



## **INCEST TRAUMA CENTER – BELGRADE**

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**The Incest Trauma Center – Belgrade Initiative that the National Assembly of the Republic of Serbia supervise the implementation of legal measures for the prevention of re-traumatization of child survivors of sexual assault**

**- Elaborated proposal -**

**Forwarded to: Women's Parliamentary Network, Committee on the Rights of the Child, Committee for Human and Minority Rights and Gender Equality, Committee for Constitutional Issues and Legislation, Committee on the Judiciary, Public Administration and Self-Government, Committee on Health and Family, and all the deputies to the National Assembly of the Republic of Serbia.**

### **Introduction**

**In the capacity of the Official Partner, for the Republic of Serbia, of the Council of Europe Campaign "1 OF 5", The Incest Trauma Center – Belgrade hereby submits to the Women's Parliamentary Network and the competent parliamentary committees the following Initiative for the supervision of legal measures for the prevention of re-traumatization of child survivors of sexual violence, as part of the supervisory function of the National Assembly of the Republic of Serbia.**

The major shortcomings in practice could be removed through the following:

A) Introducing into the Penal Code a provision on the obligation to consider the child's best interest, by invoking the Family Law;

5) Ensuring equal protection of children in Criminal Law proceedings, irrespective of their age (0-18 years of age).

The existing legal provisions for victim protection in the course of judicial proceedings (hearing of the child outside the court premises and without the presence of the participants in the proceedings, the use of technical support for the transmission of picture and sound, the child's attorney being one of the specially trained lawyers in this field) are not being fully implemented.

**At this moment, in 88% of the cases, the children are being questioned in the courtroom, most often also allowing the defendant to directly question the child, whereas in 21% of the cases the children are heard in judges' chambers, and only in 4.7 % of the cases in specially equipped rooms.** (Official data presented at the Conference for the judiciary professional staff "Protection of children from sexual abuse and sexual exploitation", organized by the Ombudsman and held on 16<sup>th</sup> Nov. 2015; The Incest Trauma Center - Belgrade was invited to participate in the capacity of guest-speaker).

In the sphere of protection of children against violence, it has been 10 years since the adoption of the General Protocol and 5 years since the ratification of the Lanzarote Convention (the Council of Europe Convention on the protection of children from sexual exploitation and sexual abuse). In the meantime, regulations were being changed and some new ones have been adopted. **The two most important ones** are: The Law on Juvenile Offenders and Criminal Protection of Juveniles and The law on special measures to prevent the commission of crimes against sexual freedom of minors (publicly referred to as "**Maria's Law**").

The Law on Juvenile Offenders and Criminal Protection of Juveniles introduced new protective measures for child victims of criminal offences: mandatory attorneys for the plaintiffs, procedures conducted by judges and other participants who have been trained to work with juveniles, no more than two hearings of the victim, the use of audio and video recordings and the possibility of conducting the hearing of the child outside the court.

"Maria's Law" with the measures it provides for is a positive development, therefore regular and continual updating of the general and professional public about the progress of its implementations by a specially appointed agency (Directorate for Execution of Criminal Sanctions), would perform an important role in prevention, reflecting the meaning of the name of the Law conveys- prevention of criminal offences being committed.

These two laws represent changes paving the way towards an essential harmonization of our legislative framework with the Lanzarote Convention and providing full protection of the child survivor of sexual violence. At present, this system still does not provide for adequate prevention, protection and rehabilitation of the child, nor is it sufficiently directed at protecting the child from repeated abuse and secondary or multiple victimization.

The elaborated proposal of this Initiative comprises full implementation of art. 32, 34, 35 and 36 of the Lanzarote Convention **(each article is stipulated in Annex 1).**

## **EXAMPLES FROM PRACTICE**

(Excerpt from the five-year Report, published on 19<sup>th</sup> Nov.2014, on the World Day for Prevention of Abuse and violence against Children; the integral version of the Report was incorporated in the draft of the Strategy in education for prevention of child sexual abuse in the Republic of Serbia ; Ministry of Education and Technological Development, November 2015;) *"Over the period September 2009 - September 2014, the Incest Trauma Center - Belgrade recorded an average of seven (7) reported cases of child sexual abuse per week. In 100% of the cases, the perpetrator was a person familiar to the child (the same in the period 2005-2009). In 78.39% of the cases, the perpetrator was a family member, most often the biological father. Girls are most often the target, in 83.22% of the cases. In 55.65% of the cases, our service was the first place where the cases were reported. In 92.11 % of the cases, criminal proceedings were not launched. For the adjudicated cases, which all involved child victims under 12 years of age, the average duration of criminal proceedings was 3 years and 3 months. On average, the sanction amounted to a 1 year and 2 months prison term.*

