| Chapter 7 |

Child-Friendly Justice – Serbian Perspective

Marko S. Knežević

ABSTRACT

The UN Convention on the Rights of the Child (CRC) was ratified by Serbia in 1991, but the specific rights of children to participate in court proceedings were more clearly defined with the Family Act of 2005. Serbian law establishes a strong foundation for child-friendly justice, aligning closely with CRC obligations. Children capable of forming opinions have the right to express them in court proceedings relevant to them, with no age threshold for such fundamental judicial participation right. Court accessibility in all procedures is governed by the principle of the child's best interests. Special regulations exist particularly for criminal cases involving juvenile offenders and minors who are victims, prioritising children's interests. Nonetheless, challenges remain in effectively implementing these normative frameworks to achieve a truly child-friendly justice system.

KEYWORDS

participation rights of children in Serbian law, child's right to be heard in Serbian court proceedings, access to the court proceedings in Serbian Law, child-friendly justice in Serbia

1. Legal Framework of Participation Rights of Children in Serbian Law

When discussing the legal framework of participation rights of children in Serbian law, it is foremost necessary to outline the Serbian legal system. It is described as a typical continental legal system in which legal sources are primarily laws in a functional, non-technical sense, whereas case law is not. The nomenclature of legal sources implies that the Constitution (*Serbian: Ustav*) is the highest legal act, and all other legal sources, including international treaties, as well as laws and bylaws, have to be in accordance with the Constitution.

The current Constitution was adopted in 2006[1] and amended in 2022.[2] The Constitution does not explicitly mention the participation rights of children; instead, it

1 Službeni glasnik Republike Srbije [*Official gazette of Republic of Serbia*], No. 98/2006.
2 Službeni glasnik Republike Srbije [*Official gazette of Republic of Serbia*], No. 16/2022.

Marko S. Knežević (2025) 'Child-Friendly Justice – Serbian Perspective' in Benyusz, M., Zombory, K., (eds.) *Child-Friendly Justice. The Participation and the Rights of the Child in Court Proceedings From a Central European Comparative Perspective.* Miskolc–Budapest: Central European Academic Publishing, pp. 141–156. https://doi.org/10.71009/2025.mbkz.cfj_7.

envisages other rights of the child,[3] emphasising that children enjoy human rights according to their age and mental maturity.[4] However, the Constitution also stipulates that human and minority rights, guaranteed by generally accepted principles of international law and confirmed by international treaties, are directly applicable through the Constitution.[5]

Since the UN Convention on the Rights of the Child (CRC) was ratified in 1991, there is no doubt that participation rights, as shaped in the CRC, hold constitutional status. Additionally, the Constitution includes a rule for interpreting human rights norms, stating that such norms shall be interpreted to the benefit of promoting the values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation.[6]

The specific regulation of the participation rights of children in court proceedings is outlined in various acts. From the perspective of Article 12 of the CRC, the Family Act (*Serbian: Porodični zakon*; hereinafter FA), enacted in 2005,[7] is undoubtedly the most crucial, aiming for the complete implementation of obligations arising from the CRC. For the first time, the right of children to be heard in court proceedings, including the ability to express their own opinions, has been officially established, even if the regulation is not flawless from a nomotehnical perspective. In addition to the FA, the position of the child in court proceedings is sporadically addressed in the codifications of procedural law – in the Criminal Procedure Code (*Serbian: Zakonik o krivičnom postupku*),[8] the Civil Procedure Code (*Serbian: Zakon o parničnom postupku*),[9] and the Non-litigious Procedure Code (*Serbian: Zakon o vanparničnom postupku*).[10] However, concerning the participation rights of children in criminal proceedings, the Law on Juvenile Criminal Offenders and the Criminal Legal Protection of Juveniles (*Serbian: Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica*; hereinafter: Law on Juveniles), enacted in 2005,[11] is much more significant. It not only governs criminal court proceedings for juvenile offenders but also addresses the unique status of juvenile victims of various crimes.

3 E.g. right to personal name, entry in the registry of births, the right to learn about his/her ancestry, the right to preserve his/her own identity, protection from every kind of exploitation or abuse, equality between children born out of wedlock and children born within, Art. 64 paras. 2–4 of the Constitution.

4 Ibid., Art. 64 para. 1.

5 Ibid., Art. 18 para. 2.

6 Ibid., Art. 18 para. 3.

7 Službeni glasnik Republike Srbije [*Official gazette of Republic of Serbia*], No. 18/2005, with amendments.

8 Službeni glasnik Republike Srbije [*Official gazette of Republic of Serbia*], No. 72/2011, with amendments.

9 Ibid.

10 Službeni glasnik Socialist Republike Srbije [*Official gazette of Socialist Republic of Serbia*], No. 25/1982, with amendments.

