



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

Distr.: General  
16 February 2015

Original: English  
English, French and Spanish only

---

**Committee on Enforced Disappearances**

**Eighth session**

2–13 February 2015

Agenda item 6

**Consideration of reports of States parties to the Convention**

**List of issues in relation to the report submitted by Serbia  
under article 29, paragraph 1, of the Convention**

Addendum

**Replies by Serbia to the list of issues\***

[Date received: 14 January 2015]

---

\* The present document is being issued without formal editing.

GE.15-02540 (E)



\* 1 5 0 2 5 4 0 \*

Please recycle A recycling symbol consisting of three chasing arrows forming a triangle.



## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. General .....	1	3
Reply to paragraph 1 of the list of issues .....	1	3
II. Definition and criminalization of enforced disappearance (arts. 1–7).....	2–14	3
Reply to paragraph 2 of the list of issues .....	2–7	3
Reply to paragraph 3 of the list of issues .....	8	4
Reply to paragraph 4 of the list of issues .....	9	4
Reply to paragraph 5 of the list of issues .....	10–14	4
III. Judicial Procedure and Cooperation in Criminal Matters (arts. 8–15) .....	15–33	5
Reply to paragraph 6 of the list of issues .....	15–16	5
Reply to paragraph 7 of the list of issues .....	17–19	5
Reply to paragraph 8 of the list of issues .....	20–22	6
Reply to paragraph 9 of the list of issues .....	23–25	7
Reply to paragraph 10 of the list of issues .....	26–29	8
Reply to paragraph 11 of the list of issues .....	30–33	8
IV. Measures to Prevent Enforced Disappearances (arts. 16–23) .....	34–55	9
Reply to paragraph 12 of the list of issues .....	34–35	9
Reply to paragraph 13 of the list of issues .....	36–37	10
Reply to paragraph 14 of the list of issues .....	38–44	11
Reply to paragraph 15 of the list of issues .....	45	12
Reply to paragraph 16 of the list of issues .....	46–49	13
Reply to paragraphs 17 of the list of issues .....	50–51	14
Reply to paragraphs 18 of the list of issues .....	52–54	15
Reply to paragraph 19 of the list of issues .....	55	16
V. Measures for Reparation and the Protection of Children .....		
against Enforced Disappearance (arts. 24–25) .....	56–82	17
Reply to paragraph 20 of the list of issues .....	56–57	17
Reply to paragraph 21 of the list of issues .....	58–60	17
Reply to paragraph 22 of the list of issues .....	61	18
Reply to paragraph 23 of the list of issues .....	62	18
Reply to paragraph 24 of the list of issues .....	63–64	18
Reply to paragraph 25 of the list of issues .....	65–82	19

## **I. General**

### **Reply to paragraph 1 of the list of issues**

1. The Constitution of the Republic of Serbia,<sup>1</sup> article 16, paragraph 2, prescribes that ratified international agreements must be in compliance with the Constitution, which implies that the provisions of the Convention which are not in compliance with the Constitution cannot be an integral part of the legal system of the Republic of Serbia.

## **II. Definition and criminalization of enforced disappearance (arts. 1–7)**

### **Reply to paragraph 2 of the list of issues**

2. The provisions of the articles 113-127 of the Criminal Code<sup>2</sup> prescribe criminal offences against the life and body, and the provisions of article 128-153 of the same Code prescribe criminal offences against human and civil freedoms and rights.

3. Although the criminal legislature of the Republic of Serbia does not provide an explicit definition of enforced disappearance concerning article 2 of the Convention, actions described in article 2 of the Convention may constitute legal characteristics of criminal offences listed in paragraphs 36 and 37 of the Report.

4. Actions of “refusal to acknowledge the deprivation of liberty” or “concealment of the fate or whereabouts of the disappeared person” may be also considered actions of committing criminal offences of failure to report a criminal offence or the perpetrator from article 332, paragraph 2 and 3 of the Criminal Code, and aiding the perpetrator after the commission of the criminal offence from article 333 of the Criminal Code.

5. The action of the commission of the criminal offence of crime against humanity from article 371 of the Criminal Code also includes “detention or abduction of persons without disclosing information on such acts in order to deny such person legal protection”.

6. Article 132 paragraph 3 of the Criminal Code prescribes, for a severe form of the action of the commission of the criminal offence of illegal deprivation of liberty, that “if unlawful depriving of liberty exceeded thirty days, the offender shall be punished with imprisonment of one to eight years”.

7. The fate of damaged parties in cases of war crimes which have been stated in the Report (attachment 1) has been revealed; namely, in the case of illegal detentions which were the subject of the Judgement K.V. 4/05, nine damaged parties who were illegally detained have been released<sup>3</sup>; out of the hostages who were damaged parties in the judgement K.V. 5/08, two have been exchanged, while the remains of two persons have

---

<sup>1</sup> “Official Gazette of RS”, No. 98/2006.

<sup>2</sup> “Official Gazette of RS”, No. 85/2005, 88/2005 — corr., 107/2005 — corr., 72/2009, 111/2009, 104/2013 and 108/2014.

<sup>3</sup> Judgment of the District Court in Belgrade, the War Crimes Chamber K.V. 4/05 (K-Po2 9/10) dated 18 September 2006.

later been found<sup>4</sup>; illegally detained persons and hostages who were damaged parties in the cases K.V. 5/05, K-Po2 28/10 have been either exchanged, or their bodies have been found.<sup>5</sup>

### **Reply to paragraph 3 of the list of issues**

8. According to the data collected by the competent prosecutor's offices on the territory of the Republic of Serbia, during the period 2011-2014 there were no criminal charges filed relating to cases of human trafficking that may fall under articles 2 and 3 of the Convention.

### **Reply to paragraph 4 of the list of issues**

9. Ordering the commission of an enforced disappearance which does not amount to a crime against humanity, pursuant to provisions of the Criminal Code, would constitute inciting the commission of a criminal offence, pursuant to the provision of article 34 of the Criminal Code, which prescribes that a person who incites another with premeditation to commit a criminal offence will be punished as prescribed for this criminal offence.

### **Reply to paragraph 5 of the list of issues**

10. Article 40 of the Law on Military Security Agency and Military Intelligence Agency<sup>6</sup> prescribes that members of the Military Security Agency are professional members of the Serbian Armed Forces, civil servants and State employees.

11. Article 8 paragraph 1 of the Law on the Serbian Armed Forces<sup>7</sup> prescribes that professional members of Serbian Armed Forces are professional combatants and civilians serving in Serbian Armed Forces, and Article 10 paragraph 1 of the same law prescribes that civilians serving in Serbian Armed Forces are army civil servants and army employees.

12. The Military Security Agency does not possess examples from court practice relating to the prohibition of invoking superior orders.