*In the period September 2012 - September 2014, 36.26% of the cases involved child victims up to 10 years of age. On average, abuse of children of the youngest age lasted for 3 years and 2 months (nearly one third of their lives, and these are cases that were the subject of extremely lengthy criminal proceedings, whereby these children were directly prevented from getting on with their lives). These cases are usually characterized by previously existing violence in the intimate partner relationship, with the mother having been exposed to her partner's violence and had at some moment decided to break out of the partner relationship and protect herself and the child. Unfortunately, in practice, the mother's previous experience of violence is treated as an aggravating circumstance in court, for example, because her statement concerning abuse is considered as less credible."*

Here are some examples from the 22 years long practical experience of the Incest Trauma Center - Belgrade, a specialized service for the social problem of sexual

**violence, based on the services of psychological assistance directly provided to child and adult survivors of sexual violence – based on child testimonies:**

**Case study 1: Essay "Juca" (Appendix 2).**

**Case study 2: A six-year-old girl,** case reported because of suspected sexual abuse of the child by her biological father.

Beforehand, the case had been reported to the police, the Welfare Center and the Prosecutor's Office.

She was questioned two (2) times by the police, two (2) times in the Welfare Center and underwent a gynecological examination three (3) times. Afterwards, as part of the ongoing procedure, an expertise was conducted. It failed two (2) times, because she burst into tears and refused to speak. In the course of the third expertise, she denied that sexual abuse had taken place.

During the psychological assistance she receives in the Incest Trauma Center – Belgrade, when she was asked, in reference to the completed expertise, "How did it go, what happened?", the girl answered: "I could not talk about it anymore, I felt so ashamed, there were four (4) ladies sitting there, and I had to get out of it somehow, so I said "Nothing happened". When asked "What happened then?", she answered "They told me 'Thank you, that's a good girl' ".

The procedure has been suspended. The girl's visitations with her father continue.

**Case study 3:** Two girls (sisters), were 3.5 and 5.5 years old at intake.

Sexual abuse by their paternal grandfather had been reported. They are 8.5 and 10.5 years old now. The procedure is still ongoing.

**Case study 4:** A 5.5-year-old boy, sexual abuse by his biological father.

Until then, the kindergarten teacher had noticed some changes in the boy's behavior and in his drawings and she talked to the child, who disclosed to her sexual abuse by his father. The institution informed the mother about this and, after the boy told his mother that "daddy made him play that game", she reported her suspicion to the police and the Social Welfare Center. The boy's disclosure coincided with his parents' divorce procedure.

Six (6) months after the mother's report to the competent services, she had not been contacted by anyone, while the boy's visitations with his father had to take place at fixed times. The mother was persistent and refused to give up.

When the procedure was launched, a daily newspaper published an article "on the condition of the mother's health" and "unprofessional attitude" of the kindergarten

teacher in the institution the boy attended. For more than a week, this news made the headlines. The following data was made known to the public: the mother's name and last name, the name of the daycare institution, and the kindergarten teacher's initials. The mother decided to remove the boy from the kindergarten and to leave the city. The kindergarten teacher went on a long sick leave. She remained permanently involved in the procedure and never changed her statement.

The procedure lasted for four (4) years. Due to lack of evidence, it was not established whether sexual abuse had taken place. The mother decided that she would not allow her son's visitations with his father, at the cost of being fined and /or imposed other sanctions the court can prescribe.

*It is important to know that it is a common development in practice, that when physically separated from the perpetrator (which is often the case during the divorce procedure or the parents' separation period), the child for the first time feels safe enough to disclose abuse to the non-violent parent or the support person.*

**Case study 5:** A 14-year-old girl, abuse by her biological father reported. The case was reported to the police and a daily newspaper published an article about her case. The following data was disclosed to the public: the name of her elementary school and her initials, father's occupation, the other family members, how the sexual abuse took place and what violent actions were applied.

The girl stopped going to school, she would not leave the house, and she attempted suicide by taking an overdose of sleeping pills, after which the case was reported to our service. In the police, she had been questioned in the presence of her father and uncle.

**Case study 6:** A 7-year-old girl, sexual abuse by her father reported. She was questioned in the police three (3) times, in the Welfare Center two (2) times, at the clinic two (2) times and eventually referred for expertise. According to the finding of the expert witness, it was impossible to definitely confirm that sexual abuse had taken place, because the girl "refers to the event in a detached way devoid of emotions".

