

**CHILD-FRIENDLY LEGAL AID IN CIVIL COURT  
PROCEEDINGS:  
INTERNATIONAL STANDARDS AND THE CIRCUMSTANCES  
IN THE REPUBLIC OF SERBIA \***

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**Abstract.** *The paper discusses international standards on the provision of legal assistance to children in civil and administrative proceedings in the context of the contemporary concept of child-friendly justice. The author critically analyzes the national legal provisions on legal assistance to children, which provide for the implementation of constitutional norms on the right to access to justice and the right to a fair trial. As children are fully entitled to these rights, the author underscores the need to establish an effective and sustainable national system of child-friendly legal aid.*

**Key words:** *right of the child, right to a fair trial, child-friendly legal aid, civil procedure.*

## 1. INTRODUCTION

As one of the fundamental human rights, the right to a fair trial is an autonomous human right that is essential for the protection of individual rights and the implementation of the rule of law principle. The international standards on the right to a fair trial and its normative framework at the national level are an expression of the need to protect the dignity and integrity of individuals, and to ensure lawful, effective and efficient protection of their rights. At the international level, the right to a fair trial is guaranteed by Article 10 of the Universal Declaration of Human Rights and Article 14 par. 1 of the International Covenant on Civil and Political Rights, but it is most comprehensively elaborated in Article 6 of the European Convention for the Protection of Human Rights and Fundamental

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Freedoms (ECHR).<sup>1</sup> In constitutional democracies, the right to a fair trial is usually guaranteed by the Constitution, within the framework of political rights.

The right to a fair trial applies to all criminal proceedings and all proceedings involving decisions on "civil rights and obligations" of legal entities (Article 6 par. 1 ECHR); it includes a range of complementary procedural human rights: the right of access to justice, the right to a fair hearing which includes the 'equality of arms', the right to independent and impartial tribunal established by law, the right to a public hearing within a reasonable time.<sup>2</sup> While all these rights are equally important, the right of access to justice is, substantively, a prerequisite for the protection of all other human rights, which may be exercised only provided that legal entities are allowed to appear before the court and seek protection of their rights.<sup>3</sup> On the other hand, in order to provide for an effective access to justice, legal entities must have equal opportunities to effectively participate in the proceedings and exercise their rights before the competent courts and other bodies of public authority. Therefore, in modern legislation, the principle of equality of arms in access to justice is one of the basic legal principles and standards. The effectiveness of access to justice depends on many factors but the matter of primary importance is the provision of high-quality legal assistance, either free of charge (*pro bono*) or at lower costs, to all citizens who need but cannot afford such assistance.

The ECHR expressly recognizes the right to legal assistance to individuals charged with committing a criminal offence (Art.6 par. 3 ECHR), but this right is not expressly guaranteed in the field of civil law protection. However, it is the standpoint of the European Court of Human Rights (ECtHR) that the right to (free) legal aid, being an instrument for exercising the right to a fair trial, equally applies to proceedings involving decisions on civil matters.<sup>4</sup> Hence, states are expected to provide legal assistance to litigants when such assistance is essential for effective access to justice, when the state is obliged to provide such assistance under the provisions of the national law, and/or when it is necessary due to the complexity of the legal matter and civil proceedings involving a dispute resolution.<sup>5</sup>

<sup>1</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms, 1953 (hereinafter: the ECHR).

<sup>2</sup> For more detail on the right to a fair trial and its protection before the European Court of Human Rights (ECtHR) see: Van Dijk, P., Van Hoof, G. J. H. *Theory and Practice of European Convention on Human Rights*, Deventer, Kluwer Law and Taxation Publishers, 1998, pp. 237-270; Mole, N. Harby, C., *The right to a fair trial: A guide to the implementation of Article 6 of the European Convention on Human Rights*, Council of Europe, 2006; Janis, W. M., Kay, S. R., Bradley, W. A. *European Human Rights Law*, Oxford University Press, 2000, pp. 403-404.

<sup>3</sup> The European Court of Human Rights (ECtHR) has taken an explicit stance on this matter in numerous decisions. See: *Golder v. the United Kingdom*, decision of 21. January 1975, Series A, no. 18, pp. 16-18, §§ 34 in fine and 35-36; *Z and Others v. the United Kingdom* [GC], No. 29392/95, §§ 91-93, ECHR 2001-V, *Kreuz v. Poland*, No. 28249/95.

<sup>4</sup> ECtHR case law: *Dewier v Belgium* (1980), Series A, No 35. Notably, within the ECHR framework, "civil matter" is an autonomous concept because the European Court does not interpret it according to the criteria applicable in the national legal system of the respondent state but rather according to the general and objective criteria, in compliance with "the common European concept concerning its nature". Such an attitude is prominent in many ECtHR decisions. For example, see: *Ringelsen v. Austria*, decision of 22 June 1972, Series A, No 15; *König v. the Federal Republic of Germany*, decision of 28 June 1978, Series A, No. 27; *Andersson v. Sweden*, decision of 27 August 1997, Reports of Judgments and Decisions, 1997-IV.

