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### COMMITTEE ON THE RIGHTS OF THE CHILD

#### CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 12, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

##### Initial reports of States parties due in 2004

##### SERBIA

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**INITIAL REPORT OF SERBIA ON THE IMPLEMENTATION OF THE OPTIONAL  
PROTOCOL TO THE CONVENTION OF THE RIGHTS OF THE CHILD ON THE SALE OF  
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY FOR THE PERIOD  
2003-2007**

**I. INTRODUCTION**

1.The Republic of Serbia is the legal successor of the State Union of Serbia and Montenegro and the Federal Republic of Yugoslavia; therefore, as this initial report refers to the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography for the period 2003-2007, it also provides an analysis of the regulations and practices that existed at the time of the State Union of Serbia and Montenegro and the Federal Republic of Yugoslavia.

2.The Republic of Serbia (the State Union of Serbia and Montenegro/the Federal Republic of Yugoslavia) is a State party to the Convention on the Rights of the Child (“Official Gazette of the SFRY - International Agreements” No. 15/90 and “Official Gazette of the FRY” Nos. 4/96 and 2/97), and both Protocols thereto, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (“Official Gazette of the FRY - International Agreements” No. 7/02) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (“Official Gazette of the FRY - International Agreements” No. 7/02).

3.The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was adopted in New York on 25 May 2000. In the Optional Protocol it is stated that the incidence of acts such as trafficking in children (for whatever purpose), child prostitution and exploitation of children for pornographic purposes has increased significantly on the international level; those acts are connected with other international criminal activities and, therefore, it is necessary that these issues be addressed in the most effective manner. In that respect, the intention of the Optional Protocol is to further ascertain the achievement of goals set forth in the Convention on the Rights of the Child through the adoption of relevant measures on the part of States parties, in order to ensure the protection of minors against the sale of children, all kinds of sexual abuse, and exploitation of children for pornographic purposes.

4.The Federal Republic of Yugoslavia (now the Republic of Serbia) signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 8 October 2001 and ratified it on 2 July 2002 (it came into force in the Federal Republic of Yugoslavia on 10 October 2002).

5.The ratification of the Optional Protocol by our country, as a measure that followed the adoption of the Convention on the Rights of the Child and which makes it binding on the States parties to adopt legislative measures aimed at protecting children against all forms of physical or mental abuse including sexual abuse as well as all types of exploitation, is a very important step towards a more effective implementation of the Convention. When the Optional Protocol came into force there was no need for any significant amendments to be introduced into our legal system as our national substantive law already contained the corresponding criminal offences, i.e. criminal offences that were so similar to those stated in the Protocol that the process of adjustment proved really simple.

6.By virtue of the ratification of the Optional Protocol and its taking effect, the Republic of Serbia (the State Union of Serbia and Montenegro/the Federal Republic of Yugoslavia), in accordance with article 12, paragraph 1, of the Optional Protocol, undertook to submit, within two years of the Protocol's entry into force in this State party, its report to the Committee on the Rights of the Child providing comprehensive information on the measures taken to implement the provisions of the Protocol.

7.In this respect, we have produced this initial report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography for the period 2003-2007. The report includes the regulations effective by the end of December 2007.

8.The present report describes the legislative, executive, judicial and other measures enforced in the Republic of Serbia (the State Union of Serbia and Montenegro/the Federal Republic of Yugoslavia), pertaining to the provisions of the Optional Protocol and in accordance with the Guidelines for the preparation of initial reports on the implementation of the Optional Protocol, adopted by the Committee on the Rights of the Child.

9.Following the submission of the comprehensive report, pursuant to article 12, paragraph 2, of the Protocol, each State party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention on the

Rights of the Child, any further information with respect to the implementation of the Protocol.

10. This initial report contains an analysis of the legal system of the Republic of Serbia (the State Union of Serbia and Montenegro/the Federal Republic of Yugoslavia) in the area of protection of children against the sale of children (for whatever purpose), child prostitution and exploitation of children for pornographic purposes. The report presents data and information on measures taken with the aim of protecting the child victims of such illicit practices based on which the Committee on the Rights of the Child will have an insight into the implementation of the Protocol during the said period.