*The children who have to repeatedly go over the personal experience they survived, in order to pull through the proceedings, begin to narrate their experience of sexual abuse as a "rehearsed act", because they have reiterated it several times during the procedure, with the professionals' remark "to tell them everything as it happened, like she told them the first time". The so-called "detachment" is a precious survival mechanism for the child: not to show emotions, not to manifest anything, because it is safer that way. It is a valid defense mechanism against the complex system of pursuing justice, which is not child-friendly and in which it is difficult, and usually impossible, for the child to be an equal participant in the proceedings.*

## **RE-TRAUMATIZATION OF THE CHILD IS CAUSED BY THE FOLLOWING:**

### **1. Lack of protective and security measures**

The first National Study on the social problem of child sexual abuse in the Republic of Serbia showed that only 7% of the children who have survived sexual assault report their case to the competent services (2015©Incest trauma Center - Belgrade; in partnership with the Ministry for Education and Technological Development and the Women Health Promotion Center).

The lack of appropriate protective and security measures, such as domestic restraining orders, which is a measure that can timely prevent both the reoccurrence of sexual abuse and influencing the child during the procedure, and also ensure the child's full recovery.

A direct consequence of the procedure usually not being child-friendly is that children occasionally change or withdraw their statements. This does not necessarily mean that sexual abuse did not take place. It means that the child did not feel safe enough in the course of the procedure. It is the adults' responsibility to make the child feel safe.

**It is essential to: Introduce and implement the protective measure of removing the perpetrator of child sexual abuse from the family household.**

Therefore, it is necessary to take all necessary precautions to make the child feel **safe** during the entire procedure.

### **2. Screen rooms, hearings for children outside courts**

In the part that refers to practice, the Ombudsman institution of the Republic of Serbia observed that the protective measures concerning children who have survived sexual abuse are not applied on regular basis. In several cities in Serbia there exist the so-called screen rooms, especially equipped for taking statements from children. However, only few courts use this facility. Data collected early in 2013 revealed that out of five basic and higher courts in **five** cities, only **one** used the screen room. The others either did not have the information about it, or if they did, they still opted that the child be heard "the regular way". That way usually comprises the presence of a psychologist, generally in the courtroom or in the judges' chambers. The possibility that the child be heard outside the court premises was used very seldom, either in screen rooms or in some other environment safe for the child.

**It is essential to: Make the application of the measures prescribed by the Law on Juvenile Perpetrators of Criminal Offences mandatory: obligatory representation of the plaintiffs, procedures before judges and with participants who are trained to work with children and juveniles, not more than two hearings of the victim, the use of audio and video recordings and the option of hearing the child outside the court.**

Therefore, to make mandatory the implementation of the rule on hearing the child **WITHOUT** the presence of the participants in the proceedings and outside the premises of the court / police / prosecutor's office.

### **3. Multiple hearings of children**

It is the ITC experience that, from the moment the case is reported to the Social Welfare Center to the prospective pronouncement of the sentence, the children are usually heard 5 or more times, because their statements are taken at different stages of the procedure and before different bodies, (the Social Welfare Center, the police, in the course of the investigation, the expertise and the main hearing). This aggravates the child's position considerably, induces re-traumatization of the child and prevents recovery. Such proceedings do not by any means serve justice, as they have a strong negative effect on the validity of obtained statements.

**It is essential to: Make mandatory the implementation of measures prescribed by the Law Juvenile Perpetrators of Criminal Offences (see 2 above)**

Therefore, to declare it mandatory for all the agencies to adhere to the rule of **TWO hearings of the child at most** and to **EXTEND ONTO THE ENTIRE PROCEEDINGS the REGULATION on two hearings of the child at most**, including the preliminary criminal proceedings and the expertise.

### **Intolerably long duration of the procedures**

Proceedings involving children who have survived sexual violence last all too long. The reason for this are not only the judges' workload, but also the behavior of other participants in the proceedings, especially the defense attorneys and representatives, whom the court appoints ex officio and the legal obstacles to holding the proceedings without their presence.

**It is essential to: Limit the total duration of the proceedings to 12 months.**

Therefore, the child's life must not be stopped because of a years long judicial proceedings.

#### **4. "Leaking of information" about the identity of its actors during the proceedings**

The specific position of children who have survived sexual abuse and exploitation calls for close attention of all state agencies. Spreading of information about sexual abuse or sexual exploitation considerably undermines the chances for their successful rehabilitation and social reintegration, and can leave permanent consequences on their psychological development. In particular, the state has pledged to protect the privacy and identity of child victims and to undertake all measures in order to prevent the spreading of information that could reveal the identity of child victims (art. 31 of the Lanzarote Convention and art. 8 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography).