11 Službeni glasnik Republike Srbije [*Official gazette of Republic of Serbia*], No. 85/2005.

2. Right to Be Heard in Court Proceedings: Reception of Article 12 CRC

2.1. General Overview

Article 65 of the FA enshrines and partially clarifies the child's right to be heard, as outlined in Article 12 of the CRC. While the order of paragraphs may appear somewhat random, it addresses key aspects of the right to express opinions, particularly in court proceedings. It discusses how to ensure conditions for exercising this right, the process for determining the child's opinion, and the eventual impact of that opinion on decision-making. Subsequent provisions further elaborate on these foundational principles.

The right to be heard, as will be demonstrated, is enjoyed by every child capable of forming his/her opinion.[12] Hence, Serbian law does not recognise an age threshold, consistently embracing the concept of Article 12 of the CRC in this regard. Although referred to by a different name in Serbian, the right to be heard fundamentally represents a subjective right in the context of court proceedings that is not merely formal but also substantive. It is not enough to allow a child to express their opinion; the court is required to consider that opinion.[13] On the other hand, the right to be heard is distinct from a child testifying as a witness in court. When a child expresses his/her opinion, they are not providing testimony about facts relevant to the case; rather, they are sharing their personal perspective on their situation.[14] Procedurally, this involves an independent position that has not yet been adequately explored in theory.[15]

2.2. Scope of Application

While Article 65 of the FA is designed to encompass all court proceedings, it appears to limit the application of the right to be heard in other provisions. Specifically, it states that the court must provide essential information to a child, allow them to be heard, and enable them to express their opinion when the child is a party to the proceedings.[16] This implies, by contrast (*e contrario*), that the court has no such obligation when the child is not a party, even in cases that affect the child's interests, such as parental rights and marital disputes. However, both case law and scholarly literature agree that the court must ensure the effective participation of the child, even if they are not a party to the proceedings. This obligation stems not only from the fundamental provision of Article 65 but is also justified from a teleological perspective[17]

12 Art. 65, para. 1 of the FA.
13 Ibid., Art. 65, para. 3.
14 Ponjavić, 2012, p. 48; Novaković, 2012, p. 192 fn. 33.
15 Ćorac, 2014, pp. 327–328.
16 Art. 266, para. 3 of the FA.
17 The aim of Art. 65 of the FA was to fully implement Art. 12 of the CRC; cf. Ponjavić and Vlašković, 2022, p. 258. On the other hand, Art. 12 of the CRC does not limit right of the child to be heard in court proceedings in such manner, that only child who is party to the court proceeding is entitled.

and is logically necessary. In any situation where decisions affect a child's rights, the substantive legal standard is the child's best interests. Established case law indicates that a child's "wishes and feelings in relation to age and maturity" are important for determining the best interests of child,[18] and this cannot be assessed without hearing the child's perspective.

Case law indicates that the obligation to uphold the child's right to be heard extends beyond legal proceedings that directly determine the child's rights or interests. Even in enforcement proceedings concerning the child's rights, it is essential to allow the child to express their opinion prior to any enforcement actions, as per general rules. For instance, when enforcing a decision about maintaining personal contact between a non-custodial parent and the child, the child's voice must be considered before any enforcement measures are implemented.[19]

2.3. Prerequisites For the Child's Right to Be Heard

According to Article 65, para. 1 FA, a child capable of forming his/her opinion has the right to freely express that opinion. On the other hand, according to Article 65, para 4 FA, a child who has reached the age of 10 can freely and directly express his/her opinion in any court or administrative proceeding deciding on his/her rights. When these two provisions are examined systematically, they reveal a somewhat conflicting relationship. Paragraph 1 has a general nature, applying to all instances of a child's expression without age restrictions. In contrast, paragraph 4 appears to be a specific rule applicable to court and administrative proceedings, which includes an age limit. This interpretation suggests that a child under the age of 10 does not have the right to express their opinion in court or administrative proceedings concerning their rights, regardless of their ability to form an opinion. This viewpoint is supported by some legal scholars[20] and certain appellate decisions.[21]

Conversely, one could argue that the relationship between the mentioned provisions is not exclusive but rather complementary, allowing for specific differentiation. For children who have reached the age of 10, there is a legal presumption of their ability to form an opinion, although this presumption is rebuttable. For those under the age of 10, it is essential to evaluate their capacity to form an opinion in each case. This perspective is widely accepted in legal theory[22] and is supported by the case law of the supreme instance. Supreme Court of Serbia[23] stated already back in 2007, only two years after the enactment of the FA, that '...right of the child to freely express

18 Judgement of Supreme Court of Cassation, 1. 2. 2023, No. Rev 1201/23; Judgement of Supreme Court of Cassation, 28. 9. 2022, No. Rev 11946/22.