<sup>5</sup> See the ECtHR arguments in cases: *Airey v. Ireland*, decision of 9 October 1979, Series A No. 32, and *Ashindane v. U.K.* (1985) 7 EHRR 528. (<http://echr.coe.int>, accessed 4. 05. 2016). For more on this issue, see: Petrušić, N. *Pravo na pristup sudu u svetlu novog ZPP* (The Right of Access to Justice in light of the new Civil

In accordance with the modern concept of the rights of the child<sup>6</sup>, which is normatively shaped by the UN Convention on the Rights of the Child, a child is an autonomous legal entity entitled to all human rights and freedoms which are exercised in accordance with the maturity and developmental capacities of the child. Accordingly, the child is fully entitled to the right to a fair trial, in all its aspects.

Just like adults, children come into contact with the justice system on different occasions and in different ways. They may be parties in civil and administrative proceedings involving decisions on their rights and interests, they may appear as witnesses, victims or perpetrators of criminal and other illegal acts. Faced with the justice system, children are "thrown" into a terrifying world of adults which they cannot understand. Therefore, in order to provide for the exercise of the children's right to a fair trial it is necessary to adjust the justice system to the specific needs of the child.

The direct result of the efforts to adjust the judicial system to children's needs and interests is the concept of child-friendly justice, which refers to all civil, criminal and administrative proceedings involving the child, as well as the alternative dispute resolution proceedings, all of which should be implemented in a manner that ensures full observance of the entire corpus of children's rights. One of the key components of child-friendly justice is the right of the child to have equal access to justice and effectively participate in court proceedings, including the right to high-quality legal assistance (child-friendly legal aid).

An overview of international documents in the field of children's rights shows that the major focus of international community is the right to legal assistance which should be afforded to children in conflict with the law and child-victims and/or witnesses of crime. The situation is similar in legal science and research, which are mainly focused on providing legal assistance to children who participate in criminal court proceedings. When it comes to Serbia, in the past years, many measures have been taken in the area of juvenile criminal justice in order to provide adequate legal assistance to children in conflict with the law and children-victims and witnesses of crime, whereas the provision of legal aid to children involved in civil court proceedings has received far less attention.<sup>7</sup> Yet, legal practice show that the violations of children's rights that are protected in civil proceedings are much more common, which further entails that children actively participate in civil proceedings much more frequently than in criminal proceedings. Therefore, there is a need to pay more attention to providing legal assistance to children who appear and participate in civil court proceedings as parties, witnesses or participants.

In this paper, the author examines the general and basic principles and postulates of the child-friendly legal aid<sup>8</sup> provided in civil matters, as well as the scope of their

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Procedure Act), u: Primjena Zakona o parničnom postupku u Bosni i Hercegovini i regionu: Zbornik radova, Istočno Sarajevo, Pravni fakultet, 2007, pp. 64-87.

<sup>6</sup> For an overview of theoretical approaches to children's rights, see: Vučković Šahović, Petrušić, 2016: 23-28.

<sup>7</sup> For more on this issue, see: Pravosuđe po meri deteta u Republici Srbiji, Centar za prava deteta, Beograd, 2013, (Child-friendly justice in the Republic of Serbia, Center for the Rights of the Child) [http://www.cpd.org.rs/en/home/news/\\_params/newsplus\\_news\\_id/2921.html](http://www.cpd.org.rs/en/home/news/_params/newsplus_news_id/2921.html); accessed 4. 5. 2016).

<sup>8</sup> It should be noted that there are special legal standards on providing legal assistance to vulnerable categories of children. Thus, in 2014, the European Council on Refugees and Exiles (ECRE) prepared nine governing principles concerning the provision of legal assistance to migrant children unaccompanied by adults. The implementation of these principles should enable each migrant child unaccompanied by an adult to receive timely and quality legal assistance, in conjunction with social and other forms of assistance and support. These principles are contained in the document *Right to Justice: Quality Legal Assistance for Unaccompanied Children – Annex 1: Guiding principles for quality legal assistance for unaccompanied children; Annex 2: Indicators for the guiding principles*. <http://www.refworld.org/docid/54047b224.html> (accessed 4. 5. 2016).

implementation in the Serbian legal system. In the first part of the paper, the author presents the key international standards on child-friendly justice. In the second part of the paper, the author provides a critical analysis of the Serbian legislation on providing legal assistance to children participating in civil proceedings.

## 2. CHILD-FRIENDLY JUSTICE – INTERNATIONAL STANDARDS AND POSTULATES

At the international level, the process of standardizing child-friendly justice has been generally completed, with the major focus on adjusting the criminal justice system to children in conflict with the law and children-victims and witnesses of crime. In 1985, the United Nations adopted the *Minimum Rules for the Administration of Juvenile Justice*.<sup>9</sup> The 1989 *UN Convention on the Rights of the Child* (UNCRC) defined a set of rights for children in conflict with the law (Articles 37 and 40 ECHR). In 1990, the United Nations adopted the *Riyadh Guidelines for the prevention of juvenile delinquency*<sup>10</sup> and the *Havana Rules for the Protection of Juveniles Deprived of their Liberty*.<sup>11</sup> By adopting the 2005 *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*<sup>12</sup>, the application of the juvenile justice principles has been extended to children-victims and witnesses. Concerned over the modest accomplishments of national policies in the field of juvenile justice and the treatment of children in conflict with the law in some states, in 2007, the Committee on the Rights of the Child adopted *General Comment No. 10: Children's rights in juvenile justice*<sup>13</sup>, which established the basic elements of a comprehensive juvenile justice policy.<sup>14</sup> One of these elements is the guarantee of a fair trial and a fair treatment of children in conflict with the law and child-victims and witnesses of crime.