11. The Agency for Human and Minority Rights of the Government of Serbia, as a body in charge of monitoring the implementation and enforcement of the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, has coordinated the preparation of, and produced, this initial report. Relevant State authorities have participated in its preparation, such as the Ministry of Labour and Social Policy, the Ministry of Health, the Ministry of Justice, the Ministry of Interior, the Ministry of Education, the Ministry of Culture, the Ministry of Foreign Affairs, the Commissariat for Refugees and the Provincial Ombudsman of the autonomous province of Vojvodina. The data and information of local non-governmental organizations have also been used. The preparation of this initial report commenced at the beginning of 2007. The report is based on contributions by competent State authorities, in particular the Ministry of Labour and Social Policy and the Ministry of Interior, which should also give their consent to the text of the report. After that, the report will also be discussed and adopted by the Government of the Republic of Serbia.

12. For the requirements of this report, the names of all three States will be used, i.e. the Republic of Serbia (the State Union of Serbia and Montenegro/the Federal Republic of Yugoslavia).

13. The Republic of Serbia will ensure access to the report to the broadest public.

14. As stated above, the Federal Republic of Yugoslavia (now the Republic of Serbia) ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 2 July 2002. By ratifying the Protocol, i.e. undertaking the obligations therein, the State expressed its readiness to adjust the existing legislation on the national level and, in such areas which are not legally regulated, to enact relevant regulations and take other measures and activities so as to improve and achieve different rights of the child. This further implies the enactment or amendment of criminal laws within which criminal offences, such as child trafficking, illegal adoption, child prostitution and child pornography, shall be clearly defined.

15. As regards the legal status of the Optional Protocol and its applicability in the national law, the legislation of the Republic of Serbia falls into the group of monistic legal systems, which means that ratified international conventions are integral constituents of the internal judicial order and may be directly applied in cases where no corresponding domestic regulation exists. In this respect, when it comes to the legal status of the Optional Protocol, i.e. its status in the internal judicial order and its applicability in the Republic of Serbia, pursuant to article 10 of the Constitutional Charter of the State Union of Serbia and Montenegro ("Official Gazette of the State Union of Serbia and Montenegro - International Agreements" No. 1/03) which was declared and entered into force on 4 February 2003 and ceased to be effective on 5 June 2006 by virtue of the Resolution of the National Assembly of the Republic of Serbia on the obligations of the State authorities of the Republic of Serbia in the exercise of jurisdiction of the Republic of Serbia as the legal successor to the State Union of Serbia and Montenegro, which entered into force with immediate effect as of the date of its adoption ("Official Gazette of the Republic of Serbia" No. 48/06), the provisions stipulated in international treaties on human and minority rights and freedoms which were valid in the territory of Serbia and Montenegro were implemented directly.

16. In accordance with article 194 of the new Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia" No. 98/06) which was promulgated and entered into force on 8 November 2006, ratified international treaties and generally accepted rules of international law shall be part of the legal system of the Republic of Serbia, whereby ratified international treaties may not be in contrast to the Constitution. Laws and other general acts enacted in the Republic of Serbia may not be in non-compliance with the ratified international treaties and generally accepted rules of international law. This means that international treaties, which are concluded, ratified and published in accordance with the Constitution and which are in force, have precedence over laws in the hierarchy of legal acts. Hence, the provisions of ratified international treaties which are not in compliance with laws applied internally shall apply directly under the Constitution. On the other hand, ratified international treaties shall also apply directly in cases where adequate domestic regulation does not exist. Since the Protocol has been ratified and come into force, its provisions are applicable in the Republic of Serbia.

17. As regards the issue of States parties' intentions to withdraw the reservations that they may have placed regarding the Optional Protocol, it should be said that the Republic of Serbia has placed no reservations as to the content of the Optional Protocol.

18. As regards the ministries or Government authorities in charge of the implementation of the Optional Protocol and their coordination with the regional and local governments, civil society, business sector and public information services, the responsible body for monitoring the implementation of the Optional Protocol on the national level is the Agency for Human and Minority Rights of the Government of Serbia.

19. Namely, in accordance with the Resolution on the Foundation of the Agency for Human and Minority Rights of 2006 ("Official Gazette of the Republic of Serbia" No. 49/06) this Agency performs the tasks related to the protection and promotion of human and minority rights, participates in the preparation of regulations regarding human and minority rights, monitors the process of harmonization of internal regulations with the international agreements and other international legal documents on human and minority rights and initiates the introduction of amendments into the internal legislation. This Agency is also responsible for the preparation and submission of reports regarding the implementation of various international agreements on human and minority rights, where such reports are requested.