19 Judgement of Higher Court Novi Sad, 20. 8. 2019, No. Gži 306/19.

20 Petrušić, 2007; Jović Prlainović, 2021, pp. 51–52.

21 E.g. Judgement of Appellate Court Kragujevac, 11. 5. 2011, No. Gž 212/11.

22 Ponjavić, 2012, pp. 39–40; Ponjavić and Vlašković, 2022, pp. 258–259; Draškić, 2022, p. 191–192; Ćorac, 2014, pp. 329–330; cf. Novaković, 2012, p. 193.

23 N.B.: Serbian highest court has changed it's names in last two decades: until 2010 it was named "Supreme Court of Serbia"; from 2010 until 2022, it was named "Supreme Court of Cassation"; from 2022 it is named "Supreme Court".

opinion is limited by his capability of forming own opinion, and accordingly no age threshold for exercising such right is prescribed by law'.[24]

There are at least two reasons to support this doctrine. First, from the historical legislator's perspective, the purpose of Article 65 of the FA was to implement Article 12 of the CRC, which notably does not set any age limit on a child's right to express an opinion. Second, from an objective-teleological viewpoint, the right to a child's expression of opinion is intended to uphold the dignity of their personality and ensure decisions are made in their best interest, which is independent of age.

Regarding the undefined legal concept of "capacity to form an opinion", case law has yet to clarify this condition for a child's right to express an opinion. Meanwhile, legal theory has made efforts to define it, primarily by referencing foreign literature and the opinions of the Committee on the Rights of the Child. In this context, a narrow interpretation – one that limits the capacity to two cumulative elements: the intellectual ability to understand one's actions and the ability to freely decide regarding those actions – has been rejected. Such a definition would significantly reduce the number of children recognised as having the right to express themselves. In line with the Committee's position, there is support for a broader understanding of the capacity to form an opinion in Serbian law, which is viewed as the competence to develop and articulate one's will, regardless of whether that will is free, reasonable, or meaningful.[25]

The determination of whether a child is capable of forming an opinion ultimately rests with the court, and this assessment must occur prior to the child's hearing. However, the court typically lacks the expertise necessary for this evaluation. As a result, assessments are carried out by professionals such as psychologists and social workers.[26] A hearing can only take place if the expert provides a positive assessment. Contrary to some authors,[27] the evaluation of a child's capacity to form an opinion is not a matter of judicial discretion; any negative determination must be justified and can be contested on that basis.

The child's right to be heard is, however, constrained by a careful balance between the principles of participation and the best interests of the child. The court should refrain from hearing a child if doing so would clearly contradict their best interests.[28] For example, this might occur in situations where the child is facing a loyalty conflict, and there is a valid concern that expressing an opinion could harm their relationship with one parent or negatively affect his/her mental health.[29]

24 Decision of Supreme Court of Serbia, 19. 4. 2007, No. Rev 123/07.
25 Cf. Ponjavić, 2012, pp. 38–39.
26 Cf. Judgement of Supreme Court of Cassation, 4. 6. 2020, No. Rev 2263/20; Judgement of Supreme Court of Cassation, 13. 1. 2022, No. Rev 8643/21.
27 Ponjavić, 2012, pp. 40, 42, 46.
28 Art. 266 para. 3 of the FA.
29 Cf. Appellate Court of Niš, 17. 11. 2022, No. Gž2 427/22.

2.4. Informative Duties

To ensure the effective right to be heard, Article 65, para 2 of the FA stipulates that a child has the right to receive timely information necessary for forming an opinion. This obligation is further detailed in the responsibilities of the court and the child's representative (parent or temporary guardian) to make sure the child receives this information.[30]

2.5. Impact of the Child's Opinion

The child's right to express his own opinion does not imply a subjective right, meaning that the decision in question must be based on the child's opinion. The court's duty is to give due weight to the child's opinion,[31] which means that it must be taken into account when making a specific decision. Whether the decision will align with the child's opinion depends on whether such alignment is in the best interests of the child.[32] In this regard, Serbian law consistently implements Article 12, para. 1 of the CRC, ensuring that the due weight to the child's opinion shall be given in accordance with the age and maturity of the child.[33]

3. Access to Court Proceedings

3.1. Civil Proceedings

When discussing access to civil court proceedings, it is necessary to start from a doctrinal framework that influences the systematisation of the issues. In this sense, one question is who can be a party in the proceedings in general. Another question involves participation in the proceedings through the performance of procedural acts, which includes issues related to the representation of parties. Additionally, there are other aspects that affect a child's access to the court, such as issues related to legal aid.

3.1.1. Party Capacity of the Child

In Serbian procedural law, party capacity (*German: Parteifähigkeit*) refers to the ability to be a party in a legal proceeding, encompassing the capacity to hold procedural rights and obligations.[34] Every natural person has party capacity.[35] Therefore, every child – regardless of age, maturity, or other characteristics – holds party capacity and can participate as either a plaintiff or a defendant.