13. With regard to the practice relating to the prohibition of invoking superior orders in cases of war crimes in judgments of the High Court in Belgrade, the War Crimes Chamber, this kind of a defence of the defendant was debated, and thus, in the judgment K Po2 22/10 dated 26 June 2012,<sup>8</sup> court chamber decided that the defendant must not transmit an order whose execution would constitute a criminal offence, as regulated by Article 53 of the Law on Service in Armed Forces and provision 37 of the Rules of Service of Armed Forces. These rules prescribe that combatants are obliged to execute orders of their superior officers relating to the service, unless it is obvious that the execution of the order would constitute a criminal offence, and that, if they receive such an order, combatants are obliged to immediately inform their higher superior officer, or a more senior officer to the person who gave the order. The court finally concluded that the lack of knowledge about the

---

<sup>4</sup> Judgment of the District Court in Belgrade, the War Crimes Chamber K.V. 5/08 (K-Po2 27/10) dated 27 May 2009.

<sup>5</sup> Judgment of the District Court in Belgrade, the War Crimes Chamber K.V. 5/05 (K-Po2 10/10) dated 12 June 2008; Judgment of the High Court in Belgrade, the War Crimes Chamber K-Po2 28/10 dated 22 November 2010.

<sup>6</sup> "Official Gazette of RS", No. 88/09, 55/2012 — CC, 17/2013.

<sup>7</sup> "Official Gazette of RS", No. 116/2007 and 88/2009.

<sup>8</sup> Judgment of the High Court in Belgrade, the War Crimes Chamber K Po2 22/10 dated 26 June 2012; page 185.

international law and military service did not absolve the accused person of the criminal responsibility.

14. Article 6 paragraph 1 of the Law on Civil Servants<sup>9</sup> prescribes that a civil servant is accountable for the legality, expertise and effectiveness of his/her work. Provisions of article 107–125 of the Law prescribe the provisions on the disciplinary accountability of civil servants, disciplinary procedure, as well as the accountability for the damage that a civil servant causes at work or relating to work. Also, article 18, paragraph 3 of the Law prescribes that a civil servant is obliged to refuse to execute a spoken or written order if the execution of that order would constitute a punishable act, and is obliged to inform in writing his/her superior, or a supervisory body supervising the work of a State authority, if the order was issued by the superior.

### **III. Judicial Procedure and Cooperation in Criminal Matters (arts. 8–15)**

#### **Reply to paragraph 6 of the list of issues**

15. Article 10, paragraph 1 of the Criminal Code prescribes that, in cases from articles 8 and 9 of the Code, criminal prosecution will not be enforced if: the offender has fully served the sentence to which he/she was convicted abroad; the offender was acquitted abroad by final judgement or the statute of limitation has set in respect of the punishment, or was pardoned; to an offender of unsound mind a relevant security measure was enforced abroad; for a criminal offence under foreign law criminal prosecution requires a motion of the victim, and such motion was not filed.

16. The amendment to article 10, paragraph 2 of the Criminal Code, which has been applied since 1 January 2013, prescribes that in case from articles 8 and 9, paragraph 1 of the Criminal Code, criminal prosecution may be undertaken only if a criminal offence is also punishable under the law of the country where it was committed, unless there is a permission by the Republic Public Prosecutor, or when so provided by a ratified international agreement. Ratified international agreement, in this case the ratified Convention for the Protection of All Persons from Enforced Disappearance, represents an independent basis, with regard to the provision of article 16, paragraph 2 of the Constitution of the Republic of Serbia, which prescribes that ratified international agreements are an integral part of the legal system in the Republic of Serbia and are applied directly.

#### **Reply to paragraph 7 of the list of issues**

17. The military police exercises its authority when there are grounds for suspicion that an employee in the Ministry of Defence or Serbian Armed Forces has committed a criminal offence while in service, or relating to the service, which he/she is prosecuted *ex officio*, unless the law prescribes otherwise. Also, the Military Police, while exercising its official authority towards the persons in the Ministry of Defence and the Serbian Armed Forces, may also exercise its authority towards civilians who were found with them during the commission of the criminal offence.

18. When there are grounds for suspicion that an employee in the Ministry of Defence or the Serbian Armed Forces has committed a criminal offence against an institution or a

<sup>9</sup> “Official Gazette of RS”, No. 79/2005, 81/2005 — corr., 83/2005 — corr., 64/2007, 67/2007 — corr., 116/2008, 104/2009 and 99/2014.

civilian while in service, or relating to the service, the Military Police may exercise its authority in accordance with the Criminal Procedure Code. If there are grounds for suspicion that such a person has committed a criminal offence outside of service (which may include a case of enforced disappearance), or a criminal offence not relating to service, the Military Police authorities shall submit the available findings to the competent prosecutor's office, which will decide on the undertaking of further measures.

19. The Military Police, in accordance with its competences, may assist the civilian authorities in the investigation of cases of enforced disappearance, if the investigation includes employees in the Ministry of Defence and Serbian Armed Forces.

### **Reply to paragraph 8 of the list of issues**

20. The provision of article 21, paragraph 1 of the Constitution prescribes that all are equal before the Constitution and the law. A possible invocation of immunity is prescribed by article 103, paragraph 3 of the Constitution, thus a Member of the National Assembly who invokes immunity may not be detained, nor can a criminal procedure with the possibility of prison sentence be conducted against him/her, without an approval by the National Assembly. The provision of article 103, paragraph 4 of the Constitution prescribes that a Member of the National Assembly who has been caught in the commission of a criminal offence for which a prison sentence longer than five years is prescribed may be detained without an approval by the National Assembly. Paragraph 5 of the same article of the Constitution prescribes that a criminal or other procedure in which immunity has been established does not have deadlines. The President of the National Assembly also enjoys immunity, while members of the Government and the Protector of Citizens (the Ombudsman) enjoy immunity as Members of the National Assembly. Article 151 of the Constitution prescribes that a judge may not be held responsible for expressing an opinion or for voting in the process of passing a court decision, unless it constitutes the criminal offence of violation of the law by the judge. A judge may not be deprived of liberty in proceedings instituted due to a criminal offence committed in performing his/her judicial function, without an approval of the High Judicial Council. Article 153 paragraph 7 of the Constitution prescribes that a member of the High Judicial Council enjoys immunity as a judge, and article 162 of the Constitution prescribes that the public prosecutor and the deputy public prosecutor may not be held responsible for expressing an opinion in exercise of their function as prosecutor, unless it constitutes the criminal offence of violation of the law by the public prosecutor or deputy public prosecutor. A public prosecutor or deputy public prosecutor may not be deprived of liberty in proceedings instituted due to a criminal offence committed in performing his/her prosecutorial function, i.e. in service, without an approval of the authorized committee of the National Assembly. Article 164, paragraph 6 of the Constitution prescribes that a member of the State Prosecutors Council enjoys immunity as a public prosecutor, while article 173, paragraph 2 of the Constitution prescribes that a judge of the Constitutional Court enjoys immunity as a Member of the National Assembly, and that the Constitutional Court decides on his/her immunity.