20. In addition to the Agency for Human and Minority Rights of the Government of Serbia, there are other bodies which are closely involved, within their scope of reference, in the process of monitoring the implementation of the Optional Protocol: the Ministry of

Labour and Social Policy, the Ministry of Interior, the Ministry of Justice, the Ministry of Health and the Ministry of Education (these are Ministries which are directly responsible for the implementation of the Optional Protocol on the national level).

21. As regards the Ministry of Labour and Social Policy, its authority is regulated by the Law on State Administration, the Law on Ministries, the Social Welfare and Social Security Law, the Family Law and the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law. The Ministry of Labour and Social Policy, in cooperation with the Republic Institute for Social Protection and municipal and urban centres for social work network, is the exponent of numerous activities related to the prevention of practices incriminated under the Optional Protocol and the protection of child victims of such illicit practices.

22. With regard to the Ministry of Interior, which, together with the education and social policy departments is most closely involved in the implementation of the Optional Protocol, the legal basis for its authority is regulated by the Law on State Administration, the Law on Ministries, the Police Law, the Criminal Proceedings Act, the Infraction Law, the Law on Road Traffic Safety and the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law.

23. The implementation of activities of the Ministry of Interior is ensured by an integrated organization for the entire territory of the Republic of Serbia. At the headquarters of this Ministry within the Crime Investigation Police Department, a separate organizational unit was established in 2006 - the Unit for Prevention and Suppression of Juvenile Delinquency. The scope of reference of this Unit includes the monitoring, evaluation and provision of professional assistance in the field of application of police powers towards juveniles by establishing uniform standards and procedures for better organization and improvement of operational work. The Unit is also responsible for the organization and provision of continued additional professional training and advancement programmes intended for police staff.

24. The tasks of prevention and protection of children are performed, as a rule, by the police officers who specialize in work with minors and have relevant certificates in accordance with article 165 of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles, as well as by other police officers from the security sector, operating in the patrol or other division.

25. With the aim of ensuring the professional, ethical and lawful treatment of minors by the police, the Ministry of Interior has enacted two binding documents: Instructions on the Conduct of Police Officers towards Minors and Young Persons and the Special Protocol on the Conduct of Police Officers in the Protection of Minors from Abuse and Neglect.

26. In view of the implementation of the Optional Protocol, the Ministry of Education has undertaken a number of preventive measures and actions. One of the priorities of this Ministry is to raise the awareness of all involved participants in the educational system on the safety of children and students. This "awareness-raising" task is being implemented through the legal framework and decrees, on one hand, and through programmes, projects and actions which put this priority into practice, on the other hand.

27. In the implementation of the Optional Protocol, all stated Government authorities fully cooperate, when the need arises and within their scopes of reference, with authorities and organizations of the autonomous province of Vojvodina, regional, urban and municipal bodies of local self-government and relevant non-governmental organizations, and public information services.

28. As regards the dissemination of the data and information on the provisions of the Optional Protocol in the public at large by virtue of all adequate means and training, the activities of the Ministry of Interior, in the area of raising awareness of the issue of sexual exploitation and abuse of children, including child prostitution and child pornography as well as child trafficking and child abduction, are implemented through the application of legal powers, i.e. measures and activities which are aimed at revealing and reporting the criminal offences and their perpetrators, with special care attached to the treatment of victims of such offences. To that end, offices and public buildings are being appropriately furnished with materials informing the general public of their rights, measures of protection and institutions that provide different forms of support or help. Also, the police officers from this Ministry take part in numerous preventive actions and programmes which are carried out in cooperation with the organizations of governmental and non-governmental sectors.