In the European Union, child-friendly justice is part of the *EU Agenda for the Rights of the Child of 2011*<sup>15</sup>, which recognized and promoted the concept of child-friendly justice at the EU level. In the EU, the protection of the rights of the child is the responsibility of each Member State but the scope and the standards of that protection were laid down in the *EU Charter of Fundamental Rights* (2000)<sup>16</sup>. In compliance with

<sup>9</sup> The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("*The Beijing Rules*"), adopted by General Assembly resolution 40/33 of 29 November 1985; <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> (accessed 4. 5. 2016).

<sup>10</sup> The United Nations Guidelines for the Prevention of Juvenile Delinquency ("*The Riyadh Guidelines*"), 1990, A/RES/45/112, <http://www.un.org/documents/ga/res/45/a45r112.htm> (accessed 4. 5. 2016).

<sup>11</sup> The United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("*La Habana Rules*"), 1990, A/RES/45/113; <http://www.un.org/documents/ga/res/45/a45r113.htm> (accessed 4. 5. 2016).

<sup>12</sup> The ECOSOC Resolution 2005/20. *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*; <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf> (accessed 4. 5. 2016).

<sup>13</sup> General Comment No. 10: Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007; <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (accessed 4. 5. 2016).

<sup>14</sup> For more on international standards in the area of criminal justice, see: Vučković Šahović, Petrušić, 2016:212-216.

<sup>15</sup> The EU Agenda for the Rights of the Child (COM/2011/0060 final), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0060&from=en> (accessed 4. 5. 2016)

<sup>16</sup> *The Charter of Fundamental Rights of the European Union* (2000/C 364/01); [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) (accessed 4. 5. 2016). *Inter alia*, Article 24 of this Charter prescribes: "Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age

the Treaty of Lisbon<sup>17</sup>, this Charter envisaged comprehensive guarantees for political and social rights in the EU. *The EU Guidelines on the Promotion and Protection of the Rights of the Child (2007)*<sup>18</sup> provided significant support in the promotion and protection of children's rights in the EU Member States as well as in the accession countries aspiring to join the EU.

The Council of Europe (CoE) has had the most prominent role in the field of establishing the child-friendly justice standards. The CoE adopted several non-binding documents<sup>19</sup>, the most significant of which is the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010)*<sup>20</sup>. The Guidelines apply to all children and all situations where children encounter the competent authorities in the application of criminal, civil or administrative law. In particular, the provisions in Chapter IV underscore that the Guidelines pertain to the rights of children before, during and after the proceedings, and that the Guidelines aim to ensure that all rights of the child in any such proceedings, including the right of the child to be promptly and adequately informed, the right to legal assistance and representation, the right to participation and protection, are fully observed with due consideration of the child's level of maturity and ability to understand the proceedings and the circumstances of the case.

The Guidelines set out five key principles of child-friendly justice: to ensure the child's participation in the process<sup>21</sup>; to consider the best interests of the child<sup>22</sup>; to respect

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and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration".

<sup>17</sup> The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, (2007/C 306/01); <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTEXT> (accessed 4. 4. 2016).

<sup>18</sup> *The EU Guidelines on the Promotion and Protection of the Rights of the Child*, approved by the Council on 10 December 2007; <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133604> (accessed 4. 5. 2016).

<sup>19</sup> For example: *Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, adopted by the Committee of Ministers on 24 September 2003 at the 853<sup>rd</sup> meeting of the Ministers' Deputies, [http://www.coe.int/t/dghl/standardsetting/prisons/PCCP%20documents%202013/Rec\(2003\)20\\_E.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/PCCP%20documents%202013/Rec(2003)20_E.pdf); *Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*, adopted by the Committee of Ministers on 5 November 2008 at the 1040<sup>th</sup> meeting of the Ministers' Deputies, [http://www.unicef.org/tdad/councilofeuroperec08\(1\).pdf](http://www.unicef.org/tdad/councilofeuroperec08(1).pdf) (accessed 4. 5. 2016).

<sup>20</sup> *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, adopted by the Committee of Ministers on 17 November 2010 at the 1098<sup>th</sup> meeting of the Ministers' Deputies <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3>.

The Guidelines are an integral part of the Council of Europe Strategy for the Rights of the Child (2016-2021); <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066cff8> (accessed 4. 4. 2016).

<sup>21</sup> It implies the right of all children to be informed about their rights, to be given appropriate advice on the access justice, and to be consulted and heard in proceedings involving or affecting them. Thus, children should be considered and treated as full bearers of rights, and should be entitled to exercise all their rights taking into account their maturity, capacity to form their own views and the circumstances of the case (Chapter III item A, Guidelines).