21. Article 116 of the Law on Civil Servants prescribes that a civil servant against whom criminal proceedings have been initiated because of a criminal offence committed at work or relating to the work, or a disciplinary procedure has been initiated because of a severe breach of duty, may be suspended until the conclusion of the criminal or disciplinary procedure, if his/her presence at work would harm the interests of the State authority or hinder the disciplinary proceedings. The ruling on the suspension is made by a superior or a disciplinary committee, depending on the person conducting the disciplinary procedure. The decision on the suspension is revoked, *ex officio* or at the proposal of a civil servant, if the grounds on which it was made no longer exist.

22. The Law on Police<sup>10</sup> prescribes in article 165 the reasons and the procedure of temporary suspension of a person employed at the Ministry of Interior. Paragraph 1 prescribes that the employee is temporarily suspended when detention is ordered against him/her, beginning with the first day of detention. Paragraph 3 prescribes that an employee of the Ministry may be temporarily suspended at a reasoned proposal of a superior, when a legal decision on an investigation of a criminal offence prosecuted *ex officio*, or a disciplinary measure because of a severe breach of duty has been issued against him/her, and if his/her presence at work would harm the interests of the service.

### **Reply to paragraph 9 of the list of issues**

23. Article 1 of the Law on Organization and Competences of Government Authorities in War Crimes Proceedings<sup>11</sup> prescribes that the law regulates the education, organization, competences and authority of government authorities and their organizational units for the deduction, criminal prosecution and trial for criminal offences specified by the Law. The law prescribes that the prosecution of perpetrators of war crimes is within the competence of the Office of the War Crimes Prosecutor, and that the High Court in Novi Sad shall organize the Service for Assistance and Support to Victims and Witnesses, which performs administrative and technical tasks, tasks relating to assistance and support to victims and witnesses, as well as tasks of ensuring conditions for the application of processual provisions of this law. The work of this service is regulated by an act adopted by the President of the High Court in Belgrade, with the approval of the Minister who is competent for the judiciary.

24. The system of witness protection in cases of war crimes has been criticized, and the criticism has been eventually summed up in the screening report of the European Commission relating to the chapter 23, referring to the judiciary and basic rights, and a recommendation relating to an improvement of the system of witness protection in cases of war crimes has been submitted to the Republic of Serbia. This recommendation is as follows: "Raise the safety level of witnesses and cooperating witnesses to a higher level and improve the work of the services for support of witnesses and cooperating witnesses".

25. The report of the European Commission, as well as reports of other organizations monitoring the issue of witness protection, concludes that witness protection is a problem that has persisted for a long time, with different levels of intensity. Within the scope of Chapter 23, the Republic of Serbia is preparing an action plan which prescribes activities for solving that issues and applying the recommendations relating to the improvement of the system of witness protection. These activities include a modification of the systematization in a number of State bodies and employment of psychologists and sociologists in order to improve the work on the protection and support of witnesses and victims; an analysis of the work of the Service for Witness Protection of the Ministry of Interior with a view to improving the work methodology and identifying the problems; change of rules and criteria for employment and selection of new unit members; training of unit members; analysis of court practice with regard to the application of the provision of the Criminal Procedure Code<sup>12</sup> in the part referring to the protection of witnesses and victims.

<sup>10</sup> "Official Gazette of RS", No. 101/2005, 63/2009- CC and 92/2011.

<sup>11</sup> "Official Gazette of RS", No. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009 and 101/2011 — as amended.

<sup>12</sup> "Official Gazette of RS", No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

**Reply to paragraph 10 of the list of issues**

26. Guarantees that State authorities have direct access to any suspicious location during the investigation are included in the provisions of the Criminal Procedure Code, especially in chapter 15, articles 285 and 286 of the Code, which define the rights and competences of the prosecutor's office and the police in the phase of pre-investigatory actions. Evidence-collecting procedures of inspecting a flat or other premises is, as a rule, conducted per a court order, at a reasoned proposal of the public prosecutor, articles 152 to 158 of the Code, and, in special cases, without a court order, in accordance with article 158 of the Code.

27. State bodies which conduct the inspection, i.e. the prosecutor and the police, have no limitations in their work which would refer to the prohibition of access to certain areas. The Code only provides a limitation that the inspection of military facilities, State bodies' premises, enterprises or other legal persons is conducted in the presence of the superior, or a person appointed by the superior, and if the invited person does not arrive within three hours from the hour when the invitation is received, the inspection may be conducted even without their presence, in accordance with article 156, paragraph 5 of the Code.

28. Articles 43 and 44 of the Code define the rights and duties of the public prosecutor, as well as the duty of all State bodies to act at public prosecutor's request. The public prosecutor, in accordance with article 44 of the Code, has the right to start a disciplinary procedure against a person who does not act at his/her requests.

29. Article 5, paragraph 2 of the Law on Public Prosecution<sup>13</sup> prescribes that any influence on the work of the public prosecutor's office and on the conduct in proceedings by the executive and legislative authorities is prohibited, whether by using a public position, public media or any other means that could endanger the independence of the work of the public prosecutor's office. Article 8 of the Law prescribes that courts, other State bodies, bodies of local self-government units and the autonomous province, as well as other organisations and legal persons, are obliged to submit to the public prosecutor's office, at its request, documents and notices necessary for the undertaking of actions it is competent for. When the public prosecutor's office has a legal deadline, they are obliged to immediately submit the documents. Article 9, paragraph 1 of the same Law prescribes that everyone is obliged to directly submit to the public prosecutor's office, at its request, the explanations and data that it deems necessary to undertake actions it is legally authorized for.

**Reply to paragraph 11 of the list of issues**

30. The Republic of Serbia has joined many multilateral and bilateral agreements, among others the Convention on Mutual Assistance in Criminal Matters of 1959, with the Additional Protocol of 1978 and Second Additional Protocol of 2001.

31. The Law on Mutual Legal Assistance in Criminal Matters,<sup>14</sup> article 1, prescribes that the Law regulates the procedure of providing international legal assistance in cases when there is no ratified international agreement, or when it does not resolve certain issues.

32. Article 7 of the Law prescribes general preconditions for the provision of international legal assistance: 1) the criminal offence, in respect of which legal assistance is requested, constitutes the offence under the legislation of the Republic of Serbia; 2) the proceedings on the same offence have not been fully completed before the national court,

---

<sup>13</sup> "Official Gazette of RS", No. 116/2008, 10420/09, 101/2010, 78/2011 — as amended, 101/2011, 38/2012 — CC decision, 121/2012, 101/2013 and 111/2014 — CC decision.

<sup>14</sup> "Official Gazette of RS", No. 20/2009.



i.e. a criminal sanction has not been fully executed; 3) the criminal prosecution, i.e. the execution of a criminal sanction, is not excluded due to the state of limitations, amnesty or an ordinary pardon; 4) the request for legal assistance does not refer to a political offence or an offence relating to a political offence, i.e. a criminal offence comprising solely violation of military duties; 5) the execution of requests for mutual assistance would not infringe sovereignty, security, public order or other interests of essential significance for the Republic of Serbia. Without prejudice to paragraph 1, subparagraph 4 of this Article, mutual assistance shall be granted for the criminal offence against the international humanitarian law that is not subject to the statute of limitations. The competent judicial authority shall decide whether or not the preconditions under subparagraphs 1-3 of paragraph 1 have been met, whereas the Minister of Justice shall decide or provide an opinion on whether or not the preconditions under subparagraphs 4) and 5) of paragraph 1 have been fulfilled.