**It is essential to:** By official dispatch from the Ministry of Justice of the Republic of Serbia and the Ministry of Internal Affairs, or by other appropriate means, and in accordance with the existing regulations in this sphere, to strongly prohibit the spreading of any piece of information that could compromise the identity and dignity of the child victim, especially the disclosure of information and data to the media, by the professional staff in the judiciary and police, and to stipulate the sanctions and their application in case of breach of the privacy clause.

#### **5. Personal attitudes and knowledge of the professional staff about sexual trauma**

The professional staff of the agencies competent for the protection of children from sexual abuse and exploitation do not possess sufficient knowledge about this form of child abuse, regarding the dynamics of sexual violence, choosing/recruiting the child-victim, the warning signs and their detection, the perpetrator's taking advantage of power over the child, the position and exceptional vulnerability of the child-victim, the effects/impact of sexual abuse on the child, the child's personal capacity, the specific features of protective measures and of the process of recovery in cases of sexual trauma. The Educational package should include the above mentioned topics, and should be specifically directed at changing personal attitudes.

**It is essential to:** Provide special training for professionals working with children who have survived sexual violence wherever possible, especially in courts, prosecutors' offices and for attorneys - who will convey specific knowledge to other participants



and enable them to act in the best interest of the child in the course of the procedures.

Therefore, it is of paramount importance that the content of the training influence a change of personal attitudes in the interest of the child who has survived sexual violence.

## **Conclusion**

**THIS INITIATIVE SEEKS** the following for the child survivor of sexual assault, which is in full accordance with the Lanzarote Convention:

- To introduce and implement the **MEASURE OF REMOVAL OF THE PERPETRATOR** of child sexual abuse from the family household
- To make mandatory compliance with the regulations on hearing the child **WITHOUT** the presence of the other participants in the procedure and outside the premises of the court / police / prosecutors' office
- To make mandatory for all the state agencies the application of the rule on a maximum of **TWO** hearings of the child
- **To EXTEND THE PROVISION** on a maximum of two hearings of the child **ON THE ENTIRE PROCEDURE**, including pre-trial proceedings and the forensic procedures
- **To limit the total duration of the proceedings to a maximum of 12 months**
- To introduce the provision "the child's best interest" into the **Penal Code**, after the Family Law model
- To ensure **EQUAL** protection for children in the course criminal law proceedings **REGARDLESS OF THE AGE** (0-18 years of age)
- To **URGENTLY SPECIALIZE** all the participants who are in contact with the child victim, from the moment of reporting crimes pertaining to the sphere of sexual delicts until the pronouncement of the sentence
- To **PRACTISE PREVENTION** by the competent agencies by continually informing the general and professional public on the results of the implementation of "Maria's Law".

Sincerely,

Belgrade, 27<sup>th</sup> November 2015

Dr. Ljiljana Bogavac

Deputy Director

**Attachments:**

- 1. Articles of the Lanzarote Convention related to the Initiative of the Incest Trauma Center - Belgrade*
- 2. Essay "Juca" of the Incest Trauma Center - Belgrade, published in 2014, on the World Day for Prevention of Child Abuse and Neglect (19<sup>th</sup> November)*

**ATTACHMENT 1 - ARTICLES OF THE LANZAROTE CONVENTION RELATED TO THE INITIATIVE OF THE INCEST TRAUMA CENTER - BELGRADE**

*The Lanzarote Convention*

*Article 32.*

*Initiation of proceedings*

*Each Party shall take the necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements.*

*Article 34.*

*Investigations*

- 1. Each party shall adopt such measures as may be necessary to ensure that persons, units and services in charge of investigations are specialized in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. Such units or services shall have adequate financial resources.*
- 2. Each Party shall take the necessary legislative and other measures to ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations.*

## ***Article 35.***

### ***Interviews with the Child***

***1. Each Party shall take the necessary legislative and other measures to ensure that:***

***a) interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;***

***b) interviews with the child take place, where necessary, in premises designed and adapted for this purpose;***

***c) interviews with the child are carried out by professionals trained for that purpose;***

***d) the same persons, if possible and where appropriate, conduct all interviews with the child;***

***e) the number of interviews is as limited as possible, and in so far as strictly necessary for the purpose of criminal proceedings;***

***f) The child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect to that person.***

***2. Each Party shall take the necessary legislative and other measures to ensure that all interviews with the victim or, where appropriate, those with a child - witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal law.***

***3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, the measures established in paragraphs 1 and 2 shall be applied pending verification of his or her age.***