<sup>22</sup> In assessing the best interests of the involved or affected children, it is essential to take into consideration: their views and opinions; all other rights of the child, such as the right to dignity, liberty and equal treatment. All relevant authorities are expected to adopt a comprehensive approach in order to take into account all relevant interests at stake, including the psychological and physical well-being as well as the legal, social and economic interests of the child (Chapter III item B, Guidelines)

the dignity of the child<sup>23</sup>; to ensure the application of the non-discrimination principle<sup>24</sup>, and to secure the application of the rule of law principle. In particular, the Guidelines emphasize that all elements of the rule of law (such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right of access to court, and the right to appeal) shall apply fully to children in the same manner as they apply to adults and may not be reduced or denied under the pretext of the best interests of the child.<sup>25</sup> The application of the principle of the rule of law, among other things, includes the right to legal assistance, which is in many cases a precondition for access to justice and a fair trial.

### 3. CHILD-FRIENDLY LEGAL AID – THE CONCEPT AND BASIC FEATURES

The effective access to justice and protection of children's rights imply the provision of child-friendly legal assistance that is tailored to the needs, rights and interests of the child. Yet, the international documents prescribing the obligation of signatory states to ensure legal assistance to children do not stipulate the attributes of child-friendly legal aid, nor do they point out to the specific needs of children as beneficiaries of such legal aid. In literature, there is no universal or generally accepted definition of child-friendly legal aid but, for research purposes, this concept is defined as legal assistance that is accessible to children, age appropriate, multi-disciplinary, effective, and responsive to a range of legal and social needs of the child<sup>26</sup>.

The legal grounds for establishing child-friendly legal aid in the field of criminal justice are provisions in Article 40 of the UNCRC which, *inter alia*, prescribe the statutory duty of the State Parties to ensure that every child in conflict with the law shall “have legal or other appropriate assistance in the preparation and presentation of his/her defense, and to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians” (Article 40, item 2 (b), points 2 and 3, UN CRC). In the *General Comment No. 10: Children's rights in juvenile justice* (2007), the Committee on the Rights of the Child expressed a clear position on the duty of States Parties to ensure legal or other appropriate assistance to the child in the preparation and presentation of the defense, which should be free of charge. According to the position of the Committee on the Rights of the Child, the expert legal assistance may be provided not only by trained

<sup>23</sup> It implies that children should be treated with care, sensitivity, fairness and respect throughout any procedure, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. In particular, children shall not be subjected to torture or inhuman or degrading treatment or punishment (Chapter III item C, Guidelines).

<sup>24</sup> In observance of the equality principle, the Guidelines emphasize that all children's rights shall be secured without discrimination on any grounds. In particular, specific protection and assistance may need to be granted to more vulnerable children, such as migrant children, refugee and asylum-seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions. (Chapter III item D, Guidelines).

<sup>25</sup> Chapter III item E, Guidelines.

<sup>26</sup> Child-Friendly Legal Aid in Africa, UNDP, UNICEF; UNODC, Open Society Initiative, 2011, [https://www.unodc.org/documents/justice-and-prison-reform/Child\\_Friendly\\_Legal\\_Aid\\_in\\_Africa.UNICEF.UNDP.UNODC.en.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Child_Friendly_Legal_Aid_in_Africa.UNICEF.UNDP.UNODC.en.pdf) (accessed 4. 4. 2016).

legal experts (lawyers) but also by social workers, paralegals, and other professional, who must have sufficient knowledge about the legal aspects of the juvenile justice system and who must be trained to work with children in conflict with the law<sup>27</sup>. The Guidelines on provision of legal assistance to child-victims and witnesses are contained in the aforesaid *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime in 2005*<sup>28</sup>.

When it comes to judicial and administrative proceedings aimed at protection of children's rights, in the *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*<sup>29</sup>, the Committee on the Rights of the Child stipulated that "effective remedies must be available to redress violations" but the Committee considered that "children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights"; therefore, the state should ensure that "there are effective, child-sensitive procedures available to children and their representatives", which should include "the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance".<sup>30</sup>

The child-friendly legal aid standards are elaborated in most detail in the aforementioned *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010). They refer to any form of legal aid<sup>31</sup> which is provided to children in civil, criminal and administrative proceedings, including the legal assistance related to the use of alternative dispute resolution (ADR) methods.

The author's analysis of the provisions on legal assistance to children contained in the Guidelines shows that the basic postulate underlying child-friendly legal aid is that children should be considered and treated as full title-holders of their rights. In this context, children should have recourse to legal remedies to effectively exercise their rights or act upon violations thereof, including the opportunity to have access to justice if they sufficiently understand their rights, as well as the opportunity to use legal remedies and protection mechanisms, on the basis of adequately provided legal advice<sup>32</sup>.

In order to make legal aid child-friendly and adjusted to children's needs, it must be available to children before, during and after completion of proceedings. From the child's first contact with the judicial system and encounter with the competent authorities (the police, immigration department, educational authorities, social and health services), states are expected to ensure that each child is provided relevant information and advice on their rights, protection mechanisms and available assistance they may be offered. Information and advice should be provided to children in a manner that is appropriate to their age and maturity, in a language which they can understand and which is gender- and culture sensitive<sup>33</sup>. On the other hand, children should have access to free legal aid, including legal representation, under the same or more favorable conditions as compared to adults<sup>34</sup>.