33. Article 83 of the Law prescribes that the subject of letter rogatory may also be other forms of legal assistance — undertaking of processual actions (hence also the forms prescribed by article 15 of the Convention), which may be provided if preconditions for this action prescribed by the Criminal Procedure Code have been fulfilled, and if there is no criminal procedure conducted at any Serbian court against the same person for the criminal offence which is a cause of the request for international legal assistance.

#### **IV. Measures to Prevent Enforced Disappearances (arts. 16–23)**

##### **Reply to paragraph 12 of the list of issues**

34. Article 13 of the Law on Mutual Legal Assistance in Criminal Matters prescribes that the extradition of an accused or convicted person to another country is allowed: 1) by reason of criminal proceedings for a criminal offence that is punishable by imprisonment for a minimum of one year under the law of the Republic of Serbia and the law of the requesting State; 2) by reason of the execution of a punishment of minimum duration of four months imposed by a court of the requesting party for the criminal offence under subparagraph 1 of this paragraph. Should the letter rogatory relate to several criminal offences, of which some do not meet the conditions set forth in paragraph 1 of this article, extradition may be granted for these criminal offences as well. Article 14 of the same Law prescribes that, if extradition is allowed, the extradited person may not be criminally prosecuted, subjected to the enforcement of a criminal sanction, or extradited to a third country for a criminal offence which was committed before the extradition, and which is not the subject of extradition. The conditions from paragraph 1 of this article will not be applied: 1) if the extradited person has explicitly waived the guarantee from paragraph 1 of this article; 2) if the extradited person did not leave the territory of the country which he/she was extradited to, even though he/she had an opportunity to do so, within 45 days as of the day of his/her conditional release, or the day when a criminal sanction was fully served, or if he/she returned to the territory concerned. Article 15 of the same Law prescribes that the following documentation shall be submitted with the letter rogatory: 1) means of proper identification of an accused or a convicted person (an accurate description, a photograph, fingerprints, etc.); 2) a certificate or other data on the citizenship of an accused or a convicted person; 3) a decision on the instigation of criminal proceedings, the indictment, the decision on detention or the judgment; 4) evidence presented on the existence of the reasonable suspicion. Article 16 of the same Law prescribes that, in addition to the preconditions specified in article 7 of the Law, preconditions for an extradition are: 1) the person, in respect of whom extradition is requested, is not a citizen of the Republic of Serbia; 2) the offence, in respect of which extradition is requested, was not committed in the territory of the Republic of Serbia, and not

committed against it or against its citizen; 3) the same person is not prosecuted in the Republic of Serbia for the offence in respect of which extradition is requested; 4) in accordance with the national legislation, conditions exist for reopening the criminal case for the criminal offence in respect of which extradition is requested; 5) the proper identity of the person in respect of whom extradition is requested is established; 6) there is sufficient evidence to support the reasonable suspicion, i.e. an enforceable court decision is in place demonstrating that the person in respect of whom extradition is requested has committed the offence in respect of which extradition is requested; 7) the requesting country guarantees that, in case of conviction *in absentia*, the proceeding will be repeated in presence of the extradited person; 8) the requesting country guarantees that the death penalty prescribed for the criminal offence in respect of which extradition is requested will not be imposed or carried out. Also, the ministry competent for the judiciary submits the letter rogatory to the court in whose jurisdiction the person whose extradition is demanded resides or finds themselves. If this location is not known, the police determines the location of the person whose extradition is requested. If the letter rogatory is submitted in accordance with articles 5 and 15 of this Law, the investigative judge will issue an order to bring in the person whose extradition is demanded. The order is executed by the police, immediately taking the person to the investigative judge. Article 29 of the same Law prescribes that, if the Pretrial Chamber establishes that the preconditions mentioned in articles 7 and 16 of the law are fulfilled, it shall pass a decision thereon. An appeal against the decision mentioned in paragraph 1 of this article may be filed to the next instance higher court within three days as of the day of receipt of the decision. The appeal postpones the execution of the order, in accordance with the general provision of article 466 of the Criminal Procedure Code. The next instance higher court will, after the interrogation by the public prosecutor of the person whose extradition is demanded and his/her defender, confirm, deny or modify the decision mentioned in paragraph 1 of this article.

35. There are no explicit criteria or mechanisms that are applied in the context of the extradition procedure for the purpose of evaluation and verification of the risk that a person may have been subjected to an enforced disappearance, but in accordance with the provision of article 32 of the Law on Mutual Legal Assistance in Criminal Matters, the Minister of Justice may, in a ruling allowing the extradition, impose conditions on extradition, which may refer to the circumstances from article 16 of the Convention for the Protection of All Persons from Enforced Disappearance. In addition, article 33 of the same law prescribes that the Minister may issue a ruling which does not permit extradition if the recommendations referred to in Article 7, paragraph 1, subparagraph 4) and 5) of the Law are not fulfilled, which may include cases referred to in Article 2 of the Convention for the Protection of All Persons from Enforced Disappearance. In compliance with Serbian legislation, as well as international agreements which the Republic of Serbia has concluded, or international conventions the Republic of Serbia has signed, the Republic of Serbia does not extradite persons to other countries if there is a reasonable suspicion that they might be subjected to enforced disappearance. For this purpose, the competent authorities take into consideration the circumstances or findings that there is, in practice, a severe, flagrant or mass abuse of human rights and a severe violation of the international humanitarian law in terms of article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance.

### **Reply to paragraph 13 of the list of issues**

36. In issuing a decision on extradition, the Ministry of Justice also assesses, on a case-by-case basis, the specific circumstances in the country which requests the extradition, in terms of a possible threat of enforced disappearance pursuant to article 16 of the International Convention for the Protection of All Persons from Enforced Disappearance.

37. On 17 August 2009, the Government of the Republic of Serbia issued the Decision on the Establishment of the List of Safe Countries of Origin and Safe Third Countries.<sup>15</sup>

### **Reply to paragraph 14 of the list of issues**

38. Article 1 paragraph 2 of the Law on the Protector of Citizens<sup>16</sup> prescribes that Protector of Citizens (the Ombudsman) is responsible for the protection and improvement of human and minority freedoms and rights. Also, article 17 of the Law prescribes that the Protector of Citizens is authorized to control the respect of the rights of the citizens, determines the violations committed by acts, actions or failures to act by administrative bodies, if there is a violation of the laws of the Republic of Serbia, other regulations and general acts. The Protector of Citizens is authorized to control the legality and regularity of the administrative bodies, but is not authorized to control the work of the National Assembly, the President of the Republic, the Government, the Constitutional Court, courts and public prosecutor's offices. Article 279 of the Law on the Enforcement of Criminal Sanctions<sup>17</sup> prescribes that the supervision and control over the enforcement of criminal sanctions, in compliance with the law, is performed by the national mechanism for the prevention of torture and the Protector of Citizens.

