

Čovečanstvo duguje deci najbolje što ima

Studija slučaja o kršenju prava na privatnost
i poverljivost podataka dece žrtava trgovine
ljudima i seksualnog zlostavljanja u Srbiji



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i svih oblika nasilja nad ženama

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Sadržaj

„Čovečanstvo duguje deci najbolje što ima”	4
Opis slučaja Ane, maloletne žrtve trgovine ljudima	9
Curenje informacija o istrazi iz institucija, kršenje prava na privatnost i zaštitu ličnih podataka u Aninom slučaju	13
Sekundarna traumatizacija i reviktimizacija, ugrožavanje bezbednosti i kontinuirano zlostavljanje Ane	17
Zaključak	22
Preporuke za saniranje uzroka i posledica koje dovode do kršenja prava na privatnost i poverljivost podataka maloletnih žrtava seksualnog zlostavljanja i trgovine ljudima	24

„ČOVEČANSTVO DUGUJE DECI NAJBOLJE ŠTO IMA“¹

Seksualno zlostavljanje je jedna od najtežih i po posledicama najkompleksnijih formi nasilja koje ostavlja ozbiljne zdravstvene, psihološke, socijalne i razvojne posledice po dete. Prema dostupnim podacima UNICEF-a, najmanje 120 miliona devojčica uzrasta od 10 do 18 godina bilo je primorano da ima seksualni odnos ili da učestvuje u aktivnostima neprimerenog seksualnog sadržaja. U skoro 90 odsto slučajeva počinioci su im bili poznati odranije.² S druge strane, podaci na globalnom nivou pokazuju da je gotovo svaka treća žrtva trgovine ljudima maloletna, s daleko najvećim učešćem devojčica u tom broju. Žene žrtve trgovine ljudima su u 82 odsto slučajeva trafikovane u svrhe seksualne eksploatacije, devojčice u 72 odsto, dok je to slučaj sa 10 odsto muškaraca i 27 odsto dečaka žrtava trgovine ljudima.³ Prema poslednjim dostupnim podacima za Srbiju iz 2019. godine, 64 odsto žrtava trgovine ljudima činile su osobe mlađe od 18 godina,⁴ dok je i prethodnih godina, prateći statističke podatke, situacija bila slična – oko 90 odsto njih su devojčice.⁵

Kada govorimo o seksualnom zlostavljanju, od presudnog značaja je promišljati rodnu dimenziju koja je evidentna ne samo u prevalenci već i u kontekstu i načinu na koji se seksualno nasilje vrši, te je izuzetno važno posmatrati ga kroz okvire rodno-zasnovanog nasilja. Rodni aspekt „učitan” je u odnos zlostavljača i zlostavljanog deteta koji podrazumeva i izražene rodne uloge devojčica i muškaraca koji ih seksualno zlostavljaju, iskorišćavaju i trafikuju. Rodni aspekt „učitan” je i u psihološki, emocionalni i socijalni „odgovor” i koping⁶ mehanizme dece žrtava, kao i u odnos deteta žrtve prema odgovornim odraslim osobama tokom institucionalnog odgovora sistema na seksualno zlostavljanje deteta. „Utvrđena je precizna transversala da, dok se od strane države i u društvu ne govori otvoreno o

1 Preambula Povelje o pravima deteta Ujedinjenih nacija.

2 <https://www.unicef.org/protection/sexual-violence-against-children>.

3 Global Report on Trafficking in Persons 2018, United Nations Office on Drugs and Crime, dostupno na: https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf, pristupljeno 12. januara 2021.

4 Dostupno na: http://www.centarzztlj.rs/images/statistika/19/2019_Statisticki_izvestaj.pdf.

5 Dostupno na: <http://www.centarzztlj.rs/images/statistika/>.

6 Adaptivne mehanizme, mehanizme prilagođavanja, prevladavanja.

seksualnom nasilju, ne može se govoriti ni o postizanju rodne ravnopravnosti”⁷

Seksualno zlostavljanje najčešće nije jedini problem s kojim se ova deca suočavaju. U opisu koji sledi, pored situacije trgovine ljudima i seksualne zlopotrebe maloletne devojčice Ane, biće prikazani i neodgovarajuće postupanje i izostanak postupanja nadležnih organa koji su bili dužni da dete zaštite. Poseban aspekt ove studije tiče se brojnih povreda privatnosti ovog deteta s naročitim osvrtom na neprofesionalno medijsko izveštavanje koje je doprinelo daljoj stigmatizaciji i retraumatizaciji, čime joj je naneta nenadoknadiva šteta.

Kada je reč o medijskom izveštavanju, čak 47 odsto izveštaja o deci, pri čemu 31 odsto u elektronskim, a čak 58 odsto tekstova u štampanim medijima u Srbiji imaju negativnu konotaciju. Izveštavanje o zlostavljanju dece bavi se pojedinačnim slučajem na nivou senzacionalističkog i šokirajućeg novinarstva, dok se zanemarljiv broj tekstova i priloga odnosi na uzroke i rešenja. Prilikom izveštavanja, ide se za tim da se otkrije i objavi što je moguće više detalja o činu zlostavljanja (uključujući i najbizarnije), i sa što više detalja o žrtvi. Kao činjenice se iznose puka nagađanja, pa i izmišljene informacije.⁸ Zaštita privatnosti deteta, ličnog i porodičnog života, dostojanstva, prava i interesa, kod dece žrtava trgovine ljudima ima i dodatnu težinu, naročito zbog zaštite bezbednosti deteta i sprečavanja njene/njegove reviktimizacije. Medijske informacije kojima se otkriva identitet deteta imaju dalekosežne posledice. U eri elektronske komunikacije i sveopšte dostupnosti informacija putem interneta, otkrivanje podataka koji identifikuju dete i daju informaciju da je ono bilo žrtva trgovine ljudima, i da je u svrhu trgovine ljudima seksualno eksploatisano, utire nesmetan put da se dete ponovo vrbuje, trafikuje i iznova seksualno zlostavlja i iskorišćava, što takođe nije redak slučaj. U medijskoj slici u Srbiji vrlo često je prisutan i mehanizam svaljivanja krivice na samu žrtvu (takozvani mehanizam okriivi okrivljenog),⁹ stereotipije, predrasude, a vrlo su osetni i mizoginija i govor mržnje.

7 Nacionalna studija o društvenom problemu seksualnog zlostavljanja dece u Republici Srbiji, Bogavac, Popadić, Otašević i Cucić, Incest Trauma Centar, Beograd 2015.

8 Medijska slika dece u Srbiji 2018, Centar za profesionalizaciju medija i medijsku pismenost, 2018, dostupno na: <https://www.ceprom.rs/wp-content/uploads/2019/03/PUBLIKACIJA-Medijska-slika-dece-u-Srbiji-2018..pdf>, pristupljeno 12. januara 2021.

9 „Okriivi okrivljenog (blaming the victim, eng.) – mehanizam u skladu s kojim se koreni socijalnih problema vide u karakteristikama grupa koje su tim problemima ugrožene, umesto da se sagledaju u sistemu koji vrši opresiju i kreira nejednake uslove i mogućnosti za različite grupe. Na taj način pokušavamo da rešavamo probleme bez menjanja stvarnih uslova koji ih stvaraju.” D. Čuk Milankov i dr., Sukob i društveni uticaj, CARS, Beograd, 2009.

➔ Normativni okvir koji je na snazi u Republici Srbiji trebalo bi da predstavlja temelj i putokaz u radu nadležnih organa u borbi protiv trgovine ljudima i zaštiti žrtava, ali u ovom slučaju nije poštovan. Obaveza Republike Srbije je da štiti decu žrtve seksualnog zlostavljanja i iskorišćavanja, da štiti njihov identitet, privatnost, lični i porodični život, ugled, dostojanstvo, prava i najbolje interese deteta žrtve.

Republika Srbija ratifikovala je više međunarodnih instrumenata koji uređuju oblast zaštite dece, naročito dece žrtava nasilja i eksploatacije, te određuju oblike podrške koje je ovoj deci neophodno obezbediti. S tim u vezi, ovde je, pored Konvencije UN o pravima deteta iz 1989. godine, važno pomenuti i nekoliko instrumenata Saveta Evrope (SE) koji se odnose na ovu oblast: Konvencija SE o zaštiti dece od seksualnog iskorišćavanja i seksualnog zlostavljanja (tzv. Lanzarote konvencija),¹⁰ zatim Konvencija SE o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici (tzv. Istanbulska konvencija),¹¹ Konvencija SE o borbi protiv trgovine ljudima,¹² kao i Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda.¹³ U ovim dokumentima navode se osnovna prava žrtava nasilja i eksploatacije koja je potrebno zaštititi, kao i minimalne usluge koje im je u svrhu oporavka neophodno obezbediti. Oni predstavljaju osnov za zakonodavne i druge radnje (recimo, one koje se tiču podizanja svesti javnosti) koje su zemlje potpisnice dužne da preduzmu u ovim oblastima. U vezi s nacionalnim zakonodavstvom koje je relevantno za ova pitanja, važno je pomenuti da odredbe o zaštiti i podršci sadrže akte iz domena krivičnopravne, socijalne i zdravstvene zaštite, a takođe i druge zakone, kao što su Zakon o zaštiti podataka o ličnosti (koji sadrži posebne obaveze kada se obrađuju podaci o ličnosti dece, navedene

10 Zakon o potvrđivanju Konvencije Saveta Evrope o zaštiti dece od seksualnog iskorišćavanja i seksualnog zlostavljanja, „Sl. glasnik RS – Međunarodni ugovori”, broj 1/2010.

11 Zakon o potvrđivanju Konvencije Saveta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici, „Sl. glasnik RS – Međunarodni ugovori”, broj 12/2013.

12 Zakon o potvrđivanju Konvencije Saveta Evrope o borbi protiv trgovine ljudima, „Sl. glasnik RS – Međunarodni ugovori”, broj 19/2009.

13 Zakon o ratifikaciji Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda, izmenjene u skladu s Protokolom broj 11, Protokola uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda, Protokola broj 4 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda kojim se obezbeđuju izvesna prava i slobode koji nisu uključeni u Konvenciju i Prvi protokol uz nju, Protokola broj 6 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda o ukidanju smrtne kazne, Protokola broj 7 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda, Protokola broj 12 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda i Protokola broj 13 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda o ukidanju smrtne kazne u svim okolnostima, „Sl. list SCG – Međunarodni ugovori”, br. 9/2003, 5/2005 i 7/2005. i „Sl. glasnik RS – Međunarodni ugovori”, br. 12/2010 i 10/2015.

u tekstu u nastavku),¹⁴ zatim Zakon o javnom informisanju i medijima,¹⁵ te Zakon o elektronskim medijima.¹⁶ Za pojedina pitanja, država je donela i određene podzakonske akte, da pomenemo samo Pravilnik o zaštiti ljudskih prava u oblasti pružanja medijskih usluga¹⁷ i Pravilnik o zaštiti prava maloletnika u oblasti pružanja medijskih usluga.¹⁸ Pored ovih (ali i ne samo ovih) normativnih akata koji garantuju zaštitu žrtava nasilja i eksploatacije, i naročito zaštitu maloletnih žrtava, i definišu obavezu države u toj oblasti, na ovu obavezu pozivaju i podsećaju i brojni izveštaji koje su Republici Srbiji uputila ekspertska tela osnovana da se staraju o primeni međunarodnih pravnih instrumenata i da nadgledaju aktivnosti države u tom pogledu; ove preporuke možemo, recimo, da vidimo u Zaključnim zapažanjima Lanzarote komiteta ili u Zaključnim zapažanjima UN Komiteta za prava deteta, koji se periodično upućuju Srbiji, i u skladu s kojima država usklađuje svoje unutrašnje zakonodavstvo kao i praktično delovanje svojih institucija.

Iako ne sadrži detaljne odredbe o zaštiti podataka o ličnosti maloletnih lica, Zakon o zaštiti podataka o ličnosti na nekoliko mesta postavlja više standarde zaštite podataka maloletnika. Pre svega, Zakon postavlja interes maloletnog lica kao jedan od interesa koji može biti pretežniji od od legitimnog interesa rukovoca ili treće strane na kome se zasniva obrada podataka o ličnosti (čl. 12. st. 1. t. 6). To znači da, čak i kada postoje opravdani (legitimni) razlozi za obradu podataka o ličnosti, obrada može biti nezakonita ukoliko je u konkretnom slučaju bitnije zaštititi interes maloletnog lica. Dalje, Zakon propisuje da je obrada podataka o ličnosti maloletnika mlađeg od 15 godina, a u vezi s korišćenjem usluga informacionog društva,¹⁹ moguća samo uz pristanak roditelja, odnosno zakonskog zastupnika lica. Konačno, Zakon posebno ističe i da je posao poverenika za informacije od javnog značaja i zaštitu podataka o ličnosti (poverenik) da se stara o podizanju javne svesti o rizicima, pravilima, merama zaštite i pravima u vezi sa obradom podataka o ličnosti, a posebno ako se radi o obradi podataka o maloletnom licu (čl. 78. st. 1. t 2).

Posebnu zaštitu maloletnog lica predviđaju i medijski propisi i smernice

14 „Sl. glasnik RS”, br. 87/2018.

15 „Sl. glasnik RS”, br. 83/2014, 58/2015 i 12/2016 – autentično tumačenje.

16 „Sl. glasnik RS”, br. 83/2014 i 6/2016.

17 „Sl. glasnik RS”, br. 55/2015.

18 „Sl. glasnik RS”, br. 25/2015.

19 Pod uslugom informacionog društva podrazumeva se usluga pružena na daljinu, na zahtev korisnika usluge i uz naknadu.

samoregulacionih tela. Zakon o javnom informisanju predviđa da se, u cilju zaštite slobodnog razvoja ličnosti maloletnika, posebno mora voditi računa da sadržaj medija i način distribucije medija ne naškodi moralnom, intelektualnom, emotivnom ili socijalnom razvoju maloletnika (čl. 77), kao i da se maloletnik ne sme učiniti prepoznatljivim u informaciji koja može da povredi njegovo pravo ili interes (čl. 80. st. 2). Takođe, Kodeks novinara Srbije predviđa obavezu novinara da osigura da dete ne bude ugroženo ili izloženo riziku zbog objavljivanja njegovog imena, fotografije ili snimka s njegovim likom, kućom, zajednicom u kojoj živi ili prepoznatljivom okolinom.