30 Arts. 265–266 of the FA.
31 Art. 65 para. 3 of the FA.
32 Judgement of Supreme Court of Cassation, 31. 3. 2021, No. Rev 1334/21; Judgement of Supreme Court of Cassation, 13. 1. 2022, No. Rev 8643/21.
33 Art. 65 para. 3 *in fine* of the FA; cf. Judgement of Supreme Court of Cassation, 4. 6. 2020, No. Rev 2263/20.
34 In general, see Poznić and Rakić-Vodinelić, 2015, pp. 196–198; Jakšić, 2017, pp. 254–257.
35 Art. 74 para. 1 of Civil Procedure Code.

3.1.2. Litigation Capacity and Representation of the Child

In Serbian law, litigation capacity (*German: Prozessfähigkeit*) implies the ability to independently undertake procedural actions.[36] If a party lacks litigation capacity, he/she must be represented by a legal representative. In this context, the regulation of litigation capacity is based on ensuring the effective right to be heard as a constitutional category.[37]

Litigation capacity is functional equivalent to legal capacity (*German: Geschäftsfähigkeit*) in substantive law and is closely linked to it. A party is deemed to have litigation capacity when they possess full legal capacity,[38] which is generally acquired at the age of 18.[39] However, under certain circumstances, children can also obtain full legal capacity and, consequently, litigation capacity. For example, a minor who is 16 years old may enter into marriage with judicial approval, thus gaining full legal and litigation capacity.[40] Additionally, a court may grant full legal capacity to a 16-year-old minor who has become a parent and has demonstrated the necessary physical and mental maturity to independently manage their own person, rights, and interests.[41]

However, even children without full legal capacity can have litigation capability "within the limits of their legal capacity".[42] The prevailing interpretation of this concept pertains to disputes involving legal transactions for which the party has legal capacity.[43] For instance, a minor who is at least 15 years old can establish an employment relationship and manage their earnings independently. This means that in disputes related to employment or income, a minor has litigation capacity.[44] Additionally, in certain non-contentious proceedings, children can independently undertake procedural actions, including initiating legal proceedings. This applies to cases seeking permission for a child older than 16 to marry; in such cases, the child is fully procedurally capable.[45] The same holds true for the process of recognising legal capacity for a child over 16 who has become a parent.

A party who is litigation-incapable cannot participate in court proceedings independently and must be represented by a legal guardian, typically their parents, in the case of children. Given the potential for a conflict of interest between the child and their legal guardian, the Civil Procedure Code allows for the appointment of a temporary representative for a litigation-incapable party.[46] Additionally, the FA provides further mechanisms to ensure the child's effective right to be heard and access to

36 Art. 75 para. 1 of Civil Procedure Code; in general, see: Poznić and Rakić-Vodinelić, 2015, pp. 199–202; Jakšić, 2017, pp. 257–261.
37 Cf. Knežević, 2023, p. 420.
38 Art. 75 para. 1 of Civil Procedure Code.
39 Art. 37 para. 2 of Constitution; Art. 11 para. 1 of the FA.
40 Art. 11 para. 2 of the FA.
41 Ibid., Art. 11 para. 3.
42 Art. 75 para. 3 of Civil Procedure Code.
43 Jakšić, 2017, p. 259; Stanković and Boranijašević, 2023, p. 132; cf. Poznić, 2009, p. 189.
44 Jakšić, 2017, p. 259.
45 Stanković and Boranijašević, 2023, p. 682.
46 Art. 81 para. 2 point 2 of Civil Procedure Code.

the court. Consequently, the court must assess throughout the proceedings whether the child is adequately represented, and if not, it shall appoint a temporary representative.[47] While the provision does not specify who this representative should be, it is generally understood, in line with civil procedure rules, that it must be a lawyer. Furthermore, to facilitate the child's participation rights as outlined in Article 12 of the CRC and Article 266 of the FA, the temporary representative is tasked with ensuring that the child receives necessary information in a timely manner, explaining the potential consequences of actions taken, and conveying the child's opinions to the court if the child has not expressed them directly.[48]

As a fundamental aspect of the right to access the court, parties in all civil proceedings have the right to be represented by counsel of their choice, known as "voluntary representation". Granting a procedural power of attorney is considered a procedural act, meaning only a party with litigation capacity can appoint counsel. For parties without such capacity, their legal guardian has the authority to appoint counsel. In the context of children, this means that if a child is litigation-capable, they can appoint their own counsel. Conversely, if the child is litigation-incapable, the legal guardian appoints counsel on their behalf. Nevertheless, in both cases, the counsel represents the child, not the legal guardian.

Under general rules, a counsel in civil matters cannot be just anyone; representation is limited to a specific group of individuals.[49] In addition to lawyers, individuals can be represented by blood relatives in the direct line, siblings, and (non)marital partners through a power of attorney.[50] Furthermore, in labour disputes, an employee may be represented by a union representative who has passed the state judicial exam.[51] Given that a child over 15 can establish an employment relationship, such a union representative can represent the child as a party in a labour dispute under a power of attorney.