39. Pursuant to the Law on the Protector of Citizens, the Protector of Citizens has the right of unobstructed access to all locations where persons deprived of liberty are located, as well as the right to speak to those persons in private. The Law additionally specifies that persons deprived of liberty have the right to file a complaint in a sealed envelope, and that therefore all institutions where persons deprived of liberty are located must provide appropriate envelopes in a visible and public manner, which is the responsibility of the administration of these institutions, as well as the ministry competent for judicial affairs. Additional guarantees of the direct and unobstructed access to the Protector of Citizens for persons deprived of liberty are provided in the Criminal Procedure Code and the Law on the Enforcement of Prison Sentence for Crimes of Organised Crime.<sup>18</sup> The Criminal Procedure Code prescribes that the Protector of Citizens has the right to pay unobstructed visits to detained persons and to talk to them without the presence of other persons, as well as that the detained persons may not be forbidden from correspondence with the Protector of Citizens. The Law also prescribes the obligation of the judge to enforce criminal sanctions, or the obligation of another judge appointed by the president of the court to immediately notify the Protector of Citizens on any irregularities noticed during any visits to the institution. The Law on the Enforcement of Prison Sentence for Crimes of Organised Crime prescribes, among other things, that the supervision over the work of the Special Division is also performed by the Protector of Citizens in compliance with the Law on the Protector of Citizens, i.e. that a convicted person has the right to a monthly visit by the Protector of Citizens, which is excluded from the legally prescribed obligation of audio and video supervision and recording, as well as that the convicted person has the right to correspond with the Protector of Citizens, and that the correspondence shall not be supervised.

40. In his work so far, the Protector of Citizens has not had problems in exercising his competences of direct and unobstructed access to persons deprived of liberty.

41. The Law amending the Law on Ratification of the Optional Protocol with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

<sup>15</sup> "Official Gazette of RS", No. 67/2009.

<sup>16</sup> "Official Gazette of RS", No. 79/2005 and 54/2007.

<sup>17</sup> "Official Gazette of RS", No. 55/2014.

<sup>18</sup> "Official Gazette of RS", No. 72/2009 and 101/2010.

Punishment, adopted on 28 July 2011, prescribes that the Protector of Citizens performs the tasks of the National Preventive Mechanism (NPM) in cooperation with Ombudsmen of the autonomous provinces and associations whose statutes prescribe that the goal of association is the improvement and protection of human rights and freedoms. In executing tasks of NPM, the Protector of Citizens has developed cooperation with the Provincial Ombudsman and 14 civil society organisations.

42. In the previous period, the Protector of Citizens developed a work methodology and implemented numerous activities in executing tasks of NPM, visiting almost 200 institutions, about which he prepared detailed reports, and sending over 700 recommendations for removing the identified defects, out of which almost all have been accepted. The Protector of Citizens has initiated cooperation dialogue with the visited institutions with a view to implementing the recommendations. He was able to achieve the above mentioned results by transferring the existing resources intended for discharging duties of his general competence to the execution of NPM tasks. As a result, the capacities for discharging duties of other competences of the Protector of Citizens were diminished due to the execution of NPM tasks.

43. In order to ensure sufficient human resources for a timely and quality discharge of all the duties from the competences of the institution, the Protector of Citizens submitted the new Rulebook on Internal Organisation and Systematization of Job Positions in the Expert Service of the Protector of Citizens.

44. The Protector of Citizens believes that the Law on the Protector of Citizens should be amended. The decisions included in the amendments should: strengthen the respect of the competences of the Protector of Citizens through a more consistent cooperation with the Government and the National Assembly; ensure the protection of the title of Protection of Citizens and specify, i.e. strengthen, the competences of the Provincial Ombudsman and the Ombudsmen in the local self-government units; and strengthen the financial independence of the institution while ensuring an appropriate status, harmonized with similar institutions, of the employees in the Expert Service of the Protector of Citizens who are engaged in tasks with control powers.

### **Reply to paragraph 15 of the list of issues**

45. Article 9 of the Law on the Enforcement of Criminal Sanctions prescribes that institutions keep records on persons against whom criminal sanctions are enforced and measures are undertaken from article 12, paragraph 1 and 2 of this Law, persons who visit the institution, as well as actions and events in the institution which are important to the enforcement of criminal sanctions. Records mentioned in paragraph 1 of this article contain data on the person, enforced criminal sanction and measure, as well as data of importance for their enforcement. The administration and institutions also keep records of employees, equipment and weapons. Records of imposed criminal sanctions and measures, as well as persons deprived of liberty, are kept in the main book. Records are kept manually and electronically. The main book includes the Registry according to the type of criminal sanction or measure, and the Personal Data Sheet. The Personal Data Sheet includes the file of the convicted person, where all documents, decisions and ruling of importance to the enforcement of the sanction are enclosed. The following data about the person are written in the main book: name, surname and nickname of the person, sex, name of the father, maiden name and name of the mother, date of birth, personal identification number, place, municipality and country of birth, address of permanent or temporary residence, citizenship, national and religious affiliation (if the person wishes to declare it), marital status, number of children, academic degree, occupation, finished trainings and specializations, previous work, special needs and personal description. The following personal data of the family

members of the person deprived of liberty are also written in the Personal Data Sheet for the purpose of enforcing criminal sanctions: family member's name and surname, personal identification number, relation to the person deprived of liberty, address of permanent or temporary residence, and telephone number. Regulation on the method of keeping records from paragraph 1 and 3 of this article is adopted by the minister competent for judicial affairs. In addition, article 10 of the same Law prescribes that records of actions and events of importance for the enforcement of criminal sanctions and measures, records of persons visiting the institution, or names of persons deprived of liberty, are kept in auxiliary books. The auxiliary books are: records of daily number of incarcerated persons, time schedule of sentence expirations, records of escapes made, records of removals made, records of deaths, records of suspended sentences, records of persons conditionally released from prison sentence, records of disciplinary sanctions against persons deprived of liberty, records of motions, claims, complaints and requests for court protection of persons deprived of liberty, records of assistance provided in the institution, records of assistance provided by other State bodies, records of the application of instruments of coercion, records of the application of special measures for maintaining order and safety, records of narcotics identification testing of persons deprived of liberty, records of testing the blood alcohol content of persons deprived of liberty as well as the employees, records of check-up visits to the institution and persons placed in special secure rooms by the prison governor and the head of security, records of check-up visits to persons in solitary confinement, records of the reception of parcels and visits by persons deprived of liberty, records of medical examinations, records of food quality control, records of persons refusing medical treatment, food or water, records on organizing and implementing cultural and sport activities, records on vocational training and education of convicted persons, records of injuries at work, records of work engagement of convicted persons in and outside of the institution, records of visits by counsel, records of persons visiting the institution or persons deprived of liberty. The following data are written in records of receipts of packages and visits to persons deprived of liberty, records of defenders and records of persons visiting the institution and persons against whom criminal sanctions and measures are enforced: visitor's name and surname, personal identity number, identification card number and attorney-at-law ID.

