psychosocial support.

#### Article 36

##### (Psychosocial support)

- (1) The appointed counsellor shall provide psychosocial support to the child after the interview or physical examination.
- (2) As soon as possible, the counsellor shall prepare a treatment plan for the child determining the intensity and frequency of contacts with the child and defining the content of psychosocial support in accordance with professional guidelines and the rules of the Children's House. Throughout the duration of the psychosocial support, the counsellor shall supplement and adjust the treatment plan.
- (3) The psychosocial support shall be provided for six months from the start of the treatment, even if the child reaches 18 years of age before the end of this period. If the counsellor assesses that the child needs further treatment, they shall refer the child to relevant institutions outside the Children's House. After the expiry of six months, the counsellor shall only continue the treatment within the Children's House until suitable support is provided outside the Children's House.
- (4) In providing psychosocial support, the counsellor shall, at their own discretion, work together with state authorities and non-governmental organisations providing other forms of support and assistance and establish contacts between the child and such authorities and organisations.

#### Article 37

##### (Voluntary participation)

- (1) A child shall voluntarily participate in crisis and psychosocial support provided by the Children's House.
- (2) The consent for participation in crisis and psychosocial support for a child under 15 years of age shall be given by their statutory representative.”

#### 2.4. In which moment(s) can a child be heard in this procedure?

A child can be questioned either at the pre-trial stage or at the criminal proceedings stage.

2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

- In case a child gains full capacity to contract (see articles below), the child has the capacity to initiate, suspend or terminate the criminal procedure.

Article 152 of **The Family Code** provides as follows:

Article 152

(Termination of parental responsibility)

(1) Parental responsibility shall terminate when the child attains the age of majority, i.e. when the child reaches the age of eighteen, or earlier if the child gains full capacity to contract before the age of majority.

(2) A child shall gain **full capacity to contract** through marriage.

(3) A court may acknowledge **full capacity to contract** for a child that has become a parent and has reached adequate physical and mental maturity to be capable of independent life.

Article 24

(Age of majority and exemption from impediment to marriage due to the person being underage)

(1) Marriage may not be concluded by a child.

(2) A court may, on justifiable grounds, allow the conclusion of a marriage for a child aged fifteen who has appropriate physical and mental maturity enabling them to understand the meaning and consequences of the rights and obligations arising from marriage.

- In the case a child does not gain full capacity to contract (as explained above), a child under the age of 16 does not have the same direct power to initiate, suspend or terminate criminal proceedings as an adult or a party to the proceedings.

A child who has reached the age of 16 is authorised to initiate a criminal proceeding in the case of offences for which the perpetrator is prosecuted by motion or private action (Article 54 paragraph 2 of The Criminal Procedure Act).

A child who has reached the age of 16 can propose that a preparatory meeting or a hearing be postponed. This is provided for in Article 20 of Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act, which states that the court





may, on the application of a child who has reached the age of 16, postpone for a maximum of eight days the preparatory meeting or hearing of the child, and at the same time set a new date for the meeting or hearing. In addition, Article 17 of the same Act provides that the hearing of a child under this Act shall be carried out on the basis of a written order issued by the court on the application of the child who has reached the age of 16, among other beneficiaries. This provision allows the child who has reached the age of 16 to play an active role in the decision on the interrogation in criminal proceedings.

### **3. Preparation for the child participation**

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

Information specifically for children are available at: <https://www.hisa-za-otroke.si/za-otroke-in-mladostnike/>

Broschures are available at: [https://www.hisa-za-otroke.si/wp-content/uploads/2024/01/HzO\\_ZLOZENKA\\_za\\_otroke\\_M.pdf](https://www.hisa-za-otroke.si/wp-content/uploads/2024/01/HzO_ZLOZENKA_za_otroke_M.pdf).

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

These materials are currently available only on the internet page [https://www.hisa-za-otroke.si/wp-content/uploads/2024/01/HzO\\_ZLOZENKA\\_za\\_otroke\\_M.pdf](https://www.hisa-za-otroke.si/wp-content/uploads/2024/01/HzO_ZLOZENKA_za_otroke_M.pdf).

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?



The legal background is provided Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children’s House Act

“Article 14

(Conditions for treatment in the Children's House)

(1) A minor victim or witness in pre-trial or criminal proceedings concerning specific criminal offences<sup>2</sup> shall be provided comprehensive treatment if so decided by the court.

(2) The court shall assess whether it is in the best interests of the child to provide, after the opinion of the Children's House is obtained, a minor victim or witness in pre-trial or criminal proceedings concerning other criminal offences or, by applying this Act mutatis mutandis, a minor who is under 18 years of age against whom pre-trial or criminal proceedings are conducted with a comprehensive treatment in the Children's House.

(3) In the opinion referred to in the preceding paragraph, the Children's House shall define its capacities with regard to staff, space and time available for providing particular activities of comprehensive treatment, taking into account the circumstances of the case, in particular the age, maturity, ability to understand the relevance and consequences of their actions and other personal traits and needs of the child, and the type, nature and circumstances of the criminal offence.