U svakom slučaju, pravni okvir za oblast koja je od značaja za ovu studiju slučaja dobro je razvijen, a obaveze i nadležnosti države precizno su definisane. To znači da nema mesta izgovoru o pravnim prazninama i nemanju nadležnosti pojedinih državnih organa, koje bi proizvelo njihovo eventualno nečinjenje, a decu koja su žrtve nasilja i eksploatacije, ili su u riziku da ih dožive, praktično ostavilo bez zaštite.

OPIS SLUČAJA ANE, MALOLETNE ŽRTVE TRGOVINE LJUDIMA

U periodu od kraja 2018. do aprila 2020, Anu je kontinuirano seksualno zlostavljao i eksploatisao otac, koji je snimao seksualne odnose sa svojom ćerkom i dalje ih distribuirao preko društvene mreže „Fejsbuk”. Otac je devojčicu podvodio i drugim muškarcima s kojima je bila primorana da ima seksualne odnose, koje je on takođe snimao.

Pored toga što je bila seksualno zlostavljana, Ana je u dugom periodu bila i žrtva roditeljskog zlostavljanja i zanemarivanja. O njoj se najviše brinula baka s kojom je devojčica razvila odnos bliskosti. Postoje indicije da je otac seksualno zlostavljao Anu u dužem periodu od prethodno navedenog.

Najkasnije januara 2019. godine, policija je imala saznanja/sumnju da Anu seksualno zlostavlja otac. Ana je u toku jedne godine najmanje četiri puta davala različitim organima izjave o tome da je otac seksualno zlostavlja i da je prinuđena na seksualne odnose s drugim muškarcima. Nije poznato da li je i jedna krivičnopravna mera preduzeta, izuzev što je policija, nakon prve detetove izjave, izrekla hitnu meru po Zakonu o sprečavanju nasilja u porodici, koja nije produžena. Uprkos hitnoj meri, otac je uspostavljao komunikaciju s detetom, koje je bežalo iz hraniteljske porodice da bi se vraćalo kući. Ocu deteta nije izrečena zatvorska kazna zbog kršenja hitne mere, kako je propisano Zakonom o sprečavanju nasilja u porodici. Iako je postojala sumnja da je Ana žrtva trgovine ljudima, na osnovu dostupnih indikatora za socijalnu zaštitu,²⁰ i mada je o tome odmah obavешten Centar za zaštitu trgovine ljudima, koji ima mandat za identifikaciju slučajeva trgovine ljudima u Srbiji, ovom Centru trebalo je godinu dana da obavi prvi razgovor s detetom. Tokom 17 meseci, ni javni tužilac ni nadležni Centar za socijalni rad nisu pokrenuli parnični postupak za zaštitu od nasilja u skladu s Porodičnim zakonom, niti su preduzimane adekvatne policijske mere u vreme kada devojčica nije bila dostupna, pa i u intervalima od više meseci.

Propusti organa počeli su i pre nego što je dete prvi put dalo izjavu o

²⁰ http://www.mup.gov.rs/wps/wcm/connect/38a440cc-c42a-4b21-b313-a323a8999d1b/05.INDIKATORI_Soc+zastita_deca.LAT.pdf?MOD=AJPERES&CVID=mBSb0A-

seksualnom zlostavljanju koje je trpelo i trajali su do lišenja slobode oca-zlostavljača, ali i nakon toga. Oni se mogu pratiti i u prošlosti, u vreme roditeljske separacije, kada je brigu o detetu suštinski vodila baka, bez odgovarajućeg pravnog rešenja i bez podrške institucija, kao i u periodu od kada je otac deteta bio osuđen na izdržavanje kazne zatvora do perioda kada je trebalo da bude otpušten i kada je trebalo procenjivati i planirati mere za smanjenje rizika po dete. Sve su ovo periodi kada je životni put ove devojčice mogao biti izmenjen, pažljivim i smislenim odabirom mera socijalne zaštite, porodično-pravne zaštite, obrazovne i zdravstvene podrške.

Tokom 17 meseci, Ani nije obezbeđena dovoljna, pravovremena i adekvatna krivičnopravna, porodičnopravna, socijalna zaštita od trgovine ljudima i zaštita od sekundarne viktimizacije, uprkos nizu organa koji su za to nadležni i nizu pravno obavezujućih i strateških dokumenata u Republici Srbiji. Pored Zakonika o krivičnom postupku, Krivičnog zakonika, Zakona o sprečavanju nasilja u porodici, Zakona o prekršajima, Zakona o policiji, Porodičnog zakona i Zakona o socijalnoj zaštiti, od kojih svaki propisuje neku od mera koje su mogle biti iskorišćene za zaštitu ovog deteta – Ana je ostala bez sveobuhvatne zaštite i pored brojnih informacija o seksualnom zlostavljanju ove devojčice.

Trebalo je da prođe 17 meseci da bi se pokrenuo krivični postupak protiv oca-zlostavljača. Uprkos odredbama Zakona o sprečavanju nasilja u porodici, ocu deteta izrečena je jedna hitna mera koja nije produžena. Takođe, nisu pokrenuti postupci za zaštitu od nasilja u skladu s Porodičnim zakonom; nije obezbeđena adekvatna i blagovremena interventna zaštita deteta. Tokom ovog perioda, devojčica je u brojnim prilikama davala iskaze policiji, Centru za socijalni rad, Centru za zaštitu žrtava trgovine ljudima.

Neke od iskaza je s vremenom povlačila, što predstavlja učestao mehanizam odbrane kod dece žrtava zlostavljanja. Smeštaj u hraniteljskoj porodici i ustanovama i programima podrške nije doveo do očekivanih efekata i devojčica se vraćala kući ocu. Tokom tog perioda nije učinjeno ništa da se spreči očev toksičan uticaj na dete, njegova kontrola nad njom, seksualno zlostavljanje koje je tokom celog perioda i vršio i organizovao. Sve do aprila 2020. godine, zlostavljač se nalazio na slobodi. Hapšenje oca deteta žrtve usledilo je tek nakon što je prijavljeno da je distribuirao snimak seksualnog nasilja nad Anom.

Ono što je ključno odlikovalo postupanje policije i tužilaštva jeste očekivanje

da dete bude nosilac dokaznog postupka, iako devojčica spada u red privilegovanih svedoka. Od nje se očekivalo da policiji i tužilaštvu pruži dokaze – snimak, izjavu, pri čemu nije uvažen položaj ovog deteta posebno zbog toga što je, zbog odsustva majčine brige, praktično prepuštena ocu. Pri tome, nadležne državne institucije nisu kontinuirano preduzimale sve neophodne i zakonom zagarantovane radnje kako bi se ovom detetu obezbedila stabilna i bezbedna sredina, slobodna od uticaja oca, sa psihološkom, zdravstvenom, socijalnom i obrazovnom podrškom, u kojoj bi dete jedino moglo da slobodno da izjavu o teškim oblicima zlostavljanja koje je trpelo. Umesto toga, ovo dete je višestruko reviktimizovano perpetuiranim uzimanjem izjava, kojima se nije davala težina niti poverenje, nepokretanjem krivičnih postupaka, omogućavanjem seksualnom zlostavljaču da uprkos izjavama deteta, devojčicu nesmetano kontroliše i nadalje zlostavlja.

Nažalost, ni hapšenje zlostavljača i aktuelan prekid seksualnog zlostavljanja nije značio kraj zlostavljanja ovog deteta. Ministarstvo unutrašnjih poslova objavilo je 22. aprila 2020. informaciju da je:

„Uhapšen osumnjičeni za rodoskrvnuće i iskorišćavanje maloletnog lica za pornografiju.

Pripadnici Ministarstva unutrašnjih poslova u Pančevu uhapsili su [...] (1977) zbog postojanja osnova sumnje da je izvršio krivično delo rodoskrvnuće, kao i krivično delo prikazivanje, pribavljanje i posedovanje pornografskog materijala i iskorišćavanje maloletnog lica za pornografiju.

Sumnja se da je on početkom ovog meseca svoju sedamnaestogodišnju ćerku nagovorio na polni odnos sa njim, što je snimio mobilnim telefonom. Taj snimak je, kako se sumnja, putem 'Fejsbuk' profila osumnjičenog prosleđen njegovim prijateljima na ovoj društvenoj mreži uz poruku 'da su vrata otvorena i da se naplaćuje 2.000 dinara za noć'.

*Osumnjičenom je određeno zadržavanje do 48 sati nakon čega će, uz krivičnu prijavu, biti priveden Osnovnom javnom tužilaštvu u Pančevu”.*²¹

Ova informacija objavljena je u okolnostima kada je snimak devojčice već bio dostupan mnogim licima putem društvene mreže „Fejsbuk”. Sama policija navela je da je otac nudio kćerku za seksualni odnos za novac, preko

21 Dostupno na: <http://www.mup.gov.rs/wps/portal/sr/aktuelno/saopštenja/eb97ef0b-64f6-4754-8449-5b13d507e641>, pristupljeno 13. januara 2021.

„Fejsbuk” mreže. Stoga je jasno da je ovaj snimak bio i mogao biti dostupan i seksualnim zlostavljačima dece, trgovcima ljudima i drugim kriminalnim grupama. Pri takvoj okolnosti, objavljivanje detalja izvršenja krivičnog dela, i posebno navođenje preko koje društvene mreže je devojčica „nuđena” za seksualni odnos i preko koje je distribuiran snimak njenog seksualnog zlostavljanja, olakšalo je mogućnost da se do snimka dođe, a dete prepozna, čime je povećan rizik od novog zlostavljanja i novog ciklusa trgovine radi seksualnog iskorišćavanja. Objavljivanje i mesta odakle je otac-zlostavljač, otvorilo je mogućnost da se sa snimkom upozna i mnogo širi krug lica, kao i da se vrlo brzo otkrije identitet deteta.

Da li je način na koji je MUP objavio informaciju doveo do eksplozije medijskih izveštaja ili je tužilaštvo odalo informaciju o opisu zlostavljanja medijima, ostaje da se utvrdi. Samo dan kasnije (a u nekim medijima i istog dana) ogroman broj štampanih i elektronskih medija objavio je informaciju o ovom hapšenju, s tim što je pored informacija koje je objavio MUP u svom saopštenju, u medijima postala i dostupna informacija o tačnom mestu stanovanja deteta, a u mnogima su osvanule i fotografije i podaci koji su potpuno otkrili detetov identitet.

ČURENJE INFORMACIJA O ISTRAZI IZ INSTITUCIJA, KRŠENJE PRAVA NA PRIVATNOST I ZAŠTITU LIČNIH PODATAKA U ANINOM SLUČAJU

Prvi podaci koje su mediji objavili od 22. do 24. aprila 2020. bile su informacije da je otac-zlostavljač saslušan pred nadležnim tužilaštvom, taksativno šta stoji u optužnici i podaci o određivanju pritvora. Mediji su dalje objavili i detaljan opis onoga što mu se stavlja na teret, što suštinski predstavlja opis seksualnog zlostavljanja maloletne Ane. Mediji se pozivaju da su informaciju dobili od tužilaštva koje je preduzelo gonjenje („Novosti”,²² „Srbija Danas”,²³ „Republika”²⁴). Takođe su objavili uzrast žrtve i starost oca-zlostavljača, kao i informaciju o mestu gde on živi. U tekstovima („Novosti”, „Republika”) objavljeno je puno lično ime Aninog oca. Iako je informacija o opisu Aninog seksualnog zlostavljanja i iskorišćavanja došla iz tužilaštva, mediji su imali obavezu da se uzdrže od njenog objavljivanja u tako detaljnoj formi, u cilju zaštite deteta žrtve. Prenošenjem detalja zlostavljanja, mediji su povredili Anino pravo na zaštitu dostojanstva žrtve nasilja (član 79 Zakona o javnom informisanju i medijima). Javno deljenje informacije o opisu seksualnog zlostavljanja deteta, od strane nadležnog tužilaštva jeste u svojoj osnovi reviktimizacija deteta i kršenja prava žrtve. Ovakva saopštenja tužilaštva, imajući u vidu da je seksualno zlostavljanje i iskorišćavanje vršeno i pomoću digitalnih tehnologija (fotografisanje i snimanje deteta i potom slanje i objavljivanje na internetu) nisu bila u interesu zaštite žrtve, naprotiv, ona su žrtvu dodatno stigmatizovala. Javno tužilaštvo bilo je dužno da uskrati ovakvu vrstu informacija (opis radnje dela koje se stavljaju na teret okrivljenom/osumnjičenom), te da pruži samo one informacije koje žrtvu ne mogu učiniti prepoznatljivom u opisima seksualnog nasilja kroz povezivanje različitih onlajn dostupnih informacija. Već 24. aprila 2020. mediji su počeli da iznose nove detalje, te su objavili:

22 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:860854-Devojka-ne-tereti-oca-za-silovanje-lstraga-o-monstrumu-koji-je-snimao-seks-sa-cerkom>, pristupljeno 13. januara 2021.

23 Dostupno na: <https://www.srbijadanas.com/vesti/hronika/doneta-odluka-pancevcu-koji-je-osumnjicen-da-je-snimao-sks-sa-cerkom-odreden-pritvor-2020-04-23>, pristupljeno 13. januara 2021.

24 Dostupno na: <https://www.republika.rs/hronika/hronika/201520/otac-monstrum-panceva-iza-resetaka-vo-koliki-pritvor-odredjen-manjaku-sta-posle-ceka>, pristupljeno 13. januara 2021.

1. puno lično ime Aninog oca (prezime je navedeno inicijalom);
2. podatak o naselju iz koga je Anin otac (u kome je i Ana živela);
3. indirektno podatak da je mesto u kome je živeo Anin otac i mesto njenog života;
4. Anin uzrast;
5. detaljan opis Aninog seksualnog zlostavljanja;
6. informacije o Aninom porodičnom životu i nasilju kome je ona bila izložena (uz navođenje ko je nad njom vršio nasilje), ali i drugi članovi porodice (majka, tetka, baba);
7. informacija o Aninom odnosu sa majkom, Aninom porodičnom statusu (ko je o njoj vodio brigu);
8. informaciju da je Ana bila smeštena u ustanovi socijalne zaštite (neki mediji objavili su i podatke o kojoj je ustanovi reč – „Srbija Danas”²⁵, „Blic”²⁶, „Novosti”²⁷, „Espresso”²⁸, „Alo”²⁹, „Politika”³⁰).