### **Reply to paragraph 16 of the list of issues**

46. Rights of the person deprived of liberty are guaranteed by the Constitution of the Republic of Serbia in the provisions of articles 27–31. The prescribed rights of the person deprived of liberty with regard to the urgent notification of family members, legal counsel, consular representatives or any other persons appointed by the person deprived of liberty, are not subject to any limitations.

47. Article 68 of the Criminal Procedure Code prescribes the rights of the accused person in the criminal procedure. This provision prescribes that the accused person has the right to: 1) be informed at the shortest notice, and always before the first interrogation, in detail and in a language he/she understands, about the charges against him, the nature and grounds of the accusation, as well the fact as that everything he/she says may be used as evidence in proceedings; 2) not say anything, refrain from answering a certain question, present his/her defence freely, admit or not admit his/her culpability; 3) defend himself/herself on his/her own or with the professional assistance of a defence counsel, in accordance with the provisions of this Code; 4) have a defence counsel attend his/her interrogation; 5) be taken before a court at the shortest notice and be tried in an impartial and fair manner and in a reasonable time; 6) read immediately before his/her first interrogation the criminal charges, the crime scene report, and the findings and opinions of an expert witness; 7) be given sufficient time and opportunity to prepare his/her defence; 8) examine documents contained in the case file and objects serving as evidence; 9) collect

evidence for his/her own defence; 10) state his/her position in relation to all the facts and evidence against him/her and present facts and evidence in his/her favour, question witnesses for the prosecution and demand that witnesses for the defence be questioned in his/her presence, under the same conditions as the witnesses for the prosecution ; 11) make use of legal instruments and legal remedies; 12) perform other actions where provided for by this Code. The authority of the procedure is obliged to instruct the accused person before his/her first interrogation on his/her rights from paragraph 1 subparagraph 2) to 4) and 6) of this Article. In addition, rights of the arrested person are guaranteed in the provision of article 69 of the Code. This provision prescribes that the arrested person, in addition to the rights from article 68, paragraph 1, subparagraph 2) to 4) and 6) and paragraph 2 of this Code, also has the right to: 1) be immediately informed about the reasons for the arrest, in a language he/she understands; 2) have, before his/her first interrogation, a confidential talk with his/her defence counsel, which would be supervised only visually and not by way of listening; 3) demand that a family member or other person close to him/her be notified without delay about his/her arrest, as well as a diplomatic/consular representative of the country he/she is citizen of, or a representative of an authorized international public law organization, in case of a refugee or a stateless person; 4) demand to be examined without delay by a physician of his/her own choosing, and if that physician is not accessible, by a physician designated by the public prosecutor or the court. A person arrested without a court decision, or a person who has been arrested on the basis of a court decision but not interrogated, must without delay, and within 48 hours at most, be handed over to the competent judge for the preliminary proceedings, or, if this is not done, must be released from custody.

48. Article 69 of the Code prescribes the rights belonging to a person deprived of liberty, which include the right to demand that a family member or other person close to him/her be notified without delay about his/her arrest, as well as a diplomatic/consular representative of the country he/she is citizen of, or a representative of an authorized international public law organization, in case of a refugee or a stateless person; Rights of persons deprived of liberty are prescribed in articles 291–294 of the Criminal Procedure Code, which regulate the conduct of the police in case of detention or arrest of a person.

49. For the rights of detained persons, relevant provisions are those of article 219 of the Code. These provisions regulate the rights to visit of detained persons, and paragraphs 2 and 3 regulate unlimited rights of diplomatic representatives, authorized international organizations, the Protector of Citizens and the defence counsel of the defendant.

### **Reply to paragraph 17 of the list of issues**

50. The Ministry of Interior has prepared a draft Law on National DNA Register. The above mentioned law is significant in the context of the harmonization of national regulations with the *acquis*. In the draft action plan for the fulfilment of the recommendations of the European Union for Chapter 24 “Justice, Freedom and Security”, the adoption of the Law on National DNA Register is projected for 2016. The draft law:

- Establishes the National DNA database:  
The DNA database is established on the basis of DNA analyses conducted for the purpose of the criminal procedure and the identification of missing persons, or unknown persons and dead bodies;
- Prescribes the content and competence for keeping the database:  
The DNA database is established, kept and managed by the Ministry of Interior. The database contains: 1) a collection of DNA profiles obtained from uncontested samples, 2) a collection of DNA profiles obtained from contested biological traces, 3) a collection of identifying data (personal data — name, surname, PIN, date and

place of birth etc.) and 4) a collection of registered DNA laboratories in the Republic of Serbia;

- Regulates the exchange of DNA analyses results, both on the national and the international level:  
The exchange of DNA analyses results is limited to the non-coding DNA component, which can be assumed not to contain information on certain genetic traits;
- Prescribes forensic DNA technologies used in DNA analyses:  
DNA analyses shall use the smallest DNA markers which constitute the European Standard Set, or the Interpol Standard Set of Loci;
- Prescribes the manner of forming the collection of uncontested biological material, the manner of collecting samples and using the biological material;
- Prescribes the processing of data in the DNA database:  
Submitting the DNA analyses results, processing of submitted results, comparisons of DNA profiles, keeping the data in the DNA database, and erasing the DNA profiles and other data from the DNA data. A comparison of the DNA profile obtained through a DNA analysis with the DNA profile which is already in the DNA database may be requested by the competent prosecutor, court or authority of the procedure. The processing of data in the DNA database is performed by employees in the Ministry of Interior who have been previously authorized by the Minister; the data in the DNA database is kept with regard to the type of criminal offence and the prescribed term of limitation, no longer than 45 years. The data from the DNA database are erased *ex officio*, or per decision by criminal procedure authorities, at personal request, or request of a relative for missing persons and unknown persons and dead bodies;
- It is prescribed that the protection of personal data is performed fully in compliance with the law regulating personal data protection and the relevant sources of international law.

51. The proposed solutions are part of the draft Law on National DNA Registry. The existing version will, in accordance with the prescribed procedure, be the subject of a public debate, and all competent State bodies of the Republic of Serbia will declare their opinions of it.

### **Reply to paragraph 18 of the list of issues**

52. Conducts prescribed in article 22 of the Convention may be addressed in the criminal procedure under the following provisions of the Criminal Code: provisions of article 147 — Violation of the Right to Submit a Legal Instrument; provisions of article 359 — Abuse of Office; provisions of article 360 — Violation of Law by a Judge, Public Prosecutor or his/her Deputy; and provisions of article 361 — Dereliction of Duty.