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<sup>27</sup> *General Comment No. 10: Children's rights in juvenile justice* (2007), Par. 49.

<sup>28</sup> *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005*, Par 22.

<sup>29</sup> *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5 27 November 2003 <http://www.refworld.org/docid/4538834f11.html> (accessed 4.5. 2016)

<sup>30</sup> Par. 24. CRC/GC/2003/5 27 November 2003. <http://www.refworld.org/docid/4538834f11.html> (pristup 4.5. 2016)

<sup>31</sup> The concept "legal aid" encompasses legal advice, legal assistance, legal representation, training and application of different ADR methods and mechanisms.

<sup>32</sup> Chapter IV, item D, par. 34, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (2010).

<sup>33</sup> Chapter IV, item A, par. 2, *Guidelines*.

<sup>34</sup> Chapter IV, item D par. 38, *Guidelines*

The user of the legal assistance is a child, and the legal aid is directly provided to the child and his/her parents or guardian. Children's legal representatives should consider and treat children as their fully-fledged clients with their own rights and, in proceedings, they should bring forward and account for the opinion of the child. Their duty is to provide the child with all the necessary information and explanations concerning the possible consequences of the child's views and/or opinions<sup>35</sup>. Accordingly, providing information to parents cannot be an alternative to communicating information to the child<sup>36</sup>. In particular, the competent authority should appoint an independent representative<sup>37</sup> or a guardian *ad litem* to represent the child in proceedings where there are conflicting interests between the child and the parents or other interested parties<sup>38</sup>.

Some of the standards on child-friendly legal aid concern the competences of persons who may provide legal assistance. Lawyers and other professionals who provide legal aid to children should be trained in children's rights and knowledgeable on child-related issues; they have to receive an ongoing and thorough training, and to be trained to communicate with the child at his level of understanding<sup>39</sup>. They have to be fully focused on the rights, needs and interests of the child, paying due attention to the child's age, maturity and ability to understand. On the other hand, all professionals working with and for children should receive adequate and necessary interdisciplinary training on the rights and needs of children of different age groups, as well as relevant training on child-friendly procedures that are adapted to children<sup>40</sup>. In particular, professionals should be trained in communicating with children of all ages and at different stages of development, especially including children from vulnerable groups<sup>41</sup>.

#### 4. PROVIDING LEGAL ASSISTANCE TO CHILDREN IN THE REPUBLIC OF SERBIA

As the successor state of the State Union of Serbia and Montenegro, the Republic of Serbia is a member state to all major international human rights treaties, including the UN Convention on the Rights of the Child (UNCRC) and the ECHR<sup>42</sup>. The concept of

<sup>35</sup> Chapter IV, item D par. 40 and 41, Guidelines

<sup>36</sup> Chapter IV, item A par. 3, Guidelines

<sup>37</sup> Chapter IV, item D par. 42, Guidelines

<sup>38</sup> Independent legal representation of the child is one of the special children's rights, arising from Article 12 of the Convention on the Rights of the Child. Explicit provisions on this right are contained in Article 4 of the European Convention on the Exercise of Children's Rights of 1996 (Council of Europe, ETS No. 160); under this Article, the child is entitled to file a request (either in person or through other persons or bodies) for the appointment of a special representative in the proceedings concerning the child, in cases where the holder of parental right/responsibility is barred under the provisions of national law from representing the child, due to a conflict of interest. In the course of determining the normative framework of the rights of the child to independent representation, studies show that comparative law includes diverse models of independent representation of the child. For more on this issue, see: Petrušić, N., *Zastupanje deteta u parnici (Legal Representation of the Child in a Lawsuit)*, u: *Pravni život. Tematski broj, Pravo i humana budućnost. – Beograd : Udruženje pravnika Srbije, 2006. – Br. 10, vol. 2 (2006), pp. 169-192.*

<sup>39</sup> Chapter IV, item D par. 39, Guidelines

<sup>40</sup> Chapter IV, item A par. 14, Guidelines

<sup>41</sup> Chapter IV, item A par. 15, Guidelines

<sup>42</sup> The ECHR was ratified by the State Union of Serbia and Montenegro in 2003 („Sl. list SCG –Međunarodni ugovori, br. 9/2003 i 5/2005). Since the secession of Montenegro from the State Union, the ECHR has been effective in Serbia on the grounds of Art. 60 of the Constitutional Charter of Serbia and Montenegro, under which Serbia has inherited the international legal personality, membership in international organizations and participation in international treaties ratified by the State Union.

children's rights began to be incorporated into the Serbian normative system after the political changes in 2000. The powerful impetus was provided by the 2006 Constitution of the Republic of Serbia<sup>43</sup>, which (for the first time in the Serbian constitutional history) included an explicit provision on the rights of the child; thus, Article 64 guarantees that "A child shall enjoy human rights suitable to their age and maturity", and lists a number of specific civil, political, economic and social rights<sup>44</sup>. Hence, the children are guaranteed the right to a fair trial (Art. 32 of the Constitution), and the right to legal assistance (Art. 67 of the Constitution). In order to provide for the exercise of the rights of the child, the state is obliged to regulate this issue by the law and adjust the entire judicial system to the rights, needs and interests of children.