Objavljivanje informacija 1-4 omogućava identifikovanje deteta, i činjenje deteta prepoznatljivim većem krugu ljudi. Objavljivanje informacije 5 predstavlja reviktimizaciju deteta i povredu prava na privatnost i bezbednost. Dete koje je – zahvaljujući objavljenim informacijama o uzrastu, mestu stanovanja, imenu oca i detaljima porodičnog života – moguće jasno identifikovati povezano je sa informacijom o seksualnom zlostavljanju i seksualnom iskorišćavanju. Na ovaj način ugrožena je

25 Dostupno na: <https://www.srbijadanas.com/vesti/hronika/tukao-je-celu-porodicu-jeziva-ispovest-bivse-zene-oca-koji-je-cerku-obljubio-sve-snimio-pa-slao-2020-04-24>, pristupljeno 13. januara 2021.

26 Dostupno na: <https://www.blic.rs/vesti/hronika/obljubio-cerku-i-sve-snimio-otac-monstrum-iz-sela-kod-panceva-devojicine-gole/effn2k>, pristupljeno 13. januara 2021.

27 Dostupno na: <https://www.novosti.rs/vesti/naslovnica/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, pristupljeno 13. januara 2021.

28 Dostupno na: <https://www.espresso.rs/vesti/hronika/549185/ovo-je-robija-koja-preti-monstrumu-iz-panceva-dugo-ce-ici-u-zatvor-zbog-onoga-sto-je-uradio-svom-detetu>, <https://www.espresso.rs/vesti/hronika/549517/progovorila-majka-devojicice-koju-je-otac-podvodio-detalji-iz-njihovog-zivota-su-cist-uzas>, pristupljeno 13. januara 2021.

29 Dostupno na: <https://www.alo.rs/vesti/hronika/pancevo-pedofil-incest-zena-cerka/306731/vest>, pristupljeno 13. januara 2021.

30 Dostupno na: <http://www.politika.rs/scc/clanak/454452/Ko-je-zakazao-u-lancu-zastite-devojicice-iz-Banatskog-Novog-Sela>, pristupljeno 13. januara 2021.

njena bezbednost, izložena je stigmatizaciji i riziku od novog seksualnog zlostavljanja, a objavljivanje ove informacije značajno otežava njen oporavak. Objavljivanjem informacija 6, 7 i 8 otkriveni su naročito osetljivi podaci o ličnom i porodičnom životu i korišćenju usluga socijalne zaštite.

Na ovaj način, povređena su sledeća prava zaštićena nacionalnim zakonodavstvom: pravo na zaštitu podataka o ličnosti i zaštitu od nezakonite obrade podataka o ličnosti,³¹ zatim pravo na zaštitu dostojanstva žrtve nasilja,³² pravo na privatnost ličnog i porodičnog života,³³ te pravo deteta da ne bude učinjeno prepoznatljivim u informaciji koja može da povredi njegovo pravo ili interes.³⁴

U medijskim izveštavanjima pojavljivale su se zamućene slike zlostavljača, kao i fotografije eksterijera u mestu u kome je Ana živela. Potom su mediji, pored informacija na osnovu kojih se može identifikovati dete žrtva i opisa seksualnog zlostavljanja, počeli da objavljuju i informacije iz krivičnog postupka, koji je zbog zaštite deteta morao da se vodi uz isključenje javnosti. Tako su citirane izjave žrtve date tužiocu („Novosti”³⁵) i informacije iz „izvora iz tužilaštva”. Uz objavljivanje informacije iz krivičnog postupka, sledi i objavljivanje informacija iz „pouzdanih izvora” s navodnim izjavama deteta pred organima gonjenja, ali ovoga puta usmerenih ka relativizaciji seksualnog zlostavljanja deteta i okrivljavanju deteta žrtve. Tako se sada navode izjave babe deteta po ocu kojom se iznose negativne kvalifikacije deteta („Srpska info”³⁶, „Blic”³⁷), navodi da je Ana inicirala seksualne odnose i da su ona i njen otac „delili momke” („Espreso”³⁸, „Alo”³⁹), navodi da je Ana izjavila da je seksualne odnose imala na „dobrovoljnoj bazi” („Alo”⁴⁰, „Srbija

31 Član 12 Zakona o zaštiti podataka o ličnosti.

32 Član 79 Zakona o javnom informisanju i medijima.

33 Član 80 Zakona o javnom informisanju i medijima.

34 Isto.

35 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno/291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, pristupljeno 13. januara 2021.

36 Dostupno na: <https://srpskainfo.com/silovao-kcerku-majka-brani-sina-monstruma-a-komsije-tvrde-da-je-uvijek-bio-nasilan/>, pristupljeno 13. januara 2021.

37 Dostupno na: <https://www.blic.rs/vesti/hronika/spavao-je-s-cerkom-u-istoj-sobi-nisam-videla-da-je-nasilan-prema-njoj-majka-brani/xhmx14>, pristupljeno 13. januara 2021.

38 Dostupno na: <https://www.espreso.rs/vesti/hronika/549223/isplivao-je-najgnusniji-detelj-pancevacke-sodome-i-gomore-oni-su-znali-sta-otac-radi-detetu-policija-je-zgrozena>, pristupljeno 13. januara 2021.

39 Dostupno na: <https://www.alo.rs/vesti/hronika/pancevo-incest-seks-sa-cerkom/306585/vest>, pristupljeno 13. januara 2021.

40 Dostupno na: <https://www.alo.rs/vesti/hronika/pancevo-pedofil-incest-devojicica-cerka/306709/vest>, pristupljeno 13. januara 2021.

Danas”⁴¹, „Kurir”⁴²), navodne izjave tetke deteta da je dete žrtva „sama tražila” (Republika 24. april 2020⁴³), „da se otac samopovređivao zbog Ane” („Republika”⁴⁴) i da je Ana zajedno sa ocem „pravila plan kako da dođu do para” („Novosti”⁴⁵). Mediji onda počinju da objavljuju i puno lično ime oca-zlostavljača („Espresso”⁴⁶, „Republika”⁴⁷) i da objavljuju nezaštićene fotografije Aninog oca („Republika”⁴⁸) i zamućene fotografije žrtve preuzete sa društvene mreže „Fejsbuk” („Kurir”⁴⁹).

Objavljivanje informacije da je devojčica sama inicirala seksualne odnose sa ocem i drugim muškarcima je težak oblik viktimizacije deteta. Ova informacija je okrivljavanje žrtve za seksualno zlostavljanje koje je doživela i seksualno iskorišćavanje kome je bila izložena, uz istovremeno određen stepen javnog „amnestiranja” zlostavljača. Imajući u vidu pol žrtve i zlostavljača, ovakvi navodi imaju izrazitu rodnu neosetljivost i rodne stereotipe. Objavljivanje ove informacije predstavlja ne samo reviktimizaciju deteta već i flagrantnu povredu prava na privatnost, poverljivost podataka i bezbednost. Takođe, prisustvo pojave tzv. posttruth, slobodnog falsifikovanja činjenica, uz plasiranje otvorenih neistina, često uvredljivog karaktera⁵⁰ i više je nego prisutno u ovom slučaju. Uz navođenje svih podataka iz prethodnih medijskih članaka, dete je prepoznato u informaciji koja suštinski predstavlja ozbiljnu prepreku njenom oporavku i reintegraciji.

41 Dostupno na: <https://www.srbijadanas.com/vesti/hronika/dobrovoljno-imala-sks-sa-ocem-izjava-cerke-pancevcva-koji-je-snimao-njihove-intimne-odnose-sokirala-2020-04-24>, pristupljeno 13. januara 2021.

42 Dostupno na: <https://www.srbijadanas.com/vesti/hronika/dobrovoljno-imala-sks-sa-ocem-izjava-cerke-pancevcva-koji-je-snimao-njihove-intimne-odnose-sokirala-2020-04-24>, pristupljeno 13. januara 2021.

43 Dostupno na: <https://www.republika.rs/hronika/hronika/201554/foto-sodoma-gomora-porodici-banatskog-novog-sela-otac-cerka-hтели-obogate-pornicem>, pristupljeno 13. januara 2021.

44 Dostupno na: <https://www.republika.rs/hronika/hronika/201554/foto-sodoma-gomora-porodici-banatskog-novog-sela-otac-cerka-hтели-obogate-pornicem>, pristupljeno 13. januara 2021.

45 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:860854-Devojka-ne-tereti-oca-za-silovanje-Istraga-o-monstrumu-koji-je-snimao-seks-sa-cerkom>, pristupljeno 13. januara 2021.

46 Dostupno na: <https://www.espresso.rs/vesti/hronika/549223/isplivao-je-najgnusniji-detalj-pancevacke-sodome-i-gomore-oni-su-znali-sta-otac-radi-detetu-policija-je-zgrozena>, pristupljeno 13. januara 2021.

47 Dostupno na: <https://www.republika.rs/hronika/hronika/201554/foto-sodoma-gomora-porodici-banatskog-novog-sela-otac-cerka-hтели-obogate-pornicem>, pristupljeno 13. januara 2021.

48 Dostupno na: <https://www.republika.rs/hronika/hronika/201747/sokantan-obrt-slucaju-silovanja-kod-panceva-otac-cerku-nije-prisilio-odnos>, pristupljeno 13. januara 2021.

49 Dostupno na: <https://www.srbijadanas.com/vesti/hronika/dobrovoljno-imala-sks-sa-ocem-izjava-cerke-pancevcva-koji-je-snimao-njihove-intimne-odnose-sokirala-2020-04-24>, pristupljeno 13. januara 2021.

50 Nasilje i mi, mediji o nasilju nad ženama, dr Zorica Mršević, Institut društvenih nauka Beograd, dostupno na: https://www.idn.org.rs/biblioteka/Nasilje_i_mi_mediji_o_nasilju_nad_zenama_sajt.pdf, strana 24, pristupljeno 12. januara 2021.

SEKUNDARNA TRAUMATIZACIJA I REVIKTIMIZACIJA, UGROŽAVANJE BEZBEDNOSTI I KONTINUIRANO ZLOSTAVLJANJE ANE

Dete je – zahvaljujući objavljenim informacijama o uzrastu, imenu oca i detaljima porodičnog života, a u ranijim tekstovima i o mestu gde živi – moguće jasno identifikovati, povezano je sa informacijom o njenoj „dobrovoljnosti” u seksualnom zlostavljanju i seksualnom iskorišćavanju, čime je Ana postala lak plen trgovcima ljudima i seksualnim zlostavljačima dece. Na ovaj način ugrožena je njena bezbednost, izložena je stigmatizaciji i riziku od novog seksualnog zlostavljanja, a objavljivanje ove informacije značajno otežava njen oporavak.⁵¹ Međutim, uprkos flagrantnim i višestrukim povredama prava zlostavljanog deteta, nijedan organ u čijoj je to nadležnosti nije pokrenuo postupke protiv medija.

S druge strane, javnim izlaganjem događaja dete se postavlja u poziciju retraumatizacije i sekundarne viktimizacije, što takođe predstavlja značajnu prepreku detetovom oporavku.⁵² U ovom kontekstu, posebno je osetljiv položaj deteta žrtve seksualnog zlostavljanja. Razvojne karakteristike dece – pre svega činjenica da razvoj detetovog identiteta (kako u ranom uzrastu, tako i u adolescenciji), zavisi u velikoj meri od poruka koje dobijaju iz porodičnog i socijalnog okruženja. U adolescenciji je veliki uticaj vršnjačke grupe, te stigma seksualnog zlostavljanja može dovesti do izbegavanja deteta žrtve ili do njegovog/njenog odbacivanja od vršnjačke grupe, što dalje vodi izolaciji deteta, usamljenosti, lošim performansama u školi, vršnjačkom zlostavljanju i značajnijim problemima u psihološkom funkcionisanju deteta i socijalizaciji.⁵³ Seksualno zlostavljanje dece nosi dugoročne posledice, uključujući posttraumatski stres, anksioznost, depresiju, poremećaje u

⁵¹ Stigmatizacija je jedan od četiri ključna faktora koji utiču na stvaranje i održavanje traume kod seksualno zlostavljanog deteta. Izlaganje javnosti žrtve seksualnog zlostavljanja povećava rizik od stigmatizacije i ukorenjivanja osećanja sramote kod žrtve. Stigmatizacija, negativne poruke (posebno okrivljujuće i osramoćujuće) značajno smanjuju šanse za oporavak. Više videti na Protecting victims identities in press coverage of child victimization, Jones, Finkelhor, Beckwith, 2010, Journalism, dostupno na: <http://www.unh.edu/ccrc/pdf/CV182.pdf>.

⁵² Isto.

⁵³ Isto.

ishrani, problem u uspostavljanju i očuvanju emotivnih veza, poremećaje u spavanju, ideje, pokušaje i izvršenje suicida, samopovređivanje i druga autodestruktivna ponašanja.⁵⁴ „Seksualna trauma ne zastareva”.⁵⁵ Dete žrtva može imati dugotrajno snažno osećanje stida i krivice, koje je nastalo manipulacijom samog seksualnog zlostavljača koji dete „uči” da je ono krivo, da je zaslužio da bude zlostavljano, da je izazvalo ili se nije suprotstavilo, da je seksualno nasilje njihova zajednička tajna. Brojnim tehnikama psihološke i emocionalne manipulacije, seksualni zlostavljač podstiče, uzgaja i neguje osećanje krivice i stida⁵⁶ koji su tim izraženiji kada je seksualni zlostavljač roditelj ili osoba od poverenja.⁵⁷

Prvi medijski izveštaji o Ani, kao što je navedeno, uglavnom su preneli saopštenja policije i tužilaštva. Očekivano, komentari čitalaca bili su negativni u odnosu na zlostavljača i izražavali su gnev i šok u vezi s podatkom da je otac seksualno zlostavljao kćerku („Rano je ukinut Goli otok”, „Čovek je kvaran i monstrozac sam po sebi”, „Zbog ovakvih stvari ponovo treba uvesti smrtnu kaznu”, „Doživotna robija i kastracija za monstruma”⁵⁸).