29. In order to improve the level of information and sensitivity with police officers, the Ministry of Interior provides police departments with various publicity/promotional materials which refer to the promotion of the implementation of children's rights and the protection of children. In this respect, some of these materials should be mentioned:

Poster: "Promotion of children's rights set forth in the Convention on the Rights of the Child", by UNICEF, seated in Belgrade

Guidelines: Protection of Children from Abuse and Neglect; brochure: Child Labour in Serbia; and a guide: Exploitation of Children with special reference to the Optional Protocol, by non-governmental organizations Child Rights Centre and Save the Children UK Belgrade office

Educational poster: Don't Donate your Future to the Advertisement - anti-trafficking action, by non-governmental organization Astra

Brochure: Children Wait - Challenges and Trends of Professional Practice in Protection of Children from Abuse, by non-governmental organization Child Rights Centre

Set of regulations: The Rights of the Child and Juvenile Justice - select international instruments, consisting of the following volumes: the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"); the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines"); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and the United Nations Standard Minimum Rules for Non-custodial Measures (the "Tokyo Rules"), by the UNICEF Belgrade office and non-governmental organization Child Rights Centre

Poster: Save the Children from Trafficking; and manual: Campaign against Child Trafficking by non-governmental organizations Astra

and Save the Children UK under the auspices of the British Embassy

Documents: National Strategy against Violence - Starting Framework; and the General and Specific Protocol on Child Protection from Abuse and Neglect, by the Ministry of Labour and Social Policy

Guidelines for the Implementation of the General Protocol on Protection of Children from Abuse and Neglect, by non-governmental organization Child Rights Centre, supported by UNICEF

Posters and manifestos: Always By Right - Never By Might, by Save the Children UK

Special Protocol on Child Protection from Abuse and Neglect; manual: "Children and Police - psychological and ethical aspects in the process of establishing a relationship based on trust and cooperation between the police and children who are in contact and/or conflict with the law"; documentary: Traffic in People; and educational poster: Let's Prevent the Traffic in People!, by the Ministry of Interior

30. As regards the issue of the dissemination of the Optional Protocol and corresponding training offered to all professional groups working with or for children and to other relevant groups, it should be noted that the text of the Optional Protocol, as has been stated earlier, was published in "Official Gazette of the FRY - International Agreements" No. 7/02 and is available both in hard copy and on the website.

31. Seminars, training, round tables and other forms of presentation of this Optional Protocol are provided for people employed in competent ministries and other bodies of the Republic of Serbia whose scope of work includes the implementation of the Optional Protocol, above all for the social workers, psychologists and educationists employed in the network of municipal and urban centres for social work, for the police officers from the Ministry of Interior as well as for all professional groups working with or for children including the relevant non-governmental organizations.

32. The Ministry of Interior, in cooperation with other institutions and organizations, has worked hard over the past several years on giving police officers adequate training in the treatment of minors and children in the capacity as injured party.

#### **(a) Professional training courses in the field of prevention and protection of children against abuse and exploitation in the field of human trafficking**

The Ministry of Interior, in cooperation with non-governmental organization Beosupport (Belgrade Support to Exploited Children and Youth), implemented in 2005 a training programme for the protection of children intended for people employed in the police and social services entitled The Sale of Children for Sexual Purposes | Identification and Initial Approach to Child Victims of Trafficking.

In the period 2005-2007, within the project Protection of Child Victims of Human Beings Trafficking, the Ministry of Interior, in cooperation with non-governmental organization Child Rights Centre and with the support of Save the Children UK, held 12 regional educational seminars on the subject of trafficking in children, entitled The Sale of Children in Serbia - Threat and Reality, for 411 public prosecutors, police officers, judges and representatives of the educational system, social and health-care sectors and the media. This project has been offering training in continuity so that the courses are being held in 2008 as well.

The Ministry of Interior of the Republic of Serbia, in cooperation with non-governmental organization Child Rights Centre and with the support of the OSCE Mission in Serbia since 2007, within the project Protection of Child Victims of Human Beings Trafficking in the Light of Reform Projects of the Ministry of Labour and Social Policy and the Ministry of Interior, has held three pilot seminars for police officers with specific expertise in the domain of the rights of the child, youth delinquency and criminal justice protection of minors, and for the coordinators of teams (within the social care system) for the protection of children without parental care. The implementation of these projects is being continued in 2008, with the aim of providing the full picture of the position in which the child victims of trafficking are placed during the process of their protection, with special reference to, and invariable application of, procedures set forth in the General and Special Protocol on Child Protection from Abuse and Neglect.