In the past period, the process of adjusting the Serbian judicial system to children's needs was mainly related to the criminal justice system. Consequently, the process of establishing child-friendly legal aid has gone furthest in this area. The 2005 Act on Juvenile Offenders and Protection of Minors in Criminal Law (hereinafter: the Juvenile Justice Act)<sup>45</sup> regulates the application of special procedures and measures for the protection of juvenile offenders and children who are witnesses or victims of crime. Being based on the principle of restorative justice<sup>46</sup>, the Juvenile Justice Act *inter alia* provides that the child who is involved in criminal proceedings is entitled to legal protection of a defense counsel from the first hearing and throughout the proceedings; in case a child or his/her legal representative or next of kin fails to retain a counsel, an *ex officio* defence counsel shall be appointed by the competent juvenile court. The defence counsel may only be an attorney who has acquired specialist knowledge and qualification in the field of children's rights and juvenile delinquency (Art. 49 of the Juvenile Justice Act). A child who appears in criminal proceeding as a victim or an injured party is also entitled to have a legal representative (Art. 154 of the Juvenile Justice Act) throughout the proceedings<sup>47</sup>, but no special conditions are prescribed in respect of the representative's professional competences.

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<sup>43</sup> Ustav Republike Srbije 2006 (Constitution of the Republic of Serbia, 2006) "Sl. glasnik RS", 98/2006

<sup>44</sup> For more on this issue, see: Vučković Šahović, Petrušić, 2016: 63.

<sup>45</sup> Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, 2005 (Act on Juvenile Offenders and Protection of Minors in Criminal Law, 2005), "Sl. glasnik RS", br. 85/2005.

<sup>46</sup> For more on juvenile criminal law in Serbia, see: Konstantinović Vilić, S., Kostić, M., Zaštita dece i maloletnika prema Zakonu o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica (Protection of Children and Minors under the Serbian Juvenile Justice Act), u: Trgovina ljudima: pravna zaštita u međunarodnim i nacionalnim okvirima (Predrag Dimitrijević, Miomira Kostić, Saša Knežević, ur.), Niš: Pravni fakultet u Nišu, 2011, pp. 207–215; Knežević, S., Maloletničko krivično pravo: materijalno, procesno i izvršno (Juvenile Criminal Law: substantive, procedural and execution legislation), Centar za publikacije Pravnog fakulteta, Niš, 2010; Jovašević, D., Položaj maloletnika u novom krivičnom pravu Republike Srbije (The Status of Juveniles in Serbian Criminal Law), Zbornik radova Pravnog fakulteta u Splitu 45, 3/2008, str. 465–486; Stevanović, I., Milošević, N., Neophodne pretpostavke za primenu Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica (Necessary presumptions for the implementation of the Juvenile Justice Act), u: Novo krivično zakonodavstvo: dileme i problemi u teoriji i praksi, (Dobrivoje Radovanović, ur.), Beograd: Institut za kriminološka i sociološka istraživanja i Viša škola unutrašnjih poslova, 2006, pp. 487–496.

<sup>47</sup> Notably, Article 156 of the Draft Act on Juvenile Offenders and Protection of Minors in Criminal Proceedings (2015) stipulates as follows: in case a victim/injured minor does not have an attorney in proceedings involving offenses against sexual freedom, human trafficking and trafficking a minor for adoption, the competent court may appoint an attorney *ex officio* from the ranks of lawyers who have acquired specialist knowledge in the field of children's rights, protection of minors in criminal law and criminal proceedings; the attorney may be appointed from the very first hearing, if the court considers it necessary for the purpose of protecting the personality of the minor victim and achieving the goal of criminal proceedings. If the legislator adopts the proposed legal solution, the child-victim should not necessarily have an attorney to represent him/her in the proceedings as the court will have the discretionary authority to decide on the issue of legal representation.

When it comes to providing legal assistance to children who participate in civil and administrative proceedings, the relevant provisions on legal representation are contained in the Family Act (2005)<sup>48</sup> and the Civil Procedure Act (2016)<sup>49</sup>.

Under the Family Act (FA), in judicial and administrative proceedings, the child is represented by his/her parents or guardian; only in the event of a conflict of interest there is a possibility that the guardianship authority<sup>50</sup> or the competent court may appoint the child's collision guardian. Namely, Article 265 FA stipulates that a child who has reached the age of 10, provided that he/she is capable of reasoning, has the right to request from the guardianship authority (either personally or through another person or institution) to appoint a collision guardian, or a temporary representative due to the existence of adverse interests between him/her and his/her legal representative (Article 265 par. 2 and par. 3 FA). In addition, Article 266 par. 2 FA stipulates that the court is obliged *ex officio* to appoint a temporary representative to the child if the court finds that the child has not been adequately represented in the proceedings<sup>51</sup>. The collision guardian appointed by the social welfare center may be any person who meets the legal requirements for obtaining the status of a guardian (Articles 126-128 FA), regardless of his/her qualifications and professional profiles; on the other hand, the court-awarded temporary guardian may only be appointed from the ranks of attorneys (Art. 79 CPA)<sup>52</sup>.