53. In compliance with the Law on the Enforcement of Criminal Sanctions, the laws which regulate the rights and duties of civil servants and State employees apply to the rights and duties of the Director of the Directorate for the Enforcement of Criminal Sanctions and the employees of the Directorate, if the Law does not prescribe otherwise. Article 266 of the Law prescribes that employees of the Directorate have disciplinary accountability for less severe and severe breaches of work obligations and duties. In addition to less severe breaches of work obligations and duties which are prescribed, the law regulating the rights and duties of civil servants and State employees and the Code of Conduct for Civil Servants, a less severe breach of work obligations and duties is defined as every conduct contrary to

the regulations on the manner of performing activities in the Directorate. In addition to severe breaches of work obligations and duties which are prescribed the law regulating the rights and duties of civil servants and State employees, severe breaches of work obligations and duties of employees of the Directorate also include: 1) acceptance of gifts from persons deprived of liberty, their relatives and other persons associated with persons deprived of liberty; 2) trade and exchange of goods with persons deprived of liberty; 3) carrying objects in or out of the institution on behalf of persons deprived of liberty; 4) making arrangements with a person deprived of liberty with a view to aiding his/her escape or hindering the investigation; 5) failure to report arrangements of persons deprived of liberty to organize a riot, escape or another form of violation of the regulations on house rules in the institution; 6) failure to undertake actions against a person deprived of liberty who is trying to escape; 7) violation of regulations which prescribe the keeping and protection of confidential data; 8) performing activities which are incompatible with the official duty; 9) issuing or executing orders which are obviously endangering the safety of persons deprived of liberty and of property; 10) overstepping of powers in the application of instruments of coercion; 11) unbecoming, violent or offensive behaviour towards superiors, members of staff or clients, or persons deprived of liberty; 12) unauthorized absence from the workplace, or leaving a person who is being escorted; 13) unauthorized disclosure of data or notifications relating to carrying out the duties or work of the institution; 14) arrival at work under the influence of alcohol or psychoactive substances, or consumption of alcohol or psychoactive substances during work; 15) failure to carry out superior orders; 16) conduct which harms the reputation of the Directorate. The disciplinary measure of the termination of the employment can be imposed for all severe breaches of work obligations and duties.

54. Disciplinary proceedings in the Ministry of Interior are conducted in compliance with the Law on Police,<sup>19</sup> Regulation on Disciplinary Proceedings in the Ministry of Interior<sup>20</sup> and the Law on General Administrative Procedure.<sup>21</sup> The Law on Police defines less severe and severe breaches of official duty, disciplinary measures, competences for decision-making and terms of limitation. Disciplinary measures that may be imposed are prescribed in articles 158 and 159 of the Law on Police, specifically for less severe breaches of official duty — a warning and a fine in the amount of 10 to 20 per cent of the employee's monthly salary for the month in which the ruling establishing disciplinary accountability becomes valid. For severe breaches of official duty, a fine in the amount of 20 to 40 per cent of the employee's monthly salary for the period of one to three months may be imposed, or a transfer to another job position where the tasks performed require the immediately lower level of professional qualifications, for a period of six months to one year, conditional termination of employment with a check-up period up to a year, cumulatively with one of the previously mentioned measures, or the termination of employment.

### **Reply to paragraph 19 of the list of issues**

55. Article 258 paragraph 3 of the Law on the Enforcement of Criminal Sanctions prescribes that vocational training, training and taking examinations to obtain titles in order to perform jobs in service are conducted on the basis of regulations adopted by the minister competent for judicial affairs. Also, Article 5 of the Law on Judicial Academy<sup>22</sup> prescribes, among other things, the constant, continuous training of judges and prosecutors, judicial and prosecutorial staff.

---

<sup>19</sup> "Official Gazette of RS", No. 101/2005, 63/2009 — CC decision and 92/2011.

<sup>20</sup> "Official Gazette of RS", No. 8/2006.

<sup>21</sup> "Official Gazette of FRY", No. 33/97, 31/2001 and "Official Gazette of RS", No. 30/2010.

<sup>22</sup> "Official Gazette of RS", No. 104/2009 and 32/2014 — CC decision.



## V. Measures for Reparation and the Protection of Children against Enforced Disappearance (arts. 24–25)

### Reply to paragraph 20 of the list of issues

56. Article 2, paragraph 1, subparagraph 11) of the Criminal Procedure Code prescribes that a damaged party is a person whose personal or property right has been violated or jeopardized by a criminal offence. Article 58 of the same code prescribes the rights of the subsidiary prosecutor (the damaged party acting as a prosecutor). This provision prescribes that the subsidiary prosecutor is entitled to: 1) represent the prosecution in accordance with the provisions of this Code; 2) submit a motion and evidence for realising a restitution claim and a motion for interim measures to secure it; 3) retain a proxy from amongst attorneys; 4) request the appointment of a proxy; 5) perform other actions provided for by this Code. Besides the rights referred to in paragraph 1 of this Article, a subsidiary prosecutor also exercises the rights of the public prosecutor, except those that the public prosecutor has in his/her capacity as a public authority. With regard to the above mentioned, the term “damaged party” has been completely equated with the term “victim”, especially with regard to the fact that the person is entitled to almost all the same rights as the public prosecutor.

57. The civil society organization “Astra” has prepared a proposal for the amendment of the Criminal Procedure Code, which would introduce the term “victim” into the Code, alongside the narrower term “damaged party”. The very goal of this proposal is to ensure the rights of victims are respected, rights which are specifically defined by international conventions, EU directives and international standards.

### Reply to paragraph 21 of the list of issues

58. The State is responsible for the damage that persons have suffered as a direct result of an enforced disappearance. Article 18 of the Criminal Procedure Code prescribes that a person who has been wrongfully deprived of liberty or convicted of a criminal offence is entitled to compensation of damages by the State and other rights prescribed by law.

59. The Law amending the Law on Civil Procedure,<sup>23</sup> which entered into force on 31 May 2014, amends the provision of article 193 of the Law on Civil Procedure, prescribing that a person who intends to file a complaint against the Republic of Serbia may submit a proposal for a peaceful dispute resolution to the Public Attorney’s Office of the Republic of Serbia before filing the complaint, unless a special regulation prescribes a deadline for filing a complaint. This means that, when a person intends to file a complaint against the Republic of Serbia — he/she will not have an obligation to address the attorney with a proposal for a peaceful dispute resolution before filing the complaint to the competent court, only the opportunity to do so, and the court does not have the right to dismiss the complaint as unauthorized if a proposal has not been submitted to the competent attorney’s office before filing the complaint, or if the complaint was filed before the expiry of the 60 days period from the time when the prosecutor addressed the attorney’s office.