#### **(b) Compulsory professional training and improvement for police officers, pursuant to article 165 of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law**

In order to create conditions for the implementation of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law, within the project Children's Chance for Change - an Initiative for Reforming the Juvenile Legislation in Serbia, 11 regional seminars entitled Child Rights and Juvenile Legislation were organized during 2005. The seminars were organized by the non-governmental organization Child Rights Centre and supported by the UNICEF Belgrade office. The main objective of these seminars was to provide professional advancement programmes and training for all professionals involved in juvenile court proceedings (the police, judiciary, legal practice, social care) so that new legal solutions could produce satisfactory results in combating juvenile delinquency in Serbia, and provide the most adequate treatment of juvenile delinquents as well as the most adequate and timely criminal justice protection of minors appearing in the capacity as injured parties.

Since 1 January 2006, when the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law entered into force, the Judicial Training Centre of Serbia has taken charge of the further development of permanent professional advancement programmes and training intended for judges, prosecutors, and police officers working with minors, public prosecutors and judges ruling in criminal cases regarding criminal offences referred to in article 150 of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law, for professionals engaged in the social care system and correctional institutions, and for lawyers. The Judicial Training Centre of Serbia acted in cooperation with competent ministries, professional associations and non-governmental organizations. Upon completion of the first stage of training, over the course of 16 regional

seminars, the Centre issued certificates for 4,642 attendees (out of whom 478 were police officers). The certificates were given primarily for the knowledge acquired in the area of treatment of juvenile delinquents and treatment of juvenile victims of criminal offences; the validity of certificates is limited and shall be extended only upon repeated checks, if attendees' results prove satisfactory.

During 2007, within the second stage of the training and professional advancement programme, pursuant to article 165 of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law, the Ministry of Interior, in cooperation with the Judicial Training Centre of Serbia, held 23 seminars for police officers who specialize in work with minors, entitled Juveniles and Legislature in Practice - Criminal-justice Aspect. The main aim of these seminars was to ensure the acquisition of specialist knowledge and skills in the treatment of juvenile perpetrators of criminal acts.

### **(c) Educational programmes that are indirectly related to the subject of prevention and protection of children from abuse and exploitation**

Within the project Children's Chance for Change - an Initiative for Reforming the Juvenile Legislation in Serbia, the Ministry of Interior, in cooperation with the UNICEF Belgrade office, held nine regional seminars for police officers who specialize in work with minors, entitled Psychological and Ethical Aspects in the Process of Establishing a Relationship Based on Trust and Cooperation between the Police and Children who are in Contact and/or Conflict with the Law. Following this series of training courses, a manual entitled "Children and Police - psychological and ethical aspects in the process of establishing a relationship based on trust and cooperation between the police and children who are in contact and/or conflict with the law" was published.

The non-governmental organization Belgrade Centre for Human Rights organized a seminar entitled Human Rights Protection.

The Council for Child Rights of the Government of Serbia and the UNICEF Belgrade office organized a round table: Presentation of the United Nations Secretary-General's Global Study on Violence against Children.

OSCE organized a round table: Creation of Comprehensive Victim Support Mechanisms: foreign experiences and possible solutions for Serbia.

The Ministry of Foreign Affairs, in cooperation with the Greek Ministry of Public Order, organized in Athens an international "training for trainers" seminar on the subject Action against Abuse of Children.

The Office for Democratic Institutions and Human Rights organized a "training for trainers" seminar in London on the subject of Combating Violence Arising from Specific Motives, as well as a Constitutional Conference of the International Network of Experts for the Prevention and Suppression of Violence Arising from Specific Motives.

Within the study visit of a police group from the Ministry of Interior to Kent in the United Kingdom, aimed at exchanging the experiences in work with minority and socially vulnerable groups, a seminar entitled Cooperation of Police and the Local Community on Prevention and Suppression of Violence Arising from Specific Motives was held.

33. As regards the mechanisms and procedures for the periodical evaluation of the implementation of the Optional Protocol and relevant side problems, it should be noted that the existing constitutional and legal solutions which are pertinent to this issue are continually monitored in Serbia. In this respect, the experiences of the authorities responsible for the direct implementation of the Optional Protocol are particularly closely monitored, so that, in an exigency, all necessary measures (legislative, administrative and other) could be taken in order to ensure the full and invariable implementation of the document.