(4) The police and social work centres may perform their tasks in proceedings concerning the minor victims of and minor witness to criminal offences within the comprehensive treatment in the Children's House after obtaining the consent of the Children's House.

(5) In the consent referred to in the preceding paragraph, the Children's House shall define the conditions for and the method of carrying out the proposed activities, taking into account the circumstances of the case, in particular the age, maturity, ability to understand the relevance and consequences of their actions and other personal traits and needs of the child, the type, nature and circumstances of the criminal offence, and the capacities of the Children's House with regard to staff, space and time. The Children's House shall ensure that the aforementioned activities do not hinder the activities of the Children's House.

### 3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

**The Criminal Procedure Act (CPA)** sets out specific restrictions on the testimony of children and minors. Minors under the age of sixteen shall be summoned as witnesses through their parents or legal representatives, unless this is not possible due to the need for urgency or other

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<sup>2</sup> as defined in Article 1/(2): “Specific criminal offences under this Act shall mean criminal offences against humanity, against life and limb, against sexual integrity and against marriage, family and children, and the criminal offences referred to in Articles 131 to 138, 140, 143, 283, 284, 286, 296, 323 and 324 of the Criminal Code)



circumstances. (Art. 239/2). This means that there is a certain age limit for the ability to be a witness without a direct summons issued to a minor, namely 16 years. However, this does not mean that minors under the age of 16 cannot be witnesses in criminal proceedings; in such cases, the summons to testify is sent to their parents or legal representatives.

Also see answer under chapter 1.2.

### 3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

Article 21 of the Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act provides that the child shall be orally informed of summons to an interview. The child is informed of the summons by the staff of the Children's House, their statutory representative or other person appointed by the court.

Although not specifically provided in Article 21 it is common practice that a child is invited to the Children's House to see the facilities.

### 3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

See the answers under questions 1.2. and 2.2.

## 4. Protection and Support

### 4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

See answers of questions 1.1., 1.2. and 3.3.

### 4.2. In case of identification of risks, what kind of protective measures are available in your country?

See answers of questions 1.1., 1.2. and 3.3.

### 4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)

See answers of questions 1.1., 1.2. and 2.3.



4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

See answers of questions 1.1., 1.2. and 2.3.

## **5. Environment**

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

Children are interviewed in The Children's House.

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate 'building' specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children)

See the answer of question 1.2. (Article 23 of The Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act)

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?

The EU-funded PROMISE project has developed c, which provide an operational and organisational framework for the organisation and functioning of the centres that have adopted the Barnahus system.

Standard number 4 of the European Standards Quality Standards for the Barnahus model defines the standard of a "Child-friendly Environment" as follows:

- Location and accessibility: Where possible, Barnahus Centre (The Children's House) facilities are located in a separate building and in a child-friendly location. It is desirable that the centre is accessible by public transport and has access for children with special needs.
- Facilities design: Furnishings and materials are child-friendly and family-friendly and adapted to the target age group. The premises must not pose a risk to physical injury to children, regardless of their age and developmental level. There are separate, soundproofed areas to ensure privacy.
- Prevention of contact with the suspect: the facilities are arranged in such a way that the victim cannot in any way come into contact with the alleged perpetrator in any way.



- Interview room: The Interinstitutional Team may observe the interviews live, but not in the same room where the interview is being conducted.

#### 5.4. Is there a specific waiting area for the child?

See the answer of question 5.3.

#### 5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? ( e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)

See the answer of question 5.3.

#### 5.6. In case identification of the offender is needed, how is this conducted, and where?

Articles 242 and 242a of the Criminal Procedure Act provide as follows:

##### “Article 242

(1) If it is necessary to establish whether a witness recognises a certain person or object, he or she shall first be asked to describe them and indicate their distinctive characteristics, and only after that, the witness shall be shown the person or object together with other persons not known to him or her, or objects of the same kind, if possible. Recognition by means of other senses (hearing, touch, smell, and the like) shall be handled in a similar manner.

(2) Before recognition, the witness shall be cautioned in accordance with paragraph two of Article 240 of this Act.

(3) The investigating judge conducting the recognition procedure shall be bound to ensure that before the commencement of recognition, the witness does not see the persons or objects he or she is to view.

(4) A record on the recognition of the accused person shall be made, accompanied by a group photograph of all the persons viewed.

##### Article 242a

If the life or body of the person performing the recognition or of his or her close relatives (points 1 to 3 of paragraph one of Article 236) is under serious threat, or if it is probable that the person being recognised might influence the course of the recognition procedure, the recognition must be performed so as to prevent the person being recognised from seeing the person performing the recognition.



See also the answer of question 1.2. regarding the provisions of The Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act.

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

It is planned that local units of The Children's House will be established. At the moment, only one unit in the capital of the Republic of Slovenia is operational.

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

See the answer of question 1.2. (Article 24 of The Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act)

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

See the answer of question 1.2. (Articles 14, 26 and 27 of The Child Protection in Criminal Proceedings and Comprehensive Treatment of Children in the Children's House Act).

## **6. Specific legal guarantees for the child**

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

See the answer of question 1.2.

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

See the answer of question 1.2.

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?



See the answer of question 1.2.