I u sledećoj liniji izveštavanja, kada su već počeli da se objavljuju detalji Aninog seksualnog zlostavljanja, reakcije čitalaca bile su u najvećoj meri izraz gneva u odnosu na zlostavljača („On je za gasnu komoru”, „Doživotna, ništa manje”, „Predložio bih 10 godina ali u Černobilu ili Fukušimi”, „Zar je takva zver još u životu”⁵⁹; „Giljotinu nasred trga pa po zasluži”⁶⁰), pravni sistem koji ovakve zločine neadekvatno sankcioniše („Zašto se država ne bavi takvim ekstremima, moramo li da živimo u ovom okruženju”⁶¹; „Postavlja se opravdano pitanje zašto postoje centri za socijalni rad? Možda ih

54 Responding to children and adolescents who have been sexually abused – WHO clinical guidelines, dostupno na: <https://apps.who.int/iris/bitstream/handle/10665/259270/9789241550147-eng.pdf;jsessionid=2666D8BD6499F9C6B8E13F61745FD6D7?sequence=1>, pristupljeno 13. januara 2021.

55 Nacionalna studija o o društvenom problemu seksualnog zlostavljanja dece u Republici Srbiji, Bogavac, Popadić, Otašević i Cucić, Incest Trauma Centar Beograd, 2015.

56 Nacionalna studija o o društvenom problemu seksualnog zlostavljanja dece u Republici Srbiji, Bogavac, Popadić, Otašević i Cucić, Incest Trauma Centar Beograd, 2015.

57 Long Term Effects of Childhood Sexual Abuse – Counseling Implications, Hall and Hall, 2011, VISTAS Online, dostupno na: https://www.counseling.org/docs/disaster-and-trauma_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf?sfvrsn=2, pristupljeno 13. januara 2021.

58 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:860854-Devojka-ne-tereti-oca-za-silovanje-istraga-o-monstrumu-koji-je-snimao-seks-sa-cerkom>, pristupljeno 13. januara 2021.

59 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, pristupljeno 13. januara 2021.

60 Dostupno na: <https://www.alo.rs/vesti/hronika/pancevo-incest-seks-sa-cerkom/306585/vest>, pristupljeno 13. januara 2021.

61 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, pristupljeno 13. januara 2021.

jednostavno nije briga”, „Služba za socijalni rad a polako i policija postaju sinonimi naše propasti. Kad čuješ da se o nekome brine socijalna služba, znaš da tom nesrećniku nema više pomoći. Žaloso”.⁶² „Eto to ova država gaji a iz države goni ljude za primer. Plus to su stvari koje propagiraju ovi rijaliti šouovi, direktna odgovornost je na njima ali nema ovde ni D od Države!”⁶³) i medijske sadržaje koji promovišu negativne vrednosti („Stop umobolnim rijaliti programima, ostanite iza brave”⁶⁴; „A šta ste očekivali kad su nam glavne zvezde učesnici Parova, Farme, Zadruga i sličnih štala gde se okupljaju ljudi najnižeg morala, kriminalci i svakojaki probisveti i njihove „vrline” nameću društvu”⁶⁵). U odnosu na žrtvu, neki komentari predstavljaju prepoznavanje da o „dobrovoljnosti” deteta na seksualno zlostavljanje u porodici ne može biti ni reči („Ako je ‘dobrovoljno’, onda nije incest? Nema krivičnog dela seks s maloletnikom? Krivično delo incest? Sve je normalno?”, „Kakve veze ima da li ga tereti za silovanje, da li ste vi normalni?! Kao prvo je maloletna, kao drugo mu je ćerka. Stvarno je sve otišlo dođavola“⁶⁶ „Ma kako da ne! Pa u ovo ne bi poverovao ni najveći debil! Dete je preplašeno, silovano, zlostavljano i naravno da će sve uraditi ne bi li oslobodila oca jer je u strahu do koske!”⁶⁷; „Jok, ona je prisilila njega? I vi mu verujete.”⁶⁸).

Kada su počele da se objavljuju informacije o Aninoj „dobrovoljnosti”, počeli su da se pojavljuju i komentari čitalaca koji minimiziraju seksualno nasilje koje je dete trpelo („Jaka stvar što se vole. Koliko ima takvih slučajeva gde otac ima odnose sa ćerkom, majka sa sinom, brat i sestra. Njihov problem u četiri zida, koga briga”, „Moderna neka porodica, kao Karingtonovi”⁶⁹), relativizuju odgovornost odrasle osobe zlostavljača („Devojka je u policiji izjavila da je DOBROVOLJNO imala seksualni odnos sa ocem. Izjavila je da je

62 Dostupno na: <http://www.politika.rs/scc/clanak/454452/Ko-je-zakazao-u-lancu-zastite-devojice-iz-Banatskog-Novog-Sela>, pristupljeno 13. januara 2021.

63 Dostupno na: https://www.alo.rs/vesti/hronika/pancevo-pedofil-incest-devojica-cerka/306709/vest_pristupljeno_13_januara_2021.

64 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, pristupljeno 13. januara 2021.

65 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:860854-Devojka-ne-tereti-oca-za-silovanje-Istraga-o-monstrumu-koji-je-snimao-seks-sa-cerkom>, pristupljeno 13. januara 2021.

66 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, pristupljeno 28. septembra 2020.

67 Dostupno na: https://www.alo.rs/vesti/hronika/pancevo-pedofil-incest-devojica-cerka/306709/vest_pristupljeno_13_januara_2021.

68 Dostupno na: <https://www.republika.rs/vest/svi-komentari/hronika/hronika/201747/sokantan-obrt-slucaju-silovanja-kod-panceva-otac-cerku-nije-prisilio-odnos>, pristupljeno 13. januara 2021.

69 Dostupno na: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, pristupljeno 13. januara 2021.

DOBROVOLJNO delila svoje nage fotografije na F.B. stranicama. Zato će ovaj čovek robijati, ali MINIMALNO, samo zato što je devojka još uvek maloletna pa je otac prekršio zakon stupajući u seksualni odnos sa njom pre nego je postala punoletna⁷⁰) i stavljaju teret odgovornosti za seksualno nasilje na dete („I nemoj da s...š da je ova devojka nevino dete. Gde piše da je otac silovao? Gde piše da joj je otac oduzeo nevinost?“⁷¹), „Znam ih od malih nogu, ćerka je jako problematična i nije kako treba“⁷²). Rodni stereotipi izrazito su uočljivi u komentarima („Ciganska posla, ovo su ganci radili godinama i sad kao nešto novo“, „Ona sama kaže da je dobrovoljno pristala. Ako išta cenim kod ove devojke, to je karakterna crta u ličnosti, jer je sposobna da sama snosi posledicu svoje odluke i ne optužuje oca za ono što je sama htela“⁷³).

Medijsko izveštavanje o Ani je ovo dete stigmatizovalo i izložilo različitim oblicima sekundarne traumatizacije i reviktimizaciji. Najpre, objavljivanjem podataka o njoj u kontekstu seksualnog iskorišćavanja i trgovine radi seksualne eksploatacije, Ana je učinjena suštinski dostupnom trgovcima ljudima i seksualnim zlostavljačima. Ove rizike dodatno je povećalo objavljivanje medijskih sadržaja o Aninoj dobrovoljnosti u vezi sa seksualnim odnosima sa ocem i drugim muškarcima radi „zaradivanja novca“. Ovakvi izveštaji Anu nisu oslikali kao žrtvu seksualnog zlostavljanja i iskorišćavanja, već kao robu koja je – zahvaljujući objavljivanju snimaka na društvenim mrežama i sajtovima i zahvaljujući medijskim sadržajima koji su te snimke i seksualnu zloupotrebu neposredno povezali s konkretnom maloletnom osobom – lako dostupna. Takođe su je prikazali kao da je ona ta koja je manipulisala ocem i svim drugim odraslim muškarcima, koji su, da podsetimo, imali seksualne odnose s maloletnim detetom. „Dobrovoljnost“ odnosa deteta sa odraslom osobom maskirana je nizom okolnosti u vezi s ponašanjem deteta, koje mogu da daju sliku kako je dete pristalo na seksualni odnos. U to se ubrajaju sledeća ponašanja deteta koje je preživelo seksualno nasilje: dete ne vrišti, ne suprotstavlja se, ne pruža aktivan otpor, ne obelodanjuje seksualni čin neposredno pošto se dogodio, u bliskoj vezi je s nasilnikom, nema forenzičkih dokaza o seksualnom odnosu i ne može da se seti detalja događaja. Međutim, treba imati u vidu da sva ova ponašanja deteta nikako ne znače i pristanak, već samo reakciju na postojeću situaciju,

70 Dostupno na: <https://www.espreso.rs/vesti/hronika/549185/ovo-je-robija-koja-preti-monstrumu-iz-panceva-dugo-ce-ici-u-zatvor-zbog-onoga-sto-je-uradio-svom-detetu>, pristupljeno 13. januara 2021.

71 Dostupno na: <https://www.espreso.rs/vesti/hronika/549185/ovo-je-robija-koja-preti-monstrumu-iz-panceva-dugo-ce-ici-u-zatvor-zbog-onoga-sto-je-uradio-svom-detetu>, pristupljeno 13. januara 2021.

72 Dostupno na: <https://www.republika.rs/vest/svi-komentari/hronika/hronika/201554/foto-sodoma-gomora-porodici-banatskog-novog-sela-otac-cerka-hteli-obogate-pornicem>, pristupljeno 13. januara 2021.

73 Dostupno na: <https://www.espreso.rs/vesti/hronika/549185/ovo-je-robija-koja-preti-monstrumu-iz-panceva-dugo-ce-ici-u-zatvor-zbog-onoga-sto-je-uradio-svom-detetu>, pristupljeno 13. januara 2021.

mehanizam odbrane i izlaženja na kraj sa situacijom u kojoj nema moć. Dete je žrtva.⁷⁴ S obzirom na to da dete ne može dobrovoljno učestvovati u tako nečem, niti može dati saglasnost za tako nešto, jasno je da se u ovakvim slučajevima radi isključivo o seksualnom iskorišćavanju i zlostavljanju dece, lica mlađih od 18 godina.

Stigmatizacija sada već prepoznatljivog i identifikovanog deteta zbog seksualnog zlostavljanja izrazita je u medijskim izveštajima, a vidi se i kroz komentare čitalaca. Ovaj sadržaj koji za Anu predstavlja sud javnog mnjenja, sud njenog okruženja i sud njenih socijalnih grupa, detetu je poslao poruke o stidu, sramoti, o krivici i isključivoj odgovornosti za trpljeno seksualno nasilje, pa i poruke o „normalnosti” seksualnog zlostavljanja u porodici i njenoj socijalnoj grupi. Za adolescentkinju koja je bila seksualno zlostavljana tokom najmanje godinu i po dana, kojoj državni organi nisu poklonili poverenje, koju institucije i pravni sistem nisu zaštitili, medijsko izlaganje javnosti i stavovi koji su o njenom zlostavljanju eksplicitno ili implicitno izraženi dodatne su poruke iz kojih ona izvodi zaključak o sopstvenoj sramoti i krivici. Kao što ovaj medijski sadržaj objavljen na internetu i snimci njenog seksualnog zlostavljanja, takođe objavljeni na internetu, ostaju zabeleženi trajno, tako trajna ostaje i Anina stigmatizacija.

74 Nacionalna studija o društvenom problemu seksualnog zlostavljanja dece u Republici Srbiji, Incest trauma centar, dostupno na http://incestrauamacentar.org.rs/files/2015/ITC_2015_Srbija_-_Nacionalna_studija_o_seksualnom_nasilju_nad_decom.pdf, pristupljeno 12. januara 2021.

Mediji mogu biti izuzetno sredstvo edukacije o nasilju nad decom, njegovoj prevenciji i faktorima rizika. Konkretni slučajevi zrelim medijima posvećenim novinarskoj etici i poštovanju ljudskih prava služe kao povod za dublju raspravu o nasilju nad decom. Takvim medijima informacija o seksualnom zlostavljanju i seksualnom iskorišćavanju služi kao momentum da pokrenu različite društveno odgovorne priče, da edukuju javnost o rasprostranjenosti seksualnog zlostavljanja, da kritikuju institucije, državne organe za neadekvatan odgovor u odnosu na seksualno nasilje prema deci, da pokrenu širu raspravu o prevenciji i zaštiti od seksualnog zlostavljanja dece, da uče decu i mlade i njihove porodice o pojavi seksualnog zlostavljanja, prevenciji i zaštiti, kao i da zagovaraju promene u sistemu koji će prevenciju i zaštitu od seksualnog zlostavljanja unaprediti.

S druge strane, mediji mogu biti izuzetno snažan izvor trauma za decu. Senzacionalističko, pa i brutalno izveštavanje o konkretnom detetu žrtvi izazvaće kod deteta nove traume, koje će biti teško, ako ne i nemoguće, zalečiti. **Kršenje privatnosti dece i objavljivanje njihovih ličnih podataka u medijima može izazvati trajne negativne posledice i urušiti svaku mogućnost da se ono oporavi.** Mediji koji to čine koriste konkretan slučaj za podizanje tiraža, kroz izveštavanje koje privlači pažnju a ne obrazuje, kroz opise koji sprečavaju čitaoce da promišljaju o prevenciji seksualnog zlostavljanja, kroz ogoljavanje žrtve bez imalo obzira, razumevanja i empatije prema njenom stanju i traumati.

Mediji biraju koju ulogu će imati u odnosu na nasilje prema deci. U Aninom slučaju mediji su, ne prvi put, na najbrutalniji način ekonomski interes stavili iznad života i zdravlja deteta, naročito deteta koje je pretrpelo jednu od najstrašnijih trauma. Dubokim i dugotrajnim posledicama seksualnog nasilja roditelja sada su pridodate traume izloženosti javnosti i iznetih detalja seksualnog nasilja koje je ovo dete preživelo i činjenice da je zaista značajno širokom krugu ljudi dete učinjeno dostupnim i prepoznatljivim. Ove informacije ostaju trajno zabeležene u digitalnom prostoru.