## ***Article 36.***

### ***Criminal court proceedings***

***1. Each Party shall take the necessary legislative and other measures, with due respect for the rules governing the autonomy of legal professions, to ensure that training on children's rights and sexual exploitation and sexual abuse of***

*children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.*

*2. Each Party shall take the necessary legislative and other measures, according to the rules provided by its internal law, that:*

*a) the judge may order the hearing to take place without the presence of the public;*

*b) the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.*

## ATTACHMENT 2



### **INCEST TRAUMA CENTER – BELGRADE**

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**Dr. Ljiljana Bogavac, Deputy Director of the Incest Trauma Center - Belgrade**

**The original version of the essay was made on the occasion of participation in the call for applications for a short story on the topic “What is your vision of the future of the judicial system in Serbia?” organized by the World bank.**

The author of the essay has been in charge of the Incest Trauma Center – Belgrade team for working with child survivors of sexual violence for 21 years and she appears in court criminal proceedings in the capacity of expert witness. In court, she represents the professional opinion of our service, which we issue at the request of the institutions taking part in the criminal proceedings, after our team has achieved continuity in providing psychological support to the child / minor with the personal experience of sexual trauma. The author is part of the team whose Initiative for abolishing the Statute of Limitations for sexual violence against children, which was adopted by the Parliament of Serbia in April 2013, whereby Serbia became the second country in Europe, after Great Britain, to have adopted this legal solution, which recognizes the long/term effects of sexual trauma experienced in childhood.

**As the form of essay allows for narration, the narrator here in a little girl, “Juca” , who does this in both adult and baby language, so as to allow the readers a deeper understanding. Juca’s experience represents “a summary of typical cases”, when a case of sexual violence against a child is processed in criminal proceedings in Serbia.**

### **“JUCA” - FOR THE READERS TO BETTER UNDERSTAND**

I am Juca and I am four and a half years old. It has already been a year now since I said that daddy had been touching me.

I told my mom how daddy and I had been playing. Mom said that adults are not supposed to play like that with children, and that she was very sorry, and she gave me a hug. We went to the Welfare Center, and the Police. That evening, mom was crying, trying to hide it away from me. In several places, everyone kept asking me what had happened. I don’t know any of these people, and it’s hard for me to

keep answering those questions, again and again. Could it have been only a dream, had anyone told me what to say, do I love my daddy. They don't seem to know what it is like when you are a child.

The first time I was there, I was wearing short sleeves, and now mom and I do not need our winter coats any more.

I am afraid what will happen if my daddy comes to the kindergarten to fetch me, if he picks me up and takes me away. My granny says that I am her "little bundle of fear" and that I should stop worrying.

Then I had to see the "expert", so they could make sure I was telling the truth. There were two ladies there in white coats, sitting at a big table, and me. My mom was waiting in the hall. Daddy was also outside, and I was trying to hide behind the chair, so that he wouldn't see me. Although I was ashamed because of all the things they asked me, I was thinking how to get out of it all, without them thinking that I am a bad girl. I said I couldn't remember. And I don't know what they decided later.

Other, bigger children, go to see the judge first. What am I supposed to do when daddy is there? How can I tell them what happened, when he told me that no one should ever know about that? I am supposed to tell them everything in detail in the right sequence. I am supposed to know everything and to remember everything. I want to forget it all. The taste, the color, the touch and the smell. Daddy likes me like that.

When mom and I return home, he calls, and asks me if I love him, and why I don't come to him, who feeds me. He often comes to our door, too.

It is all over now. It's just that I was scared, and ashamed, and I felt sorry for daddy if they were going to send him to prison, so I was thinking again that perhaps I should not tell them what he was doing to me.

Mom and I often go to the Welfare Center to see daddy. Sometimes I feel like going, but mostly I don't really, but we have to do what they say. Our life has changed.

Then the postman brought mommy a summons to come and tell them once more. I said I wasn't going to. She explained that it was because there was another judge now. Does it mean that the one before him did not listen to me well?

It was the same there as the first time. It was not enough that I said that "there was something like milk coming out of daddy's willy and stretching as a chewing gum." I had to repeat it. I heard some adults say that I am angry and cross, and that I probably hate my daddy. That mom talked me into it. But it wasn't like that, I told mom! Mom is crying because the doctor wrote that I have condyloma. I don't know why they won't believe me. Ever since I spoke about it, I've been in trouble. You get a sentence and nobody is happy.

Some children change or completely deny what they said before. But that doesn't mean that an adult person had not been touching them. I would rather keep silent, so all this could stop. And I could stop thinking about it.

Most of the time I am sad. Only I know how I feel. I don't count away my school days peacefully, it has been three years that this is going on.

**In 2014 in Serbia**