### 6.3. What is the role of parents/legal representative?

See the answer of question 1.1.

#### 6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?

Yes, the legal representative is excluded when the victim is a minor and the perpetrator is his/her legal representative. The legal basis for this is Article 64 of the Criminal Procedure Act (CPA), which provides that if the victim is a minor or a person who lacks legal capacity, the victim's legal representative is entitled to make all statements and perform all acts which the victim is entitled to make or perform under this Act. However, if the legal representative is also the perpetrator of an offence against a minor, the victim cannot, according to the logic of legal protection, rely on the representation of the perpetrator. In such a case, other mechanisms are used to ensure the rights and protection of the minor victim, such as the appointment of a special guardian or defence counsel to ensure that the rights of the minor victim are adequately represented and protected in the criminal proceedings.

#### 6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

In such a case, the representative of the minor victim is appointed by the court.

### 6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)

The Criminal Procedure Act provides in Article 295 as follows:

#### “Article 295

From the opening of the session until the conclusion of the main hearing, the panel may, ex officio or upon a motion of the parties, at any time but always after hearing the parties, exclude the public from all or part of the trial, if this is necessary for the protection of confidentiality, maintenance of law, order and morals, the protection of the personal or family life of the defendant, the injured party or the witness, or the interests of a minor, or, if in the panel's opinion, a public trial would be prejudicial to the interests of justice.”



### 6.5. Is the child allowed to plea for cautionary measures?

Yes. The Family Code provides as follows:

#### Article 153

##### (General authorization)

The courts and social work centres shall be obliged to carry out necessary measures concerning custody of children or the protection of their property and their other rights and interests.

#### Article 158

##### (Child's opinion)

- (1) In deciding on a measure to protect the child's best interests the courts shall consider the child's opinion if it has been expressed by the child or by a person the child trusts and was chosen by the child, provided that the child is capable of understanding its meaning and consequences.
- (2) A court may issue an interim injunction without obtaining the prior opinion of the child.

Furthermore, the Domestic Violence Prevention Act provides as follows:

#### Article 22g

##### (Child protection)

- (1) In procedures pursuant to this Act the court shall also take into account the child's opinion if it has been expressed by the child or by a person the child trusts and was chosen by the child, provided that the child is capable of understanding its meaning and consequences.
- (2) If the measures pursuant to this Act are issued for protection of a child, then their implementation shall be monitored by a social work centre.
- (3) The social work centre shall also perform all other required actions related to child protection in accordance with the act governing family relationships.

### 6.6. Does the child have the right to appeal any decision?

Article 367, paragraph 4 of the Criminal Code provides as follows:

#### “Article 367

- (4) The injured party may challenge the judgment by which the court rejected the charge (Article 357) or acquitted the defendant of the charge (Article 358), but may challenge the judgment by which the court found the defendant guilty only with respect to the decision on the pecuniary claim (point 7 of paragraph one of Article 359), publishing the final judgment and the decision on the costs of proceedings. If the state prosecutor has





assumed the prosecution from the injured party as prosecutor (paragraph two of Article 63), the injured party may appeal on the grounds of all the reasons for which a judgment may be challenged (Article 370).”

Also see answer of question 2.5.

## **7. Interviewing structure and procedure**

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

See the answer of question 1.2.

7.2. Is it mandatory that this professional has specific training for child interviews?

See the answer of question 1.2.

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

The protocol for the forensic interview with the child was developed on the basis of the NICHD protocol within the Promise III project and adapted to Slovenian legislation. It is available at <https://www.hisa-za-otroke.si/en/usposabljanja/>.

7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

See answer 1.2.

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

See answer 1.2.



7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

See answer 1.2.

7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

See answer 1.2.

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?

See answer 1.2.

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

See answer 1.2.

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

See answer 1.2.

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?

See answer 1.2.

## **8. Offender's right during or after the interview**

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

See answer 1.2.

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

See answer 1.2.

## **9. Parallel proceedings – coordination**

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

See the answer of question 1.2. (Article 26).

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

See answers of questions 1.1. and 1.2. No specific coordination procedure act 'per se' exists.

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

See the answer of question 1.2. (Article 26)

## **10. Training**

10.1. Are judges and magistrates trained to deal with child victims?

Yes, they are. The Centre for Judicial Education was established in 2006 and operates within the Ministry of Justice of the Republic of Slovenia. The Centre is headed by a director who is a judge in accordance with the law. The task of the Director is to manage the Centre's programmes and to ensure the topicality and quality of education. An Expert Council is established to provide professional assistance in the performance of the tasks of the Centre for Judicial Education, which includes representatives of all judicial bodies; The Slovenian Judges' Association and the Association of State Prosecutors of Slovenia, the Judicial Council of the Republic of Slovenia, the Ministry of Justice and Law faculties.



The Centre for Judicial Education provides professional development and training for work in judicial bodies. The Centre for Judicial Education is responsible for organising and implementing various forms of professional development and knowledge tests for employees of judicial bodies and other stakeholders cooperating with judicial authorities.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

See previous answer.

## 11. Reforms in progress

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?

Yes, the legal framework is continuously developing, but we are not aware of any specific changes to the legislation.