## **II. IMPLEMENTATION OF THE OPTIONAL PROTOCOL IN ACCORDANCE WITH THE GENERAL PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD, IN PARTICULAR IN ACCORDANCE WITH ARTICLES 1, 2, 6, 12, 21, 32, 33, 34, 35 AND 36 OF THE CONVENTION**

### **A. Definition of the child (art. 1)**

34. The "child" is defined in the Constitution of the Republic of Serbia as any human being below the age of 18 years, which corresponds to the definition contained in the Convention on the Rights of the Child.

35. This definition is also adopted in the Family Law, Law on Basic Principles of the Educational System, Labour Law, Law on Health Care and Law against Discrimination of Handicapped Persons.

36. The criminal legislation of the Republic of Serbia provides the following definitions: any child who has attained 14 years of age but has not attained the age of 18 is denoted as a juvenile (a juvenile who at the time of the commission of a criminal act had attained the age of 14 but had not reached the age of 16 is defined as a junior juvenile; a juvenile who at the time of the commission of a criminal act had attained the age of 16 but had not yet reached the age of 18 is defined as a senior juvenile).

### **B. Non-discrimination (art. 2)**

37. The principle of non-discrimination and equality before the law is a constitutional category envisaged in the new Constitution of the Republic of Serbia, in Section II (Human and Minority Rights and Freedoms), article 21: "All are equal before the Constitution and law. Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited. Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be

deemed discrimination.”

38. Since the principle of non-discrimination and equality before the law is a constitutional category, universally applicable, every person may refer to individual rights, regardless of being a minor or an adult, the citizen of the Republic of Serbia or an alien.

39. The Criminal Code of the Republic of Serbia, which was passed in 2005 (“Official Gazette of the Republic of Serbia” Nos. 85/05, 88/05 and 107/05) and entered into force on 1 January 2006, prohibits the instigation and exacerbation of racial and other discrimination or the violation of fundamental human freedoms on grounds of race, colour, national or ethnical affiliation (arts. 317 and 387). The Code incriminates any denial or restriction of the equality of citizens as stipulated under the Constitution, law or other regulation, or general act or ratified international agreement. The Code also incriminates any grant of privileges or benefits on grounds of national or ethnic affiliation, race, religion, political or other conviction, gender, language, education or social status (art. 128).

40. The Labour Law of the Republic of Serbia (“Official Gazette of the Republic of Serbia” Nos. 24/05 and 61/05) expressly prohibits direct and indirect discrimination of persons seeking employment, as well as the employed, on grounds of gender, language, race, colour, age, pregnancy, health condition, disability, national affiliation, marital status, family obligations, religion, sexual orientation, political and other convictions, social origin, financial status, membership of political organizations, trade unions or other personal characteristics (art. 18).

### **C. Best interests of the child (art. 2)**

41. The best interests of the child is one of the important principles of the national legislation. In this respect, taking *inter alia*, the Convention on the Rights of the Child and the Optional Protocol as starting points, and having regard to the necessity of the protection of the best interests of the child, the new Constitution, in Section II, articles 60, 64, 66, 68 and 71, envisages special protection from child labour, protection of the child from mental, physical, financial and any other forms of exploitation or abuse, protection of the mother and child and child health care and education.

42. The Constitution, in Section II, article 64, paragraph 5, stipulates that protection of the rights of the child shall be regulated more comprehensively within specific laws (“Rights of the child and their protection shall be regulated by the law”).

43. In accordance with that provision, on the legislation level at large, various laws provide for a more specific protection of the best interests of the child.

44. The Family Law of the Republic of Serbia stipulates that it is binding on everyone to act in the best interests of the child in all activities pertinent to the child (art. 6, para. 1). In accordance with this Law, the courts shall, in any proceedings for protection of the rights of the child and proceedings for parental rights or termination of parental rights, act in the best interests of the child (art. 266, para. 1).

45. Special measures for the protection of the interests of the child are envisaged in the domain of juvenile justice. Pursuant to article 55 of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law (“Official Gazette of the Republic of Serbia” No. 85/05), the coverage of juvenile proceedings is prohibited. Neither the course of proceedings nor the ruling can be made public. It is only allowed to make public a part of the ruling providing the permission for this has been granted. Still, the names or other pieces of information which could make identification of the juvenile possible must not be stated.