Nakon donošenja Zakona o sprečavanju nasilja u porodici, povećanog broja

izrečenih hitnih mera zbog nasilja u porodici, javno izrečenih statističkih podataka o žrtvama nasilja u porodici razvrstanih po polu, uočeni su određeni pomaci u medijskom izveštavanju o rodno zasnovanom nasilju (povećanje broja tekstova i priloga u kojima su poštovana prava žrtve, tekstova i priloga o nasilju u porodici i sistemskom odgovoru na njega, dokumentima nadležnih organa). Ovaj početak senzibilizacije medija (ali i državnih organa) o rodno zasnovanom nasilju nije se desio u slučaju rodno zasnovanog nasilja nad decom, te postoji oštra razlika u posmatranju nasilja nad ženom (koje se posmatra u sve većoj meri kao rodno zasnovano nasilje) i nasilja nad devojčicom (koje se posmatra isključivo kao nasilje prema detetu, bez rodnog aspekta).

Slučaj medijske viktimizacije maloletne Ane istovremeno je i slučaj institucionalne viktimizacije deteta koje je u dugom periodu bilo žrtva seksualnog zlostavljanja i seksualnog iskorišćavanja. Institucionalni sistem Republike Srbije, nije zaštitio dete od seksualnog zlostavljanja i iskorišćavanja koje je trpelo u dugom periodu, niti od institucionalnog zlostavljanja organa koji su morali da joj pruže zaštitu, niti od medijskog zlostavljanja i višestruke viktimizacije usled načina izveštavanja medija o ovom slučaju.

Postavlja se pitanje – da li će ikada biti moguće da se ova devojčica oporavi i reintegriše. Ukoliko vreme pokaže da je odgovor na ovo pitanje negativan, odgovornost stoji na na medijima i organima vlasti, koji su umesto pomoći, dete izlagali dodatnim patnjama.

PREPORUKE ZA SANIRANJE UZROKA I POSLEDICA KOJE DOVODE DO KRŠENJA PRAVA NA PRIVATNOST I POVERLJIVOST PODATAKA MALOLETNIH ŽRTAVA SEKSUALNOG ZLOSTAVLJANJA I TRGOVINE LJUDIMA

1. U slučajevima u kojima je maloletno dete žrtva krivičnog dela, tokom postupanja nadležnih organa neophodno je uzeti u obzir Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnika (*lex specialis*) i postaviti ga prioritarno u odnosu na Zakonik o krivičnom postupku. Na ovaj način pristupa se adekvatno zaštititi prava maloletnih lica u krivičnom postupku, jer su procesnopravne odredbe postavljene u odnosu na uzrast, interese i zaštitu maloletnih lica. Država se tako postavlja kao garant zaštite interesa i ostvarenja prava maloletnih lica, što omogućava postupanjem organa koji vodi postupak i njegovim tretmanom dece tokom postupka.
2. U skladu s Posebnim protokolom o postupanju pravosudnih organa u zaštiti maloletnika, neophodno je kreirati precizno merljive mehanizme kojima će se garantovati zaštita maloletnog lica od medijske (zlo) upotrebe.⁷⁵
3. Svaka institucija, organ i organizacija koja prikuplja i obrađuje podatke ličnosti maloletnika mora imati potpisan pristanak za obradu podataka, odnosno drugi odgovarajući pravni osnov za obradu podataka, kao i pažljivo isplaniran mehanizam reagovanja kako bi

75 Dostupno na: https://www.paragraf.rs/propisi/posebni_protokol_o_postupanju_pravosudnih_organu_u_zastiti_maloletnih_lica_od_zlostavljanja_i_zanemarivanja.html (čl. 2.3.2.), pristupljeno 12. januara 2021.

se sprečilo curenje informacija⁷⁶ iz institucija, posebno tužilaštava, Ministarstva unutrašnjih poslova, sistema zdravstvene i socijalne zaštite, i mehanizam adekvatnog reagovanja u slučaju kršenja prava na zaštitu podataka.

4. Potrebno je revidirati pisana uputstva o tome kako treba da glase saopštenja za medije koja objavljuju tužilaštvo i policija o krivičnim istragama i drugim postupcima u kojima se kao oštećeni pojavljuju žrtve trgovine ljudima, žrtve seksualnog zlostavljanja i drugih krivičnih dela; ova saopštenja treba da počivaju na principu „ne naudi” i „ne nanesi još veću štetu” od već postojeće po samu žrtvu i postupak.
5. Pokretanje krivičnih, prekršajnih i drugih postupaka i po službenoj dužnosti protiv vlasnika medija, urednika i novinara i svih onih koji iznose podatke iz sudskih postupaka iz kojih je isključena javnost, povređuju tajnost sudskog postupka, ruše i utiču nepovoljno na ličnost, integritet i dostojanstvo maloletnika i iznose netačne informacije o oštećenima. U okviru prava na besplatnu pravnu pomoć žrtvama trgovine ljudima,⁷⁷ obezbediti sredstva za pokretanje građanskih i vanparničnih postupaka protiv medija i drugih subjekata koji su povredili pravo na privatnost.
6. Sprovoditi kontinuirane treninge za medijske radnike (novinare, urednike, predstavnike medijskih udruženja) i inicirati tešnje umrežavanje sa organizacijama koje deluju u cilju prevencije trgovine ljudima, kao i zaštite dece, a radi unapređivanja prava deteta i zaštite podataka.
7. Neophodna je primena statusa posebno osetljivog svedoka za sve žrtve seksualnog zlostavljanja i eksploatacije tokom čitavog krivičnog postupka, uz poštovanje i primenu svih mera zaštite tokom istražnog i sudskog postupka.
8. U slučajevima u kojima je oštećeni/a maloletno lice, ali i u drugim

⁷⁶ Imajući u vidu pregovarački proces sa EU, naglašavamo i obaveze države Srbije iz Akcionog plana za Poglavlje 23, u preporuci po izveštaju o Skriningu br. 3.5.2., u kojoj se država poziva da preduzme „hitne mere da se zaustave pretnje i nasilje nad novinarima, kao i curenje informacija o tekućim ili planiranim krivičnim istragama”. Ovdje su od izuzetnog značaja aktivnosti pobrojane u ovoj preporuci na koje se država obavezala, i to od aktivnosti 3.5.2.15. do aktivnosti 3.5.2.21. i koje se sve direktno odnose na ovu problematiku.

⁷⁷ Zakon o potvrđivanju Konvencije Saveta Evrope o borbi protiv trgovine ljudima, „Sl. glasnik RS”, br 19/2009, član 15.

slučajevima u kojima je svedoku/inji oštećenom/oj određen status posebno osetljivog svedoka, ne izricati meru bezbednosti javnog objavljivanja presude ili delimično objavljivati presudu, tako da se ne povredi dostojanstvo, integritet i zaštite podaci o ličnosti žrtve.⁷⁸

9. Služba za koordinaciju zaštite žrtava trgovine ljudima, pri Centru za zaštitu žrtava trgovine ljudima, mora da preduzima sve neophodne mere u cilju zaštite prava žrtava u slučajevima kršenja prava na privatnost i poverljivost podataka, zaštitu podataka o ličnosti žrtava trgovine ljudima.
10. Prilikom inicijalnog razgovora s potencijalnom žrtvom trgovine ljudima, u slučaju da se radi o krivičnom delu sa elementima organizovanog kriminala, Služba za informisanje i zaštitu svedoka treba da obavesti žrtvu da na obrazloženi predlog može od suda tražiti zaštitu ličnih podataka kako svojih, tako i drugih lica (npr. članova porodice) koji bi se pojavili kao svedoci.⁷⁹
11. Potrebno je izmeniti Sudski poslovnik u delu koji se odnosi na obaveštavanje javnosti o radu sudova kako bi se unapredila zaštita dece.⁸⁰
12. Potrebno je insistirati na proaktivnom postupanju nezavisnih organa (zaštitnika prava građana, poverenika za informacije od javnog značaja i zaštitu podataka o ličnosti, poverenika za rodnu ravnopravnost) u slučajevima kršenja prava na poverljivost i zaštitu podataka od svih zainteresovanih strana i njihovog obelodanjivanja u medijima.

78 Zakon o krivičnom postupku, član 89.

79 Zakon o organizaciji i nadležnosti državnih organa u suzbijanju organizovanog kriminala, korupcije i drugih posebno teških krivičnih dela, član 15.

80 Mišljenje zaštitnika građana, broj 321-508/20, od dana 14. decembra 2020.

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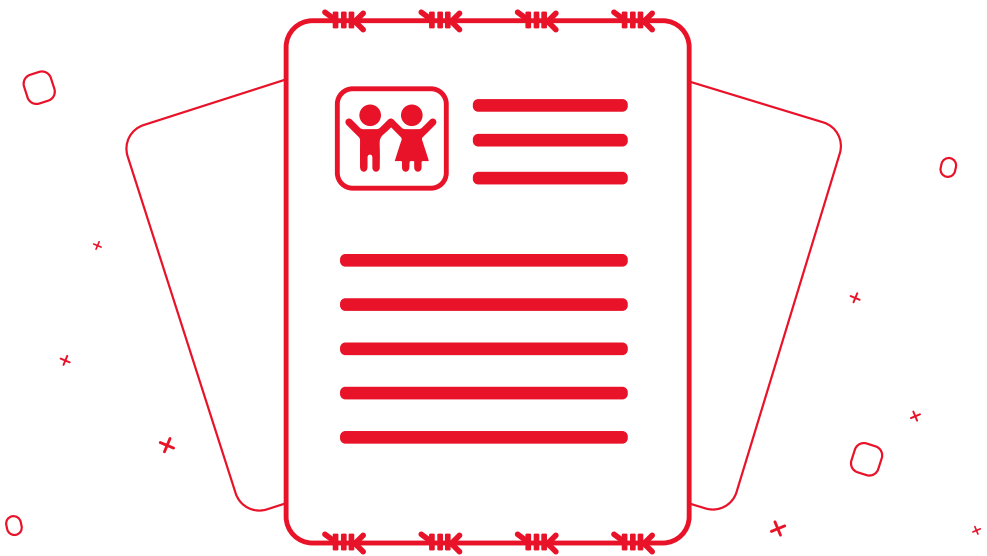
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Mankind owes to the child the best that it has to give

Case study on the violation of the right to
privacy and data confidentiality of children
victims of human trafficking and sexual
exploitation in Serbia



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Content

"Mankind owes to the child the best that it has to give" 32

Description of the case of Anna, minor victim of human trafficking 37

Leakage of information about the investigation from institutions, violation of the right to privacy and personal data protection in Anna's case 41

Secondary traumatization and revictimization, threats to safety and continuous abuse of Anna 45

Conclusion 50

Recommendations for remediation of the causes and consequences which are leading to the violation of the right to data privacy and confidentiality of minor victims of sexual abuse and human trafficking 52

"MANKIND OWES TO THE CHILD THE BEST THAT IT HAS TO GIVE"¹

Sexual abuse is one of the most severe and, in terms of consequences, the most complex forms of violence, which causes serious health, psychological, social and developmental consequences to the child. According to available UNICEF data, at least 120 million girls between the ages of 10 and 18 have been forced to have sexual intercourse or to engage in activities of inappropriate sexual content. In almost 90% of the cases, the perpetrators were known to them from before². On the other hand, data at the global level show that almost every third victim of human trafficking is a minor, with by far the largest share of girls in that number. In 82% of cases, women victims of trafficking were trafficked for the purpose of sexual exploitation, girls in 72%, while this is the case with 10% of men and 27% of boys victims of trafficking³. According to the latest available data for Serbia from 2019, 64% of victims of human trafficking were persons under the age of 18⁴, while in previous years, following the statistical data, the situation was similar, about 90% of them were girls.⁵

When we talk about sexual abuse, it is crucial to consider the gender dimension, which is evident not only in the prevalence but also in the context and manner in which sexual violence is committed, and it is important to look at it through the lens of gender-based violence. The gender aspect is "loaded" into the relationship between the abuser and the abused child, which includes the expressed gender roles of girls and men who sexually abuse, exploit and traffic them. The gender aspect is also "loaded" into the psychological, emotional and social "response" and coping⁶ mechanisms of child victims, as well as in the relationship of child victims to responsible

1 Preamble of the UN Declaration of the Rights of the Child

2 <https://www.unicef.org/protection/sexual-violence-against-children>

3 Global Report on Trafficking in Persons 2018, United Nations Office on Drugs and Crime, available at: https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf assessed on 12/01/2021

4 http://www.centarzztlj.rs/images/statistika/19/2019_Statisticki_izvestaj.pdf

5 <http://www.centarzztlj.rs/images/statistika/>

6 Mechanisms to adapt and overcome;

adults during the institutional response of the system to child sexual abuse. “A precise transversal has been determined that, until the government and society do not speak openly about sexual violence, one cannot even talk about achieving gender equality⁷”.

Often sexual abuse is not the only problem these children face. In the description that follows, besides the human trafficking situation and sexual abuse of a minor girl Anna, the inappropriate handling and lack of action of the competent authorities that were obliged to protect this child will be presented. A special aspect of this study concerns numerous violations of this child's privacy, with particular reference to unprofessional media reporting that contributed to further stigmatization and retraumatization of this child, which caused her irreparable damage.


When it comes to media reporting, as many as 47% of reports on children, with 31% in electronic media and 58% in the print media in Serbia, have a negative connotation. Reporting on child abuse involves individual cases of children, at the level of sensationalist and shocking journalism. A trivial number of texts and articles refer to causes and solutions. When reporting, the aim is to reveal and publish as many details as possible about the act of abuse (including the most bizarre ones), and with as many details about the victim as possible. Mere guesses and even fabricated information are presented as facts⁸. The protection of child's privacy, personal and family life, dignity, rights and interests, with child victims of trafficking in human beings has additional importance, especially for the protection of the child's safety and prevention of revictimization. Media information that reveals a child's identity has far-reaching consequences. In the era of electronic communication and universal availability of information via the Internet, the disclosure of data that identifies a child and exposes information that they were a victim of trafficking, that they were sexually exploited for the purpose of trafficking, paves the unobstructed way for the child to be recruited, trafficked and sexually abused again, which is also not uncommon thing. In the media coverage in Serbia, the mechanism of victim blaming⁹ is often

7 National Study on the Social Problem of Sexual Child Abuse in the Republic of Serbia, Bogavac, Popadić, Otašević i Cucić, Incest Trauma Center Belgrade, 2015

8 Media image of children in Serbia 2018, Center for Media Professionalization and Media Literacy, 2018, available at: <https://www.ceprom.rs/wp-content/uploads/2019/03/PUBLIKACIJA-Medijska-slika-dece-u-Srbiji-2018.pdf>, accessed on 12/01/2021

9 “Blaming the victim is a mechanism according to which the roots of social problems are seen in the characteristics of groups that are endangered by these problems, instead of being seen in a system that oppresses and creates unequal conditions and opportunities for different groups. In that way, we try to solve problems without changing the real conditions that create them.” D. Čuk Milankov et al., Conflict and Social Influence, CARS, Belgrade, 2009.

present, as well as stereotypes and prejudices, while misogyny and hate speech are highly noticeable.

