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SUMMARY
ASSESSMENT OF ALIGNEMENT OF LAW ON
JUVENILE CRIMINAL OFFENDER AND CRIMINAL
PROTECTION OF JUVENILES WITH RELEVANT
PROVISIONS OF EU DIRECTIVE 2012/29
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SUMMARY OF THE ANALYSIS

The position of juvenile victims in criminal proceedings is governed primarily by the provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (Articles 150 – 157). That law, regarding the criminal proceedings, is a *lex specialis*, which means that the rules contained therein apply primarily, and when something is not provisioned by these rules, the rules contained in the Criminal Procedure Code, which is then *lex generalis*, apply.

Criminal procedure rules that apply to juveniles who are injured parties are in compliance with numerous provisions of the EU Directive 2012/29. This is primarily related to certain provisions, which can be divided into two basic categories: 1) the provisions contained in the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, and 2) the provisions contained in the Criminal Procedure Code.

Regarding the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, two aspects are relevant:

- 1) The first aspect relates to the analysis of the applicable provisions of the Law that are of importance for the protection of juvenile victims;
- 2) The second aspect relates to the necessary modifications of that Law, as well as the Criminal Procedure Code, in order for it to be completely aligned with the EU Directive 2012-29.

I

When it comes to the analysis of the current provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the following provisions are primarily significant:

The provisions of Article 150 of the Law on Juveniles which define the criminal acts against juveniles where special protective rules are applied, are in accordance with the rules of the EU Directive 2012/29 (Article 18), because the catalog of criminal acts that, when the subject of criminal proceedings, and when they are committed against juveniles, results with the situation that there is a need to protect particularly sensitive (vulnerable) persons.

The provisions of Article 150 paragraph 2 and Article 151 paragraph 2 and 3 Law on Juveniles, which are related to specialization are in accordance with the rules contained in the EU Directive 2012/29 (Article 25), which refer to special training of participants in criminal proceedings, when it comes to the need of protecting victims, especially children and juveniles,

as the typical particularly vulnerable witnesses, but also in general, participants of the criminal proceedings.

The provisions of Article 152 paragraph 1 Law on Juveniles, governing the minimizing of secondary and repeated victimization, i.e. particularly careful approach to juvenile injured party are in line with the provisions of the EU Directive 2012/29 (Article 18), i.e. they are in the same spirit, since one of the main objectives of the EU Directive 2012/29, is to prevent secondary and repeated victimization of victims of criminal acts. This rule is in line with Article 9 (c) of the EU Directive 2012/29. In addition, given that communication with juveniles, especially very young children, is logically difficult and requires a specific approach, this rule is in line with Article 18 of the EU Directive 2012/29, i.e. its purpose is to prevent/minimize secondary/repeated victimization, and it is also in line with Article 3 of the EU Directive 2012/29, because this way, it is possible to provide a better possibilities to a juvenile injured party in a criminal act to understand and be understood.

The provisions of Article 152 paragraph 2 Law on Juveniles, which in principle limits the number of hearing of a juvenile injured party in criminal proceedings, are in accordance with Article 23 paragraph 2 (b) of the EU Directive 2012-29.

The provisions of Article 152 paragraphs 3 and 4, which help achieve protection from secondary and repeated victimization, are in line with the rules listed in Article 18 of the EU Directive 2012/29, and when it comes to the possibilities for the hearing of a juvenile out of courtroom, in another room or in an authorized institution - organization, which is qualified for interviewing juveniles, that rule is in line with Article 19 paragraph 2 of the EU Directive 2012/29. This rule is important from the standpoint of the protection of privacy of juvenile victims, i.e. it is in line with Article 21 of the EU Directive 2012/29, and with Article 23 paragraph 2 (a) and (b) of the EU Directive 2012/29. Given the possibility to show a video recording of the previous hearing of a juvenile injured party, this rule is in line with Article 24 paragraph 1 (a) of the EU Directive 2012/29.