Serbian law recognises what is known as mandatory representation by counsel, theoretically defined in terms of postulational capacity (*German: Postulationsfähigkeit*). Even when a party is legally capable of litigation, there are instances where they cannot independently undertake legal actions and must do so through a lawyer's representation. In other words, "litigation pro se" is not permitted. According to current law, parties lack postulational capacity in all proceedings involving so-called extraordinary legal remedies. Thus, even if a child has litigation capacity in labour disputes, they cannot directly file a second appeal as an extraordinary legal remedy. Instead, this must be done on their behalf by a lawyer.

In any case, Serbian law does not envisage any specialisation of lawyers in all civil proceedings, including family law disputes. Every lawyer is entitled to act as a counsel.

47 Art. 266 para 2 of the FA.
48 Ibid., Art. 267 of the FA.
49 For further reading, Knežević, 2023.
50 Art. 85 para. 2 of Civil Procedure Code.
51 Ibid., Art. 85 para. 3.

3.1.3. Free Legal Aid

A key factor in ensuring effective access to justice in civil proceedings is the regulation of free legal aid. Although Serbian law does not generally require legal representation by attorneys, the involvement of a lawyer significantly impacts not only the outcome of proceedings but also the initiation of legal actions. In Serbia, the Law on Free Legal Aid (*Serbian: Zakon o besplatnoj pravnoj pomoći*) was enacted in 2018,[52] granting privileged status to children regarding the assignment of a free attorney. Unlike the general framework, which ties the assignment of a free attorney to the financial circumstances of the party, free legal aid is available to a child when their rights, obligations, or interests are determined in court.[53] However, this provision applies only if the child is a citizen of the Republic of Serbia, stateless, a foreign national with permanent residence in Serbia, or covered by a ratified international treaty.[54]

3.2. Administrative Court Proceedings

A key characteristic of administrative disputes in Serbia is the minimal regulation of the procedure itself. Any issues that are not explicitly addressed are resolved through the analogous application of the Civil Procedure Code.[55] With this in mind, the principles regarding access to civil court proceedings also apply *mutatis mutandis* to administrative court proceedings.

3.3. Criminal Proceedings

The issue of children's access to the criminal justice system can be fundamentally analysed from two perspectives: the child as a defendant and the child as a victim of a crime. The criminal procedure for minors, along with the special protections for children who are victims of various offences, is governed by the Law on Juveniles.

3.3.1. Defendant's Perspective

A child can only be in the role of the accused for a criminal offence if they were at least 14 years old at the time of committing the alleged act, as the age threshold for criminal responsibility under Serbian law is 14 years.[56]

In criminal proceedings involving juveniles, the general guarantees applicable to the accused in regular criminal cases primarily apply. However, given the unique circumstances of the accused's status and the objectives of juvenile criminal law, their position – and the related issues concerning access to the court – differ.[57] There are additional mechanisms designed to facilitate their access to the court in various ways. It can be stated that the fundamental principle guiding criminal proceedings against

52 Službeni glasnik Republike Srbije [*Official gazette of Republic of Serbia*], No. 87/2018.
53 Art. 4 para. 3, point 1 of Law on Free Legal Aid.
54 Ibid., Art. 4 para. 3.
55 Art. 74 of Administrative Dispute Code.
56 In general, see: Škulić, 2020, pp. 23–45.
57 Cf. Lukić and Samardžić, 2012, p. 356.

juveniles is procedural protectionism, which aligns with the nature and purpose of these proceedings.[58]

Like any accused individual, juveniles have the full right to defence. They are not merely objects of the proceedings; they have access to all defence procedural actions. For instance, they can directly question witnesses and experts, as well as file legal remedies. Additionally, in juvenile criminal proceedings – consistent with the goals of juvenile criminal law – there is a requirement for mandatory defence starting from the first hearing. Whether a juvenile has defence counsel is not at their discretion. While the juvenile has the right to appoint their own defence counsel, this can also be done by their legal guardian or relative.[59] If no appointment is made, a defence counsel will be appointed by official duty.[60]

According to Article 49, para 3 of the Law on Juveniles, a juvenile's defence counsel must be a lawyer with specialised knowledge in children's rights and juvenile delinquency. There is some debate regarding whether this requirement applies only to defence counsel appointed by official duty or also to those chosen by the juvenile. The prevailing view in legal literature is that the specialisation requirement applies in all cases, even when the juvenile appoints their own counsel.[61] Conversely, another perspective argues that the specialisation requirement pertains only to counsel appointed by official duty, as imposing it otherwise would violate constitutional rights, which, similar to the ECHR, state that the accused has the right to freely choose their defence counsel.[62] However, this interpretation of constitutional and convention norms is countered by the ECHR's view, which holds that the right to freely choose a defender is not absolute and that a requirement for a lawyer's specialisation is justifiable when the specific nature of the proceeding justifies it.[63]