60. There is no special domestic regulation that regulates who would be responsible for compensation under domestic law in the event of an enforced disappearance, including where the person(s) responsible is(are) not identified. In accordance with the above mentioned regulations from paragraphs 138–145 of the Report, it is possible to establish the

<sup>23</sup> “Official Gazette of RS”, No. 55/2014.

responsibility of the State only if a causal link is proven between an act or a failure to act by State bodies which results in damage, in accordance with article 172 of the Contractual Relations Act.<sup>24</sup>

### **Reply to paragraph 22 of the list of issues**

61. Article 50 of the Criminal Procedure Code prescribes and lists the rights of the damaged party. The damaged party is entitled to: 1) submit a motion and evidence for realizing a restitution claim and a motion for interim measures for securing it; 2) present facts and propose evidence of importance for proving the claim; 3) retain a proxy from amongst attorneys; 4) examine the files and objects serving as evidence; 5) be notified about the dismissal of criminal charges or abandonment of criminal prosecution by the public prosecutor; 6) submit objections to the public prosecutor's decision not to conduct criminal prosecution or to abandon criminal prosecution; 7) be advised about the possibility of assuming criminal prosecution and representing the prosecution; 8) attend the preparatory hearing; 9) attend the trial and participate in examining evidence; 10) file an appeal against the decision on the costs of the criminal proceedings and the adjudicated restitution claim; 11) be notified about the outcome of the proceedings and be served the final judgment; 12) perform other actions where provided for by this Code. The damaged party may be denied the right to examine the case files and objects until he/she is questioned as a witness. The public prosecutor and the court will inform the damaged party of the rights referred to in paragraph 1 of this Article. In addition, the same Code prescribes that the damaged party may act as subsidiary prosecutor, and, among other things, submit a motion and evidence for realizing a restitution claim as well a motion for interim measures for securing it. In a judgment pronouncing the defendant guilty, the court will state a decision on the restitution claim.

### **Reply to paragraph 23 of the list of issues**

62. The general legislative framework that prohibits enforced disappearances in the Republic of Serbia is established by the Constitution of the Republic of Serbia, and specified by provisions of the Criminal Code and the Criminal Procedure Code. Reparations to victims of enforced disappearance exist in the context of court proceedings for the compensation of immaterial and/or material damages.

### **Reply to paragraph 24 of the list of issues**

63. Acts described in article 25, paragraph 1, subparagraph (a) of the Convention, with regard to the circumstances of a specific case, may constitute the commission of criminal offences prescribed by the following provisions of the Criminal Code: Article 134 paragraph 3, — Abduction; article 191 — Abduction of Minor; article 192 — Change of Family Status; article 388, paragraphs 3 and 9 — Human Trafficking; and article 389 — Trafficking in Minors for Adoption.

64. With regard to forging, concealing or destroying documents, within the meaning of article 25, paragraph 1, subparagraph (b) of the Convention, the above mentioned actions may constitute the commission of the criminal offence of Forging a Document from article 355 of the Criminal Code, or the criminal act of Forging an Official Document from

---

<sup>24</sup> "Official Gazette of SFRY", No. 29/78, 39/85, 45/89 — decision of the Constitutional Court of Yugoslavia, and 57/89; "Official Gazette of FRY", No. 31/93; and "Official Gazette of Serbia and Montenegro", No. 1/2003 — the Constitutional Charter.

article 357 of the Criminal Code, and with regard to the circumstances of a specific case, also one of the criminal offences against official duty.

### **Reply to paragraph 25 of the list of issues**

65. The Family Law<sup>25</sup> entered into force on 4 March 2005, and has been applied since 1 July 2005. Termination of adoption is prescribed in article 106–109, and the procedure for the annulment of an adoption is prescribed in article 274–276 of the Law.

66. Termination of adoption is prescribed in article 106–109 of the Law, and the procedure for the annulment of an adoption is prescribed in article 274–276 of the Law.

67. The Law prescribes only full adoption. For this reason, adoption cannot be terminated by a ruling of the custody authority, nor can it be rescinded.

68. Adoption may be terminated by an annulment. The court is authorized for the annulment of an adoption.

69. Annulment of an adoption may be requested on the grounds of nullity (the legal conditions for its validity have not been met) or on the grounds of voidability (the consent to adoption was given under duress or in error).

70. Action for annulment of an adoption on the grounds of nullity can be initiated by the adopter, the adoptee, the parents or guardian of the adoptee, persons having legal interest in the annulment of the adoption, and the public prosecutor.

71. The right to state the nullity does not expire.

72. Action for annulment of an adoption on the grounds of nullity can be initiated by a person who has given a statement of consent to adoption under duress or in error, within one year from the day the duress ceased or the error was noticed (the deadline is preclusive).

73. The judgment on the annulment of the adoption is delivered to the custody authority (administrative body) through which the adoption took place. The custody authority, on ground of the judgment, issues a ruling on the annulment of the ruling on the new entry of birth for the adoptee. Through this ruling, the first entry of birth for the adoptee automatically becomes valid again.

74. After the termination of the adoption, the guardianship of the child is decided by the custody authority.

75. Adoption is established through a decision by the custody authority (administrative body), under the conditions prescribed by article 88–105 of the Law.

76. Only a minor may be adopted, after reaching the third month of life, specifically: a child who has no living parents; a child whose parents are unknown, or their residence is unknown; a child whose both parents are fully deprived of parental right; a child whose both parents are fully deprived of business capacity; a child whose parents have granted consent to the adoption.

77. The proceedings for the establishment of adoption are conducted by the custody authority, which issues a written ruling on the adoption, in accordance with the provisions of article 311–327 of the Law.

78. The procedure may be initiated by the custody authority *ex officio*, by future adoptive parents and parents or guardian of the child.

---

<sup>25</sup> “Official Gazette of RS”, No. 18/2005.

79. Only a minor may be adopted, if it is in the minor's best interest. A child who has reached 10 years of age and who is capable of reasoning has to consent to adoption. A child who has reached 15 years of age and who is capable of reasoning may inspect the Registry of Births and other documentation relating to his/her origin (article 89, 98 and 59, paragraph 3 of the Law).

80. In accordance with the provisions of the Law in all proceedings, including the proceedings for establishment and termination of adoption, everyone is under the obligation to act in the best interest of the child in all activities. The State is obliged to undertake all necessary measures to protect the child from neglect, from physical, sexual and emotional abuse and from every form of exploitation (article 6, paragraph 1 and 2 of the Law).

81. The Law prescribes that a child who is able to form his/her own opinion has the right to free expression of this opinion. A child has the right to duly receive all information necessary to form his/her own opinion. Due attention must be given to a child's opinion in all issues concerning the child and in all proceedings where his/her rights are decided on, in accordance with the age and maturity of the child. A child who has reached the age of 10 may freely and directly express his/her opinion within every court or administrative proceedings where his/her rights are decided on. A child who has reached 10 years of age may address the court or an administrative body, by himself/herself or through another person or institution, and request assistance in realization of his/her right to free expression of opinion. The court and the administrative body shall determine a child's opinion in cooperation with a school psychologist or custody authority, family counselling service or other institution specialized in mediating family relations, and in the presence of a person that the child chooses himself/herself.

82. In late 2013, the Republic of Serbia ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, which has been applied in full scope since 1 April 2014.

---