The provisions of Article 153 Law on Juveniles which in principle prohibit the confrontation between the defendant and juvenile injured party are in accordance with Article 19 paragraph 1. These rules achieve protection from secondary and repeated victimization, which is in line with the rules contained in Article 19 of the EU Directive 2012/29. This rule is in accordance with Article 21 of the EU Directive 2012-29, as well as with Article 23 paragraph 3 (a) of the EU Directive 2012/29.

The provisions of Article 154 Law on Juveniles, which prescribes mandatory counsel to a juvenile injured party are in line with Article 13 of the EU Directive 2012/29, i.e. it is also wider than the requirements contained in the Directive.

The provisions of Article 155 Law on Juveniles, which regulate the recognition of the defendant by a juvenile injured party are in line with the rules listed in Article 19 of the EU Directive 2012/29, as well as with the rules contained in Article 23 paragraph 3 (a) of the EU Directive 2012/29.

The provision of Article 157 Law on Juveniles (urgency of procedure) is in line with Article 20 (a) of the EU Directive 2012/29.

II

When it comes to the necessary amendments to the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, i.e. the future Law on Juvenile Criminal Offenders and Protection of Juveniles in Criminal Proceedings, as well as the Criminal Procedure Code, the following issues are of particular importance:

It is necessary to modify certain rules both in the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, i.e. in the future Law on Juvenile Criminal Offenders and Protection of Juveniles in Criminal Proceedings, and in the Criminal Procedure Code, for further harmonization with the EU Directive 2012/29.

II (a)

Regarding the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the following issues are the most important:

Article 1 paragraph 1 of the Directive 2012/29: it is necessary to introduce the rules relating to the provision of information to the juvenile injured party, about the rights that he/she has in all stages of criminal proceedings, which should be done in a way that is tailored to the age and degree of maturity of a minor. This provision of information should relate to the legal representative of a minor.

Article 18 of the Directive 2012/29: It is necessary to eliminate the possibilities of posing suggestive questions to a juvenile injured party during cross-examination during the main hearing; *Article 19 paragraph 1 of the Directive:* It is necessary to prescribe the obligation to provide special facilities for minors that are injured parties in certain criminal acts.

Article 19 paragraph 2 of the Directive 2012/29: It is necessary to prescribe that a minor, in addition to a legal representative, can be “accompanied” by other person chosen by the minor or, in certain cases, his/her legal representative, that could provide adequate emotional and other types of necessary support in order to preserve the personality and psychological stability of the minor.

Article 24 of the Directive 2012/29: It is necessary to specify the possibility of setting up the so-called collisional representatives in criminal proceedings, which would include the appropriate involvement of the guardianship authority, i.e. the center for social welfare. This means that it should be stipulated that when the criminal proceedings are led against the parents of the minor due to the existence of a certain degree of relevant suspicion that he/she has committed a criminal act against a juvenile in respect to which he/she has parental rights, and the same would apply to all other persons that have the right and duty of care in relation to a

minor, such defendant cannot be in the function of a legal representative of the minor victim in the same proceedings.

II (b)

With regard to the Criminal Procedure Code, the following issues need to be regulated in the upcoming reform:

Article 19 paragraph 2 of the Directive 2012/29: It is necessary to prescribe that in certain cases injured party is entitled to be accompanied by his/her legal representatives in criminal proceedings, as well as other persons that the injured party chooses, in order to provide him/her adequate support, with the possibility, when it is justified through certain reasons (such as for example, the risk of collusion) of making other reasoned decision.

Article 20 of the Directive 2012/29: it is necessary to prevent to conduct psychiatric expert witnessing on witnesses, especially when it comes to juvenile injured parties that are repeated and as witnesses in criminal proceedings.

Article 22 paragraph 2 (d) of the Directive 2012/29: It should be specified in the part of the CPC relating to preliminary investigation, that when the police are collecting information from the victim of criminal act against sexual freedom and domestic violence, the policeman/policewoman should be of the same gender as the victim.

Article 24 of the Directive 2012/29: It is necessary to prescribe the introduction of a special form, which will regulate the collection of all relevant data on the injured party.