The principle of protectionism is evident in several ways. For instance, unlike adult criminal proceedings, trials *in absentia* are categorically prohibited for juveniles.[64] Additionally, juvenile offenders benefit from easier access to the court due to different rules regarding territorial jurisdiction. According to Article 45 of the Law on Juveniles, the court in the juvenile's place of residence is generally deemed competent. This principle is justified not only by the need to facilitate a more straightforward examination of the juvenile's circumstances and living conditions but also by the need to protect the juvenile's identity.[65] Such regulation of territorial jurisdiction aligns with the principle of the best interests of the child.

58 Škulić, 2020, pp. 181–182.
59 Art. 49 para. 2 of Law on Juveniles; cf. Škulić, 2020, p. 185.
60 Art. 49 para. 2 of Law on Juveniles.
61 Lukić and Samardžić, 2012, p. 358; Stojanović-Milošević, 2012, p. 86; Banić, 2012, pp. 117–118.
62 Škulić, 2020, pp. 185–186.
63 See, for instance: ECtHR, *Meftah and Others v. France* [GC], Nos. 32911/96, 35237/97, and 34595/97, 26 July 2002, para 47.
64 Art. 48 para. 1 of Law on Juveniles.
65 Cf. Škulić, 2020, pp. 158–159.

Moreover, juvenile offenders are typically summoned through their parents or legal representatives. If they need to be brought to trial forcibly, police officers must be in civilian clothing.[66] Lastly, as part of a protectionist approach, a judge may order the exclusion of certain individuals from the juvenile's hearing.[67] This measure aims to protect the juvenile, primarily in psychological terms, as their presence could be uncomfortable during discussions of sensitive topics, such as their psychological status, intelligence, or emotional maturity.[68]

3.3.2. Victim's Perspective

The Law on Juveniles grants a special status to minors who are victims of various criminal offences,[69] stipulating that the victim must be a minor at the time of the trial. Regarding access to the court, the provisions of this law are closely linked to the requirement for legal representation. A minor victim must have counsel from the first hearing of the defendant. If the minor does not have a lawyer, the court president will appoint one who has specialised knowledge in children's rights and the criminal legal protection of minors.[70]

The literature emphasises that the presence of such counsel is crucial for helping the minor victim understand the criminal proceedings, individual procedural actions, rights, and responsibilities; the counsel should provide support to ensure credible testimony.[71] However, this perspective should be nuanced, as the primary responsibility for preparing the minor victim for testimony lies with guardianship authorities, educators, psychologists, and other professionals[72].

4. Enforcement of Child-Friendly Justice

4.1. Special Regulations for Hearing a Minor Child

Child-friendly justice is closely tied to how the hearing of a child in court proceedings is structured. Whether the child is being heard as a witness, expressing their opinion, accused of a crime, or recognised as a victim, it is crucial to implement mechanisms that consider their needs. In Serbian law, the regulation of child hearings follows a fragmented approach: different laws govern individual cases, and the concepts involved often differ significantly. Furthermore, many cases involving the hearing of children lack explicit provisions.

66 Art. 54 para. 2 of Law on Juveniles.
67 Ibid., Art. 65 para. 2.
68 Škulić, 2022, p. 248.
69 Those criminal offenses are enlisted in Art. 150 para. 1 of Law on Juveniles.
70 Ibid., Art. 154 para. 2.
71 Miljuš, 2022, p. 96.
72 See: Section 4.1.3.

4.1.1. Civil Proceedings

When considering the hearing of a child in civil court proceedings, two distinct scenarios must be addressed.

In the first scenario, the child is heard to express their opinion. The FA does not clearly specify whether the child is to be heard directly by the judge or through a psychologist, educator, or other expert. Article 65, para 5 of the FA indicates that the court should determine the child's opinion in collaboration with a psychologist or the guardianship authority and in the presence of a person chosen by the child.[73] In practice, this provision is typically interpreted to mean that the court relies on experts to assess the child's capacity to form their own opinion before conducting the hearing. Usually, these professionals carry out the hearing, allowing the child to select who will be present. It is recommended that the hearing be conducted in a child-friendly manner, particularly regarding the language used.

In the second scenario, the child serves as a witness. The Civil Procedure Code lacks specific provisions for children called to testify. The general provision states that anyone capable of providing information about relevant facts can serve as a witness,[74] suggesting that legal age is not a requirement. However, it is advisable to adopt a more innovative approach, where the judge conducts a preliminary discussion with the child to introduce them to the judicial process and explain all relevant circumstances. Additionally, the judge is required to conduct the hearing in a way that is appropriate for the child's age and maturity, using suitable language for communication.