In addition to taking procedural actions, the child's collision guardian has specific tasks pertaining to the child's right to form and freely express his/her opinion (Article 267 FA); thus, he/she is obliged: 1) to ensure that the child duly receives all necessary information; 2) to provide the child with necessary explanations concerning the possible consequences of actions he/she undertakes; 3) to communicate the child's opinion to the court if the child has not personally and directly<sup>53</sup> expressed his/her opinion before the competent authorities<sup>54</sup>. Although the successful performance of these complex tasks requires extensive subject-specific knowledge and skills, as well as understanding of the concept of children's rights, this Act does not prescribe any special requirements that child representatives are expected to meet in terms of their professional competences.

The provision of free legal aid in civil and administrative proceedings is not adequately regulated, nor is there a comprehensive well-organized system of providing free legal aid. Back in 2010, the Serbian Government adopted the Strategy for the Development of Free

<sup>48</sup> Porodični zakon iz 2005 (Family Act, 2005; FA), "Sl. glasnik RS", 18/2005, 72/2011 - dr. zakon i 6/2015.

<sup>49</sup> Zakon o parničnom postupku iz 2016 (Civil Procedure Act, 2016; CPA), "Sl. glasnik RS", br. 72/2011, 49/2013 - odluka US, 74/2013 - odluka US i 55/2014.

<sup>50</sup> Under Article 12 FA, the activities of the guardianship authority are performed by a social welfare center.

<sup>51</sup> For more, see: Petrušić, N. Zastupanje deteta u parnici (Legal Representation of the Child in Lawsuits), Pravni život, Tematski broj, Pravo i humana budućnost, Beograd, Udruženje pravika Srbije, 2006, br. 10, tom 2 (2006), pp. 169-192; Petrović, M., Stavenović, I., Jović, S., Veljković, L., Radulović, S., Kako do pravosuđa po meri deteta Položaj deteta u građanskim sudskim postupcima u Republici Srbiji – poštovanje i ostvarivanje prava na participaciju i najbolje interese deteta u sudskim postupcima (Towards Child-friendly justice: The position of children in civil court proceedings in the Republic of Serbia – observance and exercise of the right to participation and the best interest of the child in judicial proceedings), Beograd: Centar za prava deteta, 2015, pp. 15-21.

<sup>52</sup> Article 79 Civil Procedure Act, applicable on the merits of each case.

<sup>53</sup> Under Article 65 par. 4 FA, a child is entitled to personally and directly express his/her opinion in judicial and administrative proceeding before competent authorities only if the child has reached the age of 10.

<sup>54</sup> In case a collision guardian or a temporary representative of the child has not been appointed, the court is obliged to perform all these duties (Art. 266 par.3 FA). For a detailed elaboration on exercising the child's right to freedom of expression, see: Petrušić, N. Pravo deteta na slobodno izražavanje mišljenja u novom porodičnom pravu Republike Srbije (The Right of the Child to Freedom of Expression in the new Family Act of the Republic of Serbia), u: Novine u porodičnom zakonodavstvu, Niš, Pravni fakultet, 2006, pp. 99-118.

Legal Aid in the Republic of Serbia<sup>55</sup> that envisaged the adoption of the Free Legal Aid Act, which has not been enacted yet. The Local Self-Government Act<sup>56</sup> provides that municipalities shall organize legal aid service for citizens, whereas the Advocacy Act<sup>57</sup> stipulates that the bar associations may organize and provide free legal assistance to citizens on the territory of municipal courts (Article 73 of the Advocacy Act). In addition, the Civil Procedure Act envisages that, upon a request of a party in litigation proceedings, the court may award free (*pro bono*) representation to a litigant who has been exempt from paying the litigation costs due to his/her poor financial standing, provide that it is necessary for the protection of the litigant's rights, or if it is prescribed by a special legislative act (Article 170 CPA). Consequently, a child may be awarded a court-appointed free representation (*pro bono* counsel) only if the child has the formal status of a party to the proceedings, and provided that the prior request for exemption from paying the costs of litigation proceedings has been approved.

## 5. CONCLUSION

Child-friendly legal aid is the key component of child-friendly justice. Equal access to justice and effective protection of children's rights in civil and administrative proceedings cannot be accomplished without establishing a functional and sustainable system of child-friendly legal aid, which will ensure full observance and effective implementation of the rights of the child to the highest level possible, while primarily considering the best interest of the child.

Scientific studies have shown that Serbia still has not established an adequate legal framework for the provision of legal assistance to children in civil and administrative proceedings. There are numerous obstacles that hinder children's access to legal assistance, and there is no standardized and consistent legislation on the specific requirements to be met by the providers of legal assistance and children as the users of legal aid. There is also considerable uncertainty regarding the scope and content of legal assistance that a child is entitled to receive, including the right to free legal aid. Serbia has not established the quality control system for assessing the quality of legal assistance provided to children, nor are there adequate standards on the activities of providers of legal aid services. It is highly disconcerting that legal aid services may be provided by persons without adequate knowledge in the field of children's rights, professional competences and adequate training in communication with children, which are the basic prerequisites for instituting legal aid that is adjusted to the rights, interests and needs of the child.