 The normative framework in force in the Republic of Serbia should be the foundation and guidance in the work of competent authorities in the fight against human trafficking and protection of victims, which in this case was not respected. The obligation of the Republic of Serbia is to protect the children victims of sexual exploitation and abuse, to protect their identity, privacy, personal and family life, reputation, dignity, rights and best interests of the child victim.

The Republic of Serbia has ratified several international instruments governing the protection of children, especially children victims of violence and exploitation, which determine the forms of support these children need to be provided with. In this regard, in addition to the 1989 UN Convention on the Rights of the Child, it is important to mention several Council of Europe (CoE) instruments related to this area: the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)¹⁰, the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (the so-called Istanbul Convention)¹¹, the CoE Convention on Combating Trafficking in Human Beings¹², as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms¹³. These documents list the basic rights of victims of violence and exploitation that need to be protected, as well as the minimum services that need to be provided for their recovery. They represent the basis for legislative and other actions (such as those related to raising public awareness) that signatory countries are obliged to take in these areas. Regarding the national legislation relevant to these issues, it is

10 Law on Ratification of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, "Official Gazette of RS - International Agreements", No. 1/2010

11 Law on Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, "Official Gazette of RS - International Agreements", No. 12/2013

12 Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, "Official Gazette of RS - International Agreements", No. 19/2009

13 Law on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, amended in accordance with Protocol No. 11, the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms - freedoms not included in the Convention and its First Protocol, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances, "Official Gazette of Serbia and Montenegro - International Agreements", no. 9/2003, 5/2005 and 7/2005. and "Official Gazette of RS - International Agreements", no. 12/2010 and 10/5

important to mention that the provisions on protection and support contain acts in the field of criminal law, social and health care, but other laws as well, such as the Law on Personal Data Protection (which prescribes particular obligations when processing the personal data of children, listed below)¹⁴, the Law on Public Information and the Media¹⁵, and the Law on Electronic Media¹⁶. For certain issues, the state has adopted bylaws, to mention only the Rulebook on the protection of human rights in the field of media services¹⁷ and the Rulebook on the protection of the rights of minors in the field of media services¹⁸. In addition to these (but not only these) normative acts that guarantee the protection of victims of violence and exploitation, and especially the protection of juvenile victims, and define the obligation of the state in this area, numerous reports sent to the Republic of Serbia by expert bodies call for this obligation. established to ensure the application of international legal instruments and to monitor the activities of the state in this regard; we can see these recommendations, for example, in the Concluding Observations of the Lanzarote Committee, or in the Concluding Observations of the UN Committee on the Rights of the Child, which are periodically sent to Serbia, and in accordance with which the state harmonizes its internal legislation and practical actions of its institutions.

Although it does not contain detailed provisions on the protection of personal data of minors, the Law on Personal Data Protection sets higher standards for the protection of data of minors in several places. First of all, the Law sets the interest of a minor as one of the interests that may be more important than the legitimate interest of the manager of the data or a third party on which the processing of personal data is based (Article 12, paragraph 1, item 6). This means that, even when there are justified (legitimate) reasons for the processing of personal data, the processing may be illegal if in a particular case it is more important to protect the interests of the minor. Furthermore, the Law prescribes that the processing of personal data of a minor under the age of 15, in connection with the use of information society services¹⁹, is possible only with the consent of the parents, i.e. legal representative

14 "Official Gazette of RS", No. 87/2018.

15 "Official Gazette of RS", No. 83/2014, 58/2015 and 12/2016 - authentic interpretation

16 "Official Gazette of RS", No. 83/2014 and 6/2016

17 "Official Gazette of RS", No. 55/2015

18 "Official Gazette of RS", No. 25/2015

19 Information society services are defined as services provided at a distance, at the individual request of the recipient, and with a fee.

of the person. Finally, the Law particularly emphasizes that the job of the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) is to take care of raising public awareness of risks, rules, protection measures and rights related to the processing of personal data, especially if it is about the processing of data of a minor (Article 78, paragraph 1, item 2).

Special protection of a minor is also provided by media regulations and guidelines of self-regulatory bodies. The Law on Public Information stipulates that, in order to protect the free development of the minor's personality, special care must be taken that the content of the media and the manner of media distribution do not harm moral, intellectual, emotional or social development of the minor (Article 77), as well as that a minor must not be made recognizable in information that may violate their right or interest (Article 80, paragraph 2). Also, the Serbian Journalists Code stipulates the obligation of journalists to ensure that a child is not endangered or exposed to risk due to the publication of their name, photograph, or video with their face, house, community they live in, or recognizable environment.

In any case, the legal framework for the area relevant to this case study is well developed, and the obligations and competencies of the state are precisely defined. This means that there is no place for excuses about legal gaps and lack of competence of certain state bodies, which would cause their possible inaction, and leave children who are victims of violence and exploitation, or are at risk, practically without protection.

DESCRIPTION OF THE CASE OF ANNA, MINOR VICTIM OF HUMAN TRAFFICKING

In the period from the end of 2018 to April 2020, Anna was continuously sexually abused and exploited by her father, who recorded sexual relations with his daughter and distributed them via Facebook. The father was 'renting' the girl to other men with whom she was forced to have sexual intercourses, which he also filmed.

In addition to being sexually abused, Anna has also been a victim of parental abuse and neglect for a long time. She was most cared for by her grandmother, to whom the girl felt close. There are indications that the father sexually abused Anna for a longer period of time than previously stated.

No later than January 2019, the police had information/suspicion that Anna had been sexually abused by her father. During a single year, Anna gave statements to various bodies at least four times that her father was sexually abusing her and that she was forced to have sexual intercourses with other men. It is not known whether any measure from criminal law was taken, except that the police, after the child's first statement, imposed an urgent measure under the Law on Prevention of Domestic Violence, which was not extended. Regardless of the emergency, the father established communication with the child, who fled the foster family to return home. The child's father was not sentenced to prison for violating the emergency measure, as prescribed by the Law on Prevention of Domestic Violence. Even though there was a suspicion that Anna was a victim of human trafficking, based on the available indicators for social protection²⁰, and the fact that the Center for the Protection of Trafficking Victims was immediately notified, this Center, which has a mandate to identify victims of human trafficking in Serbia, took a whole year to conduct the first interview with the child. During 17 months, neither the Public Prosecutor, nor the competent Center

²⁰ http://www.mup.gov.rs/wps/wcm/connect/38a440cc-c42a-4b21-b313-a323a8999d1b/05.INDIKATORI_Soc+zastita_deca.LAT.pdf?MOD=AJPERES&CVID=mBSb0A-

for Social Work initiated the proceedings for the protection from violence, in accordance with the Family Law, and adequate police measures were not taken at the time when the girl was not available, in the intervals of several months.

The omissions of the competent bodies began even before the child first gave a statement about the sexual abuse she suffered, and lasted until the abusive father's arrest, but continued even after that. They can be traced back to the time of parental separation, when the care of the child was essentially on the grandmother without an appropriate legal solution and without the support of institutions. Also, they lasted in the period from the time when the child's father was sentenced to prison to the period when he should have been released and when measures to reduce the risk to the child should have been assessed and planned. All these are periods when the life path of this girl could have been changed, by careful and meaningful choice of measures of social protection, family-legal protection, educational support and health support.

During the 17 months, Anna has not been provided with sufficient, timely and adequate legal, family, social protection, protection from exposure from human trafficking, or against secondary victimization, despite a number of competent bodies and legally binding and strategic documents in the Republic of Serbia. In addition to the Criminal Procedure Code, the Criminal Code, the Law on Prevention of Domestic Violence, the Law on Misdemeanors, the Law on Police, the Family Law, and the Law on Social Protection, each of which prescribe some of the measures that could have been used to protect this child, Anna was left without comprehensive protection in spite of numerous information about the sexual abuse.

It took 17 months for criminal proceedings to be instituted against the abusive father. Despite the provisions of the Law on Prevention of Domestic Violence, one urgent measure was imposed on the child's father, which was not extended. No proceedings have been initiated for protection against violence in accordance with the Family Law; adequate and timely interventional protection of the child was not provided. Throughout this period, the girl gave statements on numerous occasions to the police, the Center for Social Work, and the Center for the Protection of Trafficking Victims.

She withdrew some of her testimonies over time, which is a frequent defense

mechanism for child victims of abuse. Accommodation in a foster family and institutions, and support programs did not lead to the expected effects, and the girl would leave to return home to her father. During that period, nothing was done to prevent the father's toxic influence on the child, his control over her, the sexual abuse that he committed and organized during the entire period. Until April 2020, the abuser was at large. The arrest of the father followed only after it was reported that he had distributed a recording of sexual violence against Anna.

What crucially characterized the actions of the police and the prosecution was the expectation that the child would be the sole bearer of the evidentiary procedure, even though the girl is a privileged witness. She was expected to provide the police and the prosecution with evidence - a recording, a statement, but then again the sensitive position of this child was not taken into account, especially because, due to the absence of the mother's care, she was practically left to the father. At the same time, the competent state institutions did not continuously take all necessary and legally guaranteed actions to provide this child with a stable and safe environment, free from father's influence, with provided psychological, health, social and educational support, in which she could freely make a statement about the severe forms of abuse she suffered. Instead, this child was repeatedly revictimized by the perpetuated taking of statements, which were not given importance or trust, by not initiating criminal proceedings, by allowing the sexual abuser to control and continue abusing the girl without interruption from anyone, despite the child's statements.

Unfortunately, the arrest of the abuser and the existing cessation of sexual abuse did not mean the end of the abuse of this child. On April 22, 2020, the Ministry of the Interior announced that:

"Suspect was arrested for incest and exploitation of a minor for pornography"

Members of the Ministry of the Interior in Pančevo arrested [...] (1977) on suspicion of committing incest, as well as the criminal offense of showing, obtaining and possessing pornographic material and exploiting a minor for pornography.

It is suspected that at the beginning of this month, he persuaded his seventeen-year-old daughter to have sexual intercourse with him, which he recorded on his mobile phone. The video was said to be forwarded to his

friends on Facebook with the message that ‘the door is open, and the price is 2,000 dinars per night’.

The suspect was detained for up to 48 hours, after which he will be brought to the Basic Public Prosecutor’s Office in Pančevo”²¹.

This information was published in circumstances when the video of the girl was already available to many via the social network Facebook. The police stated that the father offered his daughter for sexual intercourse in exchange for money via Facebook. It is therefore clear that this recording was and could be available to child sexual abusers, traffickers, and other criminal groups. In such a circumstance, publishing the details of the criminal offense, and in particular stating which social network the girl was being offered and the recording of her sexual abuse distributed through, facilitated the possibility of obtaining the recording and recognizing the child, thus increasing the risk from a new abuse and a new cycle of trafficking for the purpose of sexual exploitation. The publication of the place where the abusive father is from opened the possibility for a significantly wider circle of people to see the video and reveal the identity of the child very quickly.

Whether the manner, in which the police published information led to the explosion of media reports, or whether the information about the description of the abuse was leaked to the media by prosecution, remains to be determined. Only a day later (and in some media on the same day) a huge number of print and electronic media published information about this arrest, with the fact that in addition to the information published by the Ministry of the Interior in its statement, information about the exact place of residence of the child became available, along with photographs and data that fully revealed the child’s identity.

²¹ Available at: <http://www.mup.gov.rs/wps/portal/sr/aktuelno/saopstenja/eb97ef0b-64f6-4754-8449-5b13d507e641>, accessed on 13/01/2021

LEAKAGE OF INFORMATION ABOUT THE INVESTIGATION FROM INSTITUTIONS, VIOLATION OF THE RIGHT TO PRIVACY AND PERSONAL DATA PROTECTION IN ANNA'S CASE

The first data published by the media from April 22 to 24, 2020, were information that the abusive father was questioned before the competent prosecutor's office, as stated in the indictment, and data on ordering detention. The media further published a detailed description of charges, which is essentially a description of the sexual abuse of the minor Anna. The media are quoted as saying that they received information from the competent prosecution ("Novosti"²², "Srbija Danas"²³, "Republika"²⁴). They also published the age of the victim, and the age of the father, as well as information about his whereabouts. The texts ("Novosti", "Republika") also list full first name of Anna's father. Although the information about the description of Anna's sexual abuse and exploitation came from the prosecution, the media were obliged to refrain from publishing it in such a detailed form, in order to protect the child. By sharing details of the abuse, the media violated Anna's right to the protection of dignity of the victim of violence (Article 79, Law on Public Information and the Media). Publicly sharing the information of the description of the sexual abuse of the child by the competent Prosecutor's Office is, at its core, a revictimization of the child and violation of her rights. Such statements by the Prosecution, bearing in mind that sexual abuse and exploitation were also carried out using digital technologies (photographing and filming the child and then sending and publishing these materials on the Internet) were not in the interest of protecting the victim; on the contrary, they further stigmatized her. The Public Prosecutor's Office was obliged to

22 Available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:860854-Devojka-ne-tereti-oca-za-silovanje-lstraga-o-monstrumu-koji-je-snimao-seks-sa-cerkom>, accessed on 13/01/2021

23 Available at: <https://www.srbijadanas.com/vesti/hronika/doneta-odluka-pancevcu-koji-je-osumnjicen-da-je-snimao-sks-sa-cerkom-odreden-pritvor-2020-04-23>, accessed on 13/01/2021

24 Available at: <https://www.republika.rs/hronika/hronika/201520/otac-monstrum-panceva-iza-resetaka-evo-koliki-pritvor-odredjen-manijaku-sta-posle-ceka>, accessed on 13/01/2021

withhold this type of information (description of the committed act), and to provide only information that could not make the victim recognizable in descriptions of sexual violence by linking various information available online. As early as April 24, 2020, the media began to present new details, and published the following:

1. full first name of Anna's father (his last name was listed as an initial);
2. information about the place Anna's father is from (where Anna lived as well);
3. indirect data that Anna and her father share the same place of residence;
4. Anna's age;
5. a detailed description of Anna's sexual abuse;
6. information on Anna's family life, and the violence she (stating who committed violence against her), and other family members as well (mother, aunt, grandmother) were exposed to;
7. information on Anna's relationship with her mother, and her family status (her caretaker);
8. information that Anna was placed in a social protection institution (some media also published data on the institution in question - "Srbija Danas"²⁵, "Blic"²⁶, "Novosti"²⁷, "Espresso"²⁸, "Alo"²⁹, "Politika"³⁰).