4.1.2. Administrative Court Proceedings

There is no specific regulation for hearing a child in administrative court proceedings, and the Administrative Dispute Code does not include any provisions regarding the hearing of parties or witnesses. Instead, these matters are governed by the analogous application of the civil procedure rules.

4.1.3. Criminal Proceedings

Hearing a child in criminal proceedings can occur in several contexts: first, when the child is a juvenile accused of a criminal offence; second, when the child is a victim of certain crimes; and third, when the child serves as a witness in other criminal cases.

While the process for juveniles mirrors that of adult defendants, there are key differences in the focus of questioning. Adults are primarily interrogated about the specific circumstances of the alleged offence (*causa criminalis*), whereas juveniles are assessed regarding their maturity, personality, and living environment. Additionally, the methods of questioning are adapted to create a child-friendly atmosphere, which significantly differs from adult procedures.

73 According to the case law, it is the child's right to determine not only person as such, but to determine the very presence of such person, see: Judgement of Supreme Court of Cassation, 13. 1. 2022, No. Rev 8643/21.

74 Art. 244 para. 2 of Civil Procedure Code.

The Law on Juveniles, particularly Article 48, para. 2, emphasises the well-being and development of the juvenile, requiring all participants in the proceedings to exercise care during hearings. This includes considering the juvenile's maturity and individual characteristics while protecting their privacy to avoid any negative impact on their development. The questioning of a juvenile must utilise language appropriate for their age and maturity,[75] reflecting the principle of acting in the child's best interests.

If needed, the questioning can involve the assistance of professionals such as psychologists or educators.[76] Furthermore, the presence of the public prosecutor and defence counsel is mandatory during the juvenile's hearing; typically, a parent or guardian is also present to provide emotional support.[77] However, the judge has the discretion to exclude a parent or guardian if their presence is deemed contrary to the juvenile's best interests,[78] such as when sensitive family matters are being discussed, which could affect the credibility of the testimony.

The process for hearing minor victims of specific criminal offences is carefully regulated to prevent secondary victimisation.[79] Both the public prosecutor and judicial panel members must consider the victim's age, personality, education, and living conditions, aiming to avoid any negative impact on their well-being and development. The hearing should be conducted with the support of a psychologist, educator, or another qualified professional.[80]

Two key rules are particularly important: first, a minor victim is generally allowed to be questioned no more than twice;[81] second, the court can use video links for hearings, allowing the minor to participate from a separate room without the presence of the parties involved. Additionally, hearings may occur in the minor's home or at a social welfare centre.[82]

In cases where a child is called to testify as a witness, specific provisions are generally lacking. The court must assess, with expert assistance if necessary, whether the child is capable of testifying.[83] However, a child witness may be classified as particularly sensitive.[84] In such cases, their treatment largely aligns with the previously mentioned procedures; however, the child may not require legal counsel, nor is the presence of a psychologist or educator always necessary during the hearing.

75 Cf. Lukić and Samardžić, 2012, p. 357.
76 Art. 64 para. 4 of Law on Juveniles.
77 Lukić and Samardžić, 2012, p. 358.
78 Art. 65 para. 3 of Law on Juveniles.
79 For further reading Škulić, 2022, pp. 489–514.
80 Art. 152 para. 1 of Law on Juveniles.
81 Ibid., Art. 152 para. 2.
82 Art. 152 paras. 3–4 of Law on Juveniles; cf. Brkić, 2006, p. 443.
83 Art. 131 para. 2 of Criminal Procedure Code.
84 For further reading, see: Ilić, Majić, Beljanski and Trešnjev, 2018, pp. 368–369.

4.2. Specialisation of Judges

In many court proceedings, the law mandates a form of specialisation for judges. In criminal cases involving juvenile offenders, judges are required to have expertise in child law and the criminal protection of minors.[85] This requirement also extends to cases where minors are victims of specific crimes.[86] Judges must complete training organised by the Judicial Academy, which has evolved from a basic program to a more comprehensive curriculum aimed at effective ongoing professional development. Conversely, lay judges in juvenile cases do not receive specialised training; instead, they are selected from among teachers, caregivers, and other professionals experienced in working with children and youth.[87] In family law disputes, judges are also required to have specialised knowledge in child law,[88] with training organised by the Judicial Academy that spans six working days, followed by an assessment.[89]

4.3. Promotion of Child-Friendly Justice

The effectiveness of the child-friendly justice concept does not solely rely on the legal framework; it also requires essential conditions for consistent and coherent law application. Success depends on promoting the concept comprehensively, addressing both theoretical and practical aspects. While there has been a notable increase in scholarly interest in children's justice, empirical research on the functionality of the current Serbian model is particularly important. Unfortunately, this research reveals that legislative intentions often fall short, mainly due to courts neglecting legal obligations or lacking the necessary infrastructure. For example, even though hearings for juvenile victims or especially sensitive witnesses are meant to occur in designated child-friendly spaces, often called "child-friendly rooms", many courts lack these facilities. Nonetheless, ongoing efforts from both the NGO sector and the state, particularly through the Judicial Academy, are helping to advance child-friendly justice.