Taking into account the current reform of the judiciary in Serbia, as well as the ongoing activities on establishing an effective and sustainable system of free legal aid, it may be an opportunity to implement the standards and principles embodied in the concept of child-friendly legal aid. This primarily implies providing relevant conditions that would enable every single child to have effective access to quality legal assistance, including free legal aid. The process of providing legal assistance should be organized so as to ensure affordable legal aid that fully protects the rights of the child and is adjusted

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<sup>55</sup> Strategija razvoja sistema besplatne pravne pomoći u Republici Srbiji (The Strategy for the Development of Free Legal Aid in the Republic of Serbia), "Sl. glasnik RS", br. 74/2010.

<sup>56</sup> Zakon o lokalnoj samoupravi (The Local Self-Government Act), "Sl. glasnik RS", br. 129/07, čl. 20. tačka 31.

<sup>57</sup> Zakon o advokaturi (The Advocacy Act), Sl. glasnik RS", br. 31/2011 i 24/2012 - odluka US.

to the child's personality, developmental capacities and specific circumstances in the case at issue. In order to attain this ultimate goal, it is essential to ensure that the providers of legal aid to child-clients are competent professionals specializing in this delicate and complex activity, and fully independent in exercising their professional duties.

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## **PRAVNA POMOĆ PRILAGOĐENA SPECIFIČNIM POTREBAMA DECE U GRAĐANSKOM POSTUPKU: MEĐUNARODNI STANDARDI I STANJE U REPUBLICI SRBIJI**

*U skladu sa savremenim konceptom prava deteta, koji je normativno uobličen Konvencijom UN o pravima deteta, dete je autonomni pravni subjekat, titular svih ljudskih prava i sloboda, koje ostvaruje u skladu sa svojom zrelošću i razvojnim sposobnostima. Saglasno tome, detetu pripada i pravo na pravično suđenje, u svim njegovim aspektima. Kao i odrasli, i deca dolaze u kontakt sa pravosudnom sistemom različitim povodima i na različite načine. Suočena sa pravosudnim sistemom, deca su "bačena" u jedan zastrašujući svet odraslih koji ne mogu da razumeju. Zato je za ostvarivanje prava dece na pravično suđenje neophodno prilagođavanje pravosuđa specifičnim potrebama deteta (child-friendly legal justice). Jedna od ključnih komponenti pravosuđa prilagođenog potrebama deteta jeste pravo dece da pod jednakim uslovima pristupe pravdi i efektivno učestvuju u sudskom postupku, što podrazumeva pravo dece na kvalitetnu i deci prilagođenu pravnu pomoć (child-friendly legal aid).*

*Na međunarodnom nivou proces standardizacije pravosuđa prilagođenog potrebama dece uglavnom je zaokružen. U uspostavljanju standarda i principa značajniju ulogu ima Savet Evrope, u čijem su okrilju nastale Smernice Komiteta Ministara Savet Evrope koje se odnose na pravosuđe prilagođenog potrebama deteta (2010). Smernice pružaju korisne putokaze u prilagođavanju pravosuđa pravima, potrebama i interesima dece, a njihov cilj je da se obezbedi da u svakom postupku budu u potpunosti poštovana sva prava deteta, uključujući i pravo deteta da bude informisano, da ima pravnog zastupnika, da aktivno učestvuje u postupku, kao i da se dužna pažnja posveti nivou njegove zrelosti i sposobnosti da razume postupak.*

*U proteklom periodu u Srbiji se proces prilagođavanja pravosuđa deci uglavnom odnosio na krivično pravosuđe, tako da se u ovoj oblasti najdalje odmaklo u uspostavljanju pravne pomoći prilagodjene specifičnim potrebama dece. Kada je reč o pružanju pravne pomoći deci koja učestvuju u građanskim i administrativnim postupcima, još uvek nije uspostavljen adekvatan pravni okvir. Postoje samo propisi o zastupanju dece sadržani u Porodičnom zakonu iz 2005., kao i opšti propisi Zakona o parničnom postupku kojima je regulisano postavljanje besplatnog punomoćnika strankama u postupku. Na nivou države još uvek nije uspostavljen celovit, funkcionalan i održiv sistem besplatne pravne pomoći, što otežava pristup pravdi i ostvarivanje prava na pravično suđenje i deci i odraslima. Jednak pristup pravdi i delotvorna zaštita prava deteta u građanskim i administrativnim postupcima nije moguće ostvariti bez uspostavljanja funkcionalnog i održivog sistema pravne pomoći prilagodjene specifičnim potrebama dece, koji će obezbediti poštovanje i efikasno ostvarivanje svih prava deteta na najvećem mogućem nivou, uz poštovanje prava deteta da njegovi interesi budu od prvenstvenog značaja.*

**Ključne reči:** *prava deteta, pravo na pravično suđenje, pravna pomoć prilagođena deci, građanski postupak.*

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