Publishing information 1-4 makes it possible to identify the child and make the child recognizable to a larger circle of people. Disclosure of information 5 constitutes revictimization of the child and a violation of the right to privacy and security. A child who - thanks to published information on age, place of

25 Available at: <https://www.srbijadanas.com/vesti/hronika/tukao-je-celu-porodicu-jeziva-ispovest-bivse-zene-oca-koji-je-cerku-obljubio-sve-snimio-pa-slao-2020-04-24>, accessed on 13/01/2021

26 Available at: <https://www.blic.rs/vesti/hronika/obljubio-cerku-i-sve-snimio-otac-monstrum-iz-sela-kod-panceva-devojcicine-gole/effn2k>, accessed on 13/01/2021

27 Available at: <https://www.novosti.rs/vesti/naslovn/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, accessed on 13/01/2021

28 Available at: <https://www.espreso.rs/vesti/hronika/549185/ovo-je-robija-koja-preti-monstrumu-iz-panceva-dugo-ce-ici-u-zatvor-zbog-onoga-sto-je-uradio-svom-detetu>, <https://www.espreso.rs/vesti/hronika/549517/progovorila-majka-devojcice-koju-je-otac-podvodio-detalji-iz-njihovog-zivota-su-cist-uzas>, accessed on 13/01/2021

29 Available at: <https://www.alors.vesti/hronika/pancevo-pedofil-incest-zena-cerka/306731/vest>, accessed on 13/01/2021

30 Available at: <http://www.politika.rs/scc/clanak/454452/Ko-je-zakazao-u-lancu-zastite-devojcice-iz-Banatskog-Novog-Sela>, accessed on 13/01/2021

residence, father's name and details of family life - can be clearly identified is linked to information on sexual abuse and sexual exploitation. In this way, her safety is endangered, she is exposed to stigmatization and the risk of new sexual abuse, and publishing this information significantly complicates her recovery. By publishing information 6, 7 and 8, particularly sensitive personal data, personal and family life data, and information on the use of social protection services were published.

In this way, the following rights protected by national legislation have been violated: the right to protection of personal data and protection against unlawful processing of personal data³¹, the right to protection of dignity of the victim of violence³², the right to privacy of personal and family life³³, and the child's right not to be made recognizable in information that may violate their rights or interest³⁴.

In the media reports, there were blurred images of the abuser, as well as photos of the exterior of the place where Anna lived. Then, in addition to the information on the basis of which the child victim can be identified and the description of sexual abuse, the media began publishing information from the criminal procedure, which had to be conducted with the exclusion of the public due to the protection of the child. Thus, the statements of the victim given to the prosecutor were cited ("Novosti"³⁵) along with information "from the prosecution". In addition to publishing information from the criminal proceedings, there is also the publication of information from "reliable sources" with alleged statements of the child before the prosecuting authorities, but this time aimed at relativizing the child's sexual abuse and blaming the child victim. There were also cited statements of the child's paternal grandmother which expose negative qualifications of the child ("Srpska info"³⁶, "Blic"³⁷), it is stated that Anna initiated sexual relations and that she and her father 'shared boyfriends' ("Espresso"³⁸, "Alo"³⁹), that Anna

31 Article 12 of the Law on personal data protection

32 Article 79 of the Law on public information and the media

33 Article 80 of the Law on public informing and the media

34 same

35 Available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljino-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, accessed on 13/01/2021

36 Available at: <https://srpskainfo.com/silovao-kcerku-majka-brani-sina-monstruma-a-komsije-tvrde-da-je-uvijek-bio-nasilan/>, accessed on 13/01/2021

37 Available at: <https://www.blic.rs/vesti/hronika/spavao-je-s-cerkom-u-istoj-sobi-nisam-videla-da-je-nasilan-prema-njoj-majka-brani/xhmxt14>, accessed on 13/01/2021

38 Available at: <https://www.espresso.rs/vesti/hronika/549223/isplivao-je-najgnusniji-detalji-pancevacke-sodome-i-gomore-oni-su-znali-sta-otac-radi-detetu-policija-je-zgrozena>, accessed on 13/01/2021

39 Available at: <https://www.alo.rs/vesti/hronika/pancevo-incest-seks-sa-cerkom/306585/vest> accessed on 13/01/2021

said she had sexual relations on a “voluntary basis” (“Alo”⁴⁰, “Srbija Danas”⁴¹, “Kurir”⁴²), alleged statements of the child’s aunt that the child victim “asked for it” (Republika 24/04/2020⁴³), that “the father was self-harming because of Anna” (“Republika”⁴⁴) and that Anna has, together with her father, “made a plan on how to earn money” (“Novosti”⁴⁵). The media then started publishing full name of the father - sexual abuser (“Espresso”⁴⁶, “Republika”⁴⁷), his unblurred photographs (“Republika”⁴⁸), and blurred photographs of the victim taken from Facebook (“Kurir”⁴⁹).

Publishing information that the girl initiated sexual relations with her father and other men is a grave form of child victimization. This information is victim-blaming for the sexual abuse she experienced and the sexual exploitation to which she was exposed, with a certain degree of public “amnesty” of the abuser. Having in mind the gender of the victim and the abuser, such allegations have a noticeable dimension of gender insensitivity and gender stereotypes. Disclosure of such information represents not only the revictimization of the child, but also a flagrant violation of the right to privacy, data confidentiality and security. Also, the presence of the so-called posttruth, free falsification of facts, with the placement of open untruths, often offensive in nature⁵⁰ is heavily present in this case. In addition to providing all the data from previous media articles, the child was recognized in the information which is essentially a serious obstacle to her recovery and reintegration.

40 Available at: <https://www.alo.rs/vesti/hronika/pancevo-pedofil-incest-devojica-cerka/306709/vest>, accessed on 13/01/2021

41 Available at: <https://www.srbijadanas.com/vesti/hronika/dobrovoljno-imala-sks-sa-ocem-izjava-cerke-panceva-koji-je-snimao-njihove-intimne-odnose-sokirala-2020-04-24>, accessed on 13/01/2021

42 Available at: <https://www.srbijadanas.com/vesti/hronika/dobrovoljno-imala-sks-sa-ocem-izjava-cerke-panceva-koji-je-snimao-njihove-intimne-odnose-sokirala-2020-04-24>, accessed on 13/01/2021

43 Available at: <https://www.republika.rs/hronika/hronika/201554/foto-sodoma-gomora-porodici-banatskog-novog-sela-otac-cerka-hteli-obogate-pornicem>, accessed on 13/01/2021

44 Available at: <https://www.republika.rs/hronika/hronika/201554/foto-sodoma-gomora-porodici-banatskog-novog-sela-otac-cerka-hteli-obogate-pornicem>, accessed on 13/01/2021

45 Available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:860854-Devojka-ne-tereti-oca-za-silovanje-Istraga-o-monstrumu-koji-je-snimao-seks-sa-cerkom>, accessed on 13/01/2021

46 Available at: <https://www.espresso.rs/vesti/hronika/549223/isplivao-je-najgnusniji-detalj-pancevaeke-sodome-i-gomore-oni-su-znali-sta-otac-radi-detetu-policija-je-zgrozena>, accessed on 13/01/2021

47 Available at: <https://www.republika.rs/hronika/hronika/201554/foto-sodoma-gomora-porodici-banatskog-novog-sela-otac-cerka-hteli-obogate-pornicem>, accessed on 13/01/2021

48 Available at: <https://www.republika.rs/hronika/hronika/201747/sokantan-obrt-slucaju-silovanja-kod-panceva-otac-cerku-nije-prisilio-odnos>, accessed on 13/01/2021

49 Available at: <https://www.srbijadanas.com/vesti/hronika/dobrovoljno-imala-sks-sa-ocem-izjava-cerke-panceva-koji-je-snimao-njihove-intimne-odnose-sokirala-2020-04-24>, accessed on 13/01/2021

50 Violence and us, the media on violence against women, dr Zorica Mršević, Social Science Institute Belgrade, available at: https://www.idn.org.rs/biblioteka/Nasilje_i_mi_mediji_o_nasilju_nad_zenama_sajt.pdf, page 24, accessed on 12/01/2021

SECONDARY TRAUMATIZATION AND REVICTIMIZATION, THREATS TO SAFETY AND CONTINUOUS ABUSE OF ANNA

Due to the published information on age, father's name and details of family life, and in earlier articles information about their place of residence - the child could be clearly identified and linked to information about her "voluntariness" in sexual abuse and sexual exploitation, making Anna an easy prey for traffickers and child sexual abusers. In this way, her safety is endangered, she is exposed to stigmatization and the risk of new sexual abuse, and publishing this information significantly complicates her recovery.⁵¹ However, despite flagrant and multiple violations of the rights of the abused child, nobody with a jurisdiction to do so has initiated proceedings against the media.

On the other hand, by publicly exposing the events, the child is placed in a position of retraumatization and secondary victimization, which is also a significant obstacle to the child's recovery.⁵² In this context, the position of a child, victim of sexual abuse, is particularly sensitive. Developmental characteristics of children - primarily the fact that the development of a child's identity (both at an early age and in adolescence) depends largely on the messages they receive from the family and social environment. Adolescence is heavily influenced by the peer group, and the stigma of sexual abuse can lead to avoidance of child victim or rejection by the peer group, which further leads to child's isolation, loneliness, poor school performance, peer abuse, and significant psychological problems in the child's functioning and socialization.⁵³ Child sexual abuse has long-

51 Stigmatization is one of the four key factors that influence the creation and maintenance of trauma in a sexually abused child. Exposing the victim of sexual abuse to the public increases the risk of stigmatizing and rooting the victim's feelings of shame. Stigmatization, negative messages (especially blaming and embarrassing) significantly reduce the chances of recovery. See more at Protecting victims' identities in press coverage of child victimization, Jones, Finkelhor, Beckwith, 2010, Journalism, available at: <http://www.unh.edu/ccrc/pdf/CV182.pdf>

52 Ibid

53 Ibid

term consequences, including post-traumatic stress disorder, anxiety, depression, eating disorders, difficulties in establishing and maintaining emotional relationships, sleep disorders, suicidal thoughts and attempts, self-harm, and other self-destructive behaviors.⁵⁴ “Sexual trauma does not become outdated⁵⁵”. “The child victim may have a long-lasting sense of shame and guilt, created by the manipulations of a sexual abuser who “teaches” the child that it is their fault, that they deserved to be abused, that they caused it or did not fight it, that sexual violence is their little secret. Numerous techniques of psychological and emotional manipulation are used by a sexual abuser to encourage, cultivate and nurture feelings of guilt and shame⁵⁶, which are all the more pronounced when the sexual abuser is a parent or a person of trust⁵⁷.

The first media reports of Anna, as stated, mostly conveyed statements of the police and the prosecution. As expected, the comments of the readers were negative in relation to the abuser and they expressed anger and shock regarding the fact that the father sexually abused his daughter (“We need Goli otok again”, “The man is a real piece of work, and a monster”, “Such things require death penalty”, “Life imprisonment and castration for the monster”⁵⁸).

In the next line of reporting, when details of Anna’s sexual abuse began being published, the reactions of the readers were mostly an expression of anger toward the abuser (“He is for the gas chamber”, “Life sentence, nothing less”, “I would suggest 10 years, but in Chernobyl or Fukushima”, “Why is such a beast still alive”⁵⁹; “Guillotine in the middle of the city square as deserved”⁶⁰), the legal system that inadequately sanctions such a crime (“Why doesn’t the state deal with such extremes, do we have to live in this

54 Responding to children and adolescents who have been sexually abused – WHO clinical guidelines, available at: <https://apps.who.int/iris/bitstream/handle/10665/259270/9789241550147-eng.pdf;jsessionid=2666D8BD6499F9C6B8E13F61745FD6D7?sequence=1>, accessed on 13/01/2021

55 National Study on the Social Problem of Sexual Child Abuse in the Republic of Serbia, Bogavac, Popadić, Otašević, Cucić, Incest Trauma Center, Belgrade, 2015

56 National Study on the Social Problem of Sexual Child Abuse in the Republic of Serbia, Bogavac, Popadić, Otašević, Cucić, Incest Trauma Center Belgrade, 2015

57 Long Term Effects of Childhood Sexual Abuse – Counseling Implications, Hall and Hall, 2011, VISTAS Online, available at: https://www.counseling.org/docs/disaster-and-trauma_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf?sfvrsn=2, accessed on 13/01/2021

58 „Novosti“, available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:860854-Devojka-ne-tereti-oca-za-silovanje-istraga-o-monstrumu-koji-je-snimao-seks-sa-cerkom>, accessed on 13/01/2021

59 „Novosti“, available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom>, accessed on 13/01/2021

60 „Alo“, available at: <https://www.alo.rs/vesti/hronika/pancevo-incest-seks-sa-cerkom/306585/vest>, accessed on 13/01/2021

environment”⁶¹; “A legitimate question is why Centers for Social Work even exist? Maybe they just don’t care”, “Social service, and the police as well, are becoming synonymous of our downfall. When you hear that someone is a beneficiary of social services, you know that this poor soul cannot be helped anymore. Sadly.”⁶²; “This is what our country promotes and chases off decent citizens. Plus these are things that reality shows propagate, the direct responsibility is on them, but there is not even a sign of a regulated state here!”⁶³) and media content which promote negative values (“Stop insane reality shows, stay behind bars”⁶⁴; “And what did you expect when our main celebrities are participants of reality shows which gather people of the lowest morals, criminals, and all sorts of lowlife, and impose their ‘virtues’ on the society”⁶⁵). In relation to the victim, some comments recognize that there is no such thing as “voluntariness” of a child to sexual abuse in the family (“If it is ‘voluntary’ then it is not incest? It is not a crime to have sex with a minor? Incest? Everything is normal?”, “What does it matter if he is charged with rape, are you out of your mind?! First of all, she is a minor, second of all she is his daughter. Everything really went to hell”⁶⁶; “Well, I wouldn’t believe this even if I were the greatest moron in the world! The child is frightened, raped, abused and of course she will do anything to free her father because she is scared to death!”⁶⁷; “Yeah, like she forced him to do it? And you believe him?”⁶⁸).