Ultimately, the success of this concept also depends on how well-informed children are about their rights to participate. Currently, most efforts in this area are led by NGOs. The Centre for Children's Rights,[90] the leading NGO, published a brochure in 2021 titled "Child-friendly Justice", specifically designed for children.

85 Art. 44 para 1 of Law on Juveniles.
86 Art. 150 para. 1.
87 Ibid., Art. 44 para. 2.
88 Art. 35 para. 5 of Civil Procedure Code.
89 Regulation on the program of acquiring specialised knowledge in the field of child law for judges adjudicating cases related to family relations (2006), Službeni glasnik Republike Srbije [*Official gazette of Republic of Serbia*], No. 44/2006.
90 For more see: https://cpd.org.rs/?lang=en (Accessed: 29 December 2023).

Bibliography

Banić, M. (2012) 'Mesto i uloga branioca u krivičnom postupku esto i uloga branioca u krivičnom postupku prema maloletnim učiniocima krivičnih dela rema maloletnim učiniocima krivičnih dela u Republici Srbiji Republici Srbiji' in Stevanović, I. (ed.) *Maloletničko pravosuđe u Republici Srbiji*. Belgrad: Centar za prava deteta.

Brkić, S. (2006) 'Posebna zaštita dece i maloletnika kao oštećenih i svedoka u krivičnom postupku', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 40(2), pp. 431–446.

Ćorac, S. (2014) 'Pravo deteta na izražavanje mišljenja u sudskom postupku', *Zbornik radova Pravnog fakulteta u Nišu*, 2014/66, pp. 325–342; https://doi.org/10.5937/zrpfni1466325C.

Draškić, M. (2020) *Komentar Porodičnog zakona*. Belgrad: Službeni glasnik.

Ilić, G.P., et al. (2018) *Komentar Zakonika o krivičnom postupku*. Belgrad: Službeni glasnik.

Jakšić, A. (2017) *Građansko procesno pravo*. Belgrad: Pravni fakultet Univerziteta u Belgrad.

Knežević, M.S. (2023) 'Postulaciona sposobnost punomoćnika u parničnom postupku', *Pravo i privreda*, 61(1), pp. 404–437; https://doi.org/10.55836/PiP_23209A.

Lukić, T., Samardžić, S. (2012) 'Maloletnici u krivičnom postupku', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 46(2), pp. 349–367.

Miljuš, I. (2022) 'Audio – video link kao sredstvo zaštite posebno osetljivog svedoka i faktor uravnoteženja položaja okrivljenog', *Revija za kriminologiju i krivično pravo*, 60(2), pp. 77–104; https://doi.org/10.47152/rkkp.60.2.3.

Novaković, U. (2012) 'Pravo deteta na izražavanje mišljenja' in Marković, G. (ed) *Prava djeteta ravnopravnost polova – između normativnog i stvarnog*. Istočno Sarajevo: Pravni fakultet u Istočnom Sarajevu, pp. 183–199.

Obradović, D. (2022) 'Upotreba audio vizuelne veze u ispitivanju dece u krivičnom postupku – iz ugla sudije', *Revija za kriminologiju i krivično pravo*, 60(2), pp. 59–75; https://doi.org/10.47152/rkkp.60.2.2.

Petrušić, N. (2007) 'Pravo deteta na slobodno izražavanje mišljenja', *Bilten Vrhovnog suda Srbije*, 2007/3, pp. 521–540.

Ponjavić, Z., Vlašković, V. (2022) *Porodično pravo*. Belgrad: Službeni glasnik.

Ponjavić, Z. (2012) 'Utvrđivanje mišljenja deteta u parnicama za razvod braka u kontekstu najboljeg interesa deteta' in Marković, G. (ed.) *Načela i vrijednosti pravnog sistema – norma i praksa*. Istočno Sarajevo: Pravni fakultet u Istočnom Sarajevu, pp. 30–52.

Poznić, B., Rakić-Vodinelić V. (2015) *Građansko procesno pravo*. Belgrad: Službeni glasnik.

Poznić, B. (2009) *Komentar Zakona o parničnom postupku*. Belgrad: Službeni glasnik.

Prlainović Jović, O. (2021) 'Položaj deteta u postupku porodične medijacije' in Belović, J. (ed.) *Pravni aspekti savremenih društvenih kretanja u Republici Srbiji*. Kosovska Mitrovica: Pravni fakultet.

Škulić, M. (2022) *Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica*. Belgrad: Službeni glasnik.

Stanković, G., Boranijašević, V. (2023) *Građansko procesno pravo*. Belgrad: Službeni glasnik.