When information about Anna’s “voluntariness” began, readers’ comments that minimized the sexual violence the child suffered also started (“Big deal. There are so many such cases where a father has sex with his daughter, mother with her son, or brother and sister. It’s their problem within their

61 „Novosti“, available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom> accessed on 13/01/2021

62 „Politika“, available at: <http://www.politika.rs/scc/clanak/454452/Ko-je-zakazao-u-lancu-zastite-devojci-iz-Banatskog-Novog-Sela> accessed on 13/01/2021

63 „Alo“, available at: <https://www.alo.rs/vesti/hronika/pancevo-pedofil-incest-devojica-cerka/306709/vest> accessed on: 13/01/2021

64 „Novosti“, available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom> accessed on 13/01/2021

65 „Novosti“, <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:860854-Devojka-ne-tereti-oca-za-silovanje-istraga-o-monstrumu-koji-je-snimao-seks-sa-cerkom> accessed on 13/01/2021

66 „Novosti“, available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom> accessed on 28/09/2020

67 „Alo“, available at: <https://www.alo.rs/vesti/hronika/pancevo-pedofil-incest-devojica-cerka/306709/vest> accessed on 13/01/2021

68 „Republika“, available at: <https://www.republika.rs/vest/svi-komentari/hronika/hronika/201747/sokantan-obrt-slucaju-silovanja-kod-panceva-otac-cerku-nije-prisilio-odnos> accessed on 13/01/2021

family, who cares”, “Seems they are a modern family, like the Carringtons”⁶⁹), relativize the responsibility of an adult abuser (“The girl told the police that she VOLUNTARILY had sex with her father. She stated that she VOLUNTARILY shared her nude photos on Facebook pages. That is why this man will only serve a MINIMUM sentence, only because the girl was still a minor, and the father broke the law by having sex with her before she became an adult”⁷⁰) and put the burden of responsibility for sexual violence against a child (“And don’t tell me this girl is an innocent child. Where does it say that her father raped her? Where does it say that her father took away her innocence?”⁷¹, “I’ve known them for years. The girl is highly problematic and has serious issues”⁷²). Gender stereotypes are highly visible in the comments (“Their business. This is what Roma have been doing for years, and now it turns out it’s something new”, “She says that she agreed voluntarily. If I respect anything about this girl, it is that specific character attribute in her personality, because she is capable of bearing the consequences of her decision alone, and does not accuse her father for something she wanted”⁷³).

Media coverage of Anna stigmatized her and exposed this child to various forms of secondary traumatization and re-victimization. Firstly, by publishing data on her in the context of sexual exploitation and trafficking for the purpose of sexual exploitation, Anna was made really accessible to traffickers and sexual abusers. These risks were further exacerbated by the publication of media coverage of alleged voluntariness on her part regarding sexual relations with her father and other men for the purpose of “earning money”. Such reports did not portray Anna as a victim of sexual abuse and exploitation, but as a commodity that is easily accessible - thanks to the publication of videos on social networks and websites, and thanks to the media content that directly linked those videos and sexual abuse to a specific minor. They also portrayed her as the one who manipulated her father and all the other adult men, who, let us remind you, had sexual intercourse’s with a child. The “voluntariness” of a child’s connection with an adult is disguised by a series of

69 „Novosti”, available at: <https://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:861102-Dobrovoljno-imala-seks-sa-ocem-Detalji-istrage-o-Vlajku-J-koji-je-snimao-intimne-odnose-sa-cerkom> accessed on 13/01/2021

70 Espresso, available at: <https://www.espresso.rs/vesti/hronika/549185/ovo-je-robija-koja-preti-monstrumu-iz-panceva-dugo-ce-ici-u-zatvor-zbog-onoga-sto-je-uradio-svom-detetu> accessed on 13/01/2021

71 Espresso, available at: <https://www.espresso.rs/vesti/hronika/549185/ovo-je-robija-koja-preti-monstrumu-iz-panceva-dugo-ce-ici-u-zatvor-zbog-onoga-sto-je-uradio-svom-detetu> accessed on 13/01/2021

72 “Republika”, available at: <https://www.republika.rs/vest/svi-komentari/hronika/hronika/201554/foto-sodoma-gomora-porodici-banatskog-novog-sela-otac-cerka-hteli-obogate-pornicem> accessed on 13/01/2021

73 Espresso, available at: <https://www.espresso.rs/vesti/hronika/549185/ovo-je-robija-koja-preti-monstrumu-iz-panceva-dugo-ce-ici-u-zatvor-zbog-onoga-sto-je-uradio-svom-detetu> accessed on 13/01/2021

circumstances related to the child's behavior, which can give an impression that she has consented to sexual intercourse. These include the following behaviors of a child who has survived sexual violence: the child does not scream, does not struggle, does not offer active resistance, and does not reveal the sexual act immediately after it happened, is closely related to the abuser, has no forensic evidence of sexual intercourse and does not remember the details of the event. However, it should be borne in mind that all these behaviors of the child do not mean consent, but only a reaction to the existing situation, a defense mechanism and coping with a situation in which the child has no power. The child is the victim.⁷⁴ Considering that a child cannot voluntarily participate in such a thing, nor can give consent, it is clear that such cases represent sexual exploitation and abuse of children, persons under 18 years of age.

Stigmatization of the now recognizable and identified child due to survived sexual abuse, is evident in media reports, and can be seen in the comments of readers. This content, which for Anna represents the condemnation of the public, her environment, and her social groups, sends her the message that she should feel ashamed, guilty, and that she is solely responsible for suffered violence, and also 'normalize' sexual abuse in the family and in her social environment. For an adolescent who has been sexually abused for at least a year and a half, who has not been trusted by the authorities, who has not been protected by institutions and the legal system, media exposure and views on her abuse explicitly or implicitly represent additional messages from which she concludes all this is her own shame and fault. As this media content was published on the Internet, along with the recordings of her sexual abuse, they will stay on the Internet permanently, which makes Anna's stigmatization permanent as well.

⁷⁴ National Study on the Social Problem of Sexual Child Abuse in the Republic of Serbia, Incest Trauma Center, available at http://incesttraumacentar.org.rs/files/2015/ITC_2015_Srbija_-_Nacionalna_studija_o_seksualnom_nasilju_nad_decom.pdf, accessed on 12/1/2021

CONCLUSION

The media can be an exceptional mechanism for education about violence against children, its prevention and risk factors. Specific cases serve to experienced media, dedicated to journalists' ethics and respect for human rights, as an opportunity for a deeper discussion on violence against children. For such media, information on sexual abuse and sexual exploitation serves as a momentum to initiate various socially responsible stories, to educate the public about the prevalence of sexual abuse, to criticize institutions, state bodies for inadequate response to sexual violence against children, to initiate a broader debate on prevention and protection from sexual abuse of children, to teach children and young people and their families about the existence of sexual abuse, prevention and protection, as well as to advocate for new changes in the system that will improve the prevention and protection from sexual abuse.

On the other hand, the media can be an extremely powerful source of trauma for children. Sensationalistic, even brutal, reporting on a specific child victim will cause new trauma to the child, which will be difficult, if not impossible, to heal. **Violation of children's privacy and publishing of their personal data in the media can cause lasting negative consequences and ruin any possibility for them to recover.** Media that do that use a specific case to raise sales, through reporting that attracts attention and does not educate, through descriptions that make it impossible for readers to think about the prevention of sexual abuse, through exposing the victim without any consideration, understanding, or empathy for their situation and trauma.

The media choose what role they will play in relation to violence against children. In Anna's case, the media, not for the first time, in the most brutal way, put the economic interest above the life and health of a child, especially a child who suffered one of the most horrible traumas. Deep and long-lasting consequences of sexual violence committed by a parent are now even more complex due to the trauma of public exposure and the details of sexual violence this child survived and the fact that the child has indeed been made reachable and recognizable to a wide range of people. This

information remains permanently recorded in the digital space.

Following the enactment of the Law on Prevention of Domestic Violence, an increase in the number of emergency measures imposed for domestic violence, and publicly announced statistics on victims of domestic violence disaggregated by gender, certain shifts in media coverage of gender-based violence could be observed (increase in the number of articles in which the rights of the victim are respected, articles on domestic violence and the systemic response to it, documents of the competent authorities). This beginning of sensitization of the media (but also state bodies) about gender-based violence did not happen in the case of gender-based violence against children, and there is a sharp difference in the view of violence against women (which is increasingly seen as gender-based violence) and violence against girls (which is viewed exclusively as violence against a child, without a gender aspect).

The case of Anna's media victimization is simultaneously a case of institutional victimization of a child who has been a victim of sexual abuse and sexual exploitation for a long time. The institutional system of the Republic of Serbia has not protected the child from sexual abuse and exploitation she suffered for a long period of time, from the institutional abuse of the bodies that were to provide her protection, nor from the media abuse and multiple victimization due to the way in which the media reported on this case.

Therefore, a question arises whether it will ever be possible for this girl to recover and reintegrate. If the answer is no, the responsibility lies with everyone who, instead of helping, exposed the child to additional suffering: the media and the authorities.

RECOMMENDATIONS FOR INFLUENCING THE CAUSES AND CONSEQUENCES LEADING TO THE VIOLATION OF THE RIGHT TO DATA PRIVACY AND CONFIDENTIALITY OF MINOR VICTIMS OF SEXUAL ABUSE AND HUMAN TRAFFICKING

1. In cases where a child is a victim of a criminal offense, during the actions of the competent authorities it is necessary to take into account the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (lex specialis) and set it as a priority in relation to the Criminal Procedure Code. In this way, adequate protection of the rights of minors in criminal proceedings is being move toward to in a suitable manner, as the procedural legal provisions are set in relation to the age, interest and protection of minors. The state thus sets itself as a guarantor of the protection of the interests and realization of the rights of minors, which is enabled through the actions of the body conducting the procedure and its treatment of children during the procedure.
2. In accordance with the Special Protocol on the Conduct of Judicial Bodies in the Protection of Juveniles, it is necessary to create accurately measurable mechanisms that will guarantee the protection of minors from the media (ab)use⁷⁵.
3. Each institution, body and organization that collects and processes personal data of a minor must have a signed Consent for data processing and personal data protection, i.e. other adequate legal basis for data processing, as well as a carefully planned response

⁷⁵ https://www.paragraf.rs/propisi/posebni_protokol_o_postupanju_pravosudnih_organa_u_zastiti_maloletnih_lica_od_zlostavljanja_i_zanemarivanja.html (art. 2.3.2.), accessed on 12/01/2021

mechanism in order to prevent leakage of information⁷⁶ from institutions, especially prosecutor's offices, Ministry of the Interior, health and social care system, and a mechanism of adequate response in case the right to data protection is violated.

4. It is necessary to revise the written instructions on how press releases issued by the prosecutor's office and the police on criminal investigations and other proceedings, where injured parties are victims of human trafficking, sexual abuse, and other criminal offenses, should be formulated; these statements should be based on the principle "do no harm" and "do no more damage" of the already existing per victim and the procedure.
5. Initiation of criminal, misdemeanor and other proceedings ex officio against media owners, editors and journalists, and all those who release information from court proceedings from which the public is excluded, violate the secrecy of court proceedings, destroy and harmfully affect the person, their integrity and dignity of minors and provide inaccurate information about the injured parties. Within the right to free legal aid to victims of trafficking,⁷⁷ funds should be provided for initiating civil and non-litigious proceedings against the media and other entities that have violated the right to privacy.
6. Conduct continuous training for media workers (journalists, editors, representatives of media associations) and initiate closer networking with organizations working to prevent trafficking in human beings, as well as child protection, in order to improve children's rights and data protection.
7. It is necessary to grant the status of a particularly sensitive witness to all victims of sexual abuse and exploitation during the entire criminal procedure, while respecting and applying all protection measures during the investigation and trial.
8. In cases where the injured party is a minor, but also in other cases in

76 Having in mind the negotiation process with the EU, we also emphasize the obligations of the state of Serbia from the Action Plan for Chapter 23, in the recommendation from the Screening Report no. 3.5.2. calling on the state to take "urgent measures to stop threats and violence against journalists, as well as leakage of information on ongoing or planned criminal proceedings;

77 Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, Official Gazette of RS, No. 19/2009, Article 15

which the injured party has been granted the status of a particularly sensitive witness, the security measure of public announcement of the verdict, or partial announcement of the verdict should not be used, so as not to violate dignity, integrity, and to protect the identity of the victim.⁷⁸

9. Agency for Coordination of human trafficking victims' protection within the Center for the Protection of Trafficking Victims, must take all necessary measures to protect the rights of victims of trafficking in cases of violation of the right to privacy and confidentiality of data and protection of personal data of victims of trafficking in human beings.
10. During the initial interview with a potential victim of trafficking, in the case of a criminal offense with elements of organized crime, the Witness Information and Protection Service should inform the victim that upon a reasoned proposal victim may request protection of personal data, both their own and others' (e.g. family members) who would appear as witnesses.⁷⁹
11. It is necessary to change the Court Rules of Procedure in the part related to informing the public about the work of courts, aimed to improve the protection of children.⁸⁰
12. It is necessary to insist on proactive action on initiating proceedings and reporting of independent bodies (Ombudsman, Commissioner for Information of Public Importance, and Commissioner for Gender Equality) in cases of breaches of the right to confidentiality and data protection by any of the stakeholders, and their disclosure in the media.

78 Criminal Procedure Code, Article 89

79 Law on Organization and Competences of State Bodies in the Suppression of Organized Crime, Corruption and Other Particularly Serious Crimes, Article 15

80 Opinion of the Ombudsman, number 321-508/20, dated 14/12/2020