### **D. The right to life, survival and development (art. 6)**

46. In the Republic of Serbia, the right to life, survival and development of the child implies a range of social, economic and other rights. It is guaranteed by specific articles of the Constitution and a set of laws, in particular, in the area of family legislation.

47. As a fundamental human right, the right to life is specified in the new Constitution, Section II, article 24, paragraph 1: “Human life is inviolable.”

48. The Constitution, in Section II, article 66, paragraphs 1 and 3, specifies: “Families, mothers, single parents and any child in the Republic of Serbia shall enjoy special protection in the Republic of Serbia in accordance with the law. Special protection shall be provided for children without parental care and for mentally or physically handicapped children.”

49. The Constitution, in Section II, article 65, specifies: “Parents shall have the right and duty to support, provide upbringing and education to their children in which they shall be equal. All or individual rights may be revoked from one or both parents only by a ruling of the court if this is in the best interests of the child, in accordance with the law.”

50. The Constitution, in Section II, article 60, paragraph 5, specifies: “Women, young and disabled persons shall be provided with special protection at work and special work conditions in accordance with the law.” Under article 66, paragraph 4, it is specified: “Children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morals.”

51. The Constitution, in Section II, article 71, paragraphs 1, 2 and 3, specifies: “Everyone shall have the right to education. Primary education is mandatory and free, whereas secondary education is free. All citizens shall have access under equal conditions to higher education. The Republic of Serbia shall provide for free tertiary education to successful and talented students of lower property status in accordance with the law.”

### **E. Illegal transfer and non-return of children abroad (art. 6)**

52. In the events of illegal transfer and non-return of children abroad, which can be qualified as violation of the right to childcare

and/or violation of the right to see the child (maintenance of personal relationships), the regulations of the Convention on the Civil Aspects of International Child Abduction (ratified by the Republic of Serbia on 27 September 1991) are applied. In accordance with article 3 of the Law on Ratification of the Convention, the central executive authority in charge of the implementation of this Convention in the Republic of Serbia is the Ministry of Justice. The terms of reference of this Ministry include the reception and dispatch of requests for the return of children having been illegally separated from their parents/persons with parental responsibility - to their foreign counterparts, i.e. central authorities in other countries.

53. In conformity with the obligations undertaken by the Convention on the Civil Aspects of International Child Abduction, the procedure of returning the illegally transferred child includes the implementation of the provisions of articles 86 to 96 of the Law on Resolution of Conflicts between National Law and Regulations of Other Countries in Specific Relations. This Law governs the conditions and procedures for the recognition of foreign court decisions (including the decisions on custody of the child) which are valid under the law of the country in which they have been passed. The recognition of a foreign decision on a custody award means that such a decision is equal to a corresponding decision of the domestic court and, consequently, can be enforced by legal coercion. If the custody award decision was not passed in the country from which the child was illegally transferred or if the decision passed cannot be recognized, the child return procedure, which is based on the request for the return of the child within the meaning of this Convention, shall be carried out by the responsible domestic authority, fully adhering to the principle of the best interests of the child and the right of the child to participate in the procedure and communicate his opinions according to his stage of development and capacity.

54. With the aim of suppressing the illegal transfer and non-return of children abroad, SR Yugoslavia on 9 May 2001 ratified the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

55. With the aim of expanding the measures ensuring a higher level of protection of children against the illegal transfer and non-return abroad and suppression of international child trafficking, SR Yugoslavia ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

56. Our State has also concluded a series of bilateral agreements on legal assistance between judicial and other competent authorities (between States) regarding the enforcement of decisions on child custody, which are aimed at accomplishing a more effective protection of children being unlawfully separated from their parents.

57. The Criminal Code of the Republic of Serbia, building from the provisions of the Optional Protocol and in conjunction with article 11 of the Convention on the Rights of the Child, incriminates the detention or abduction of a minor (art. 191). The Criminal Code envisages a fine or imprisonment of up to two years for anyone who unlawfully detains or abducts a minor from a parent, adoptive parent, guardian or other person or institution entrusted with the care of the minor or whoever prevents enforcement of the decision granting custody of a minor to a particular person. If this offence is committed for gain or other base motives or the offence results in serious impairment of health, care or education of the minor, the offender shall be punished with imprisonment from three months to five years. If the court pronounces a suspended sentence, it may order the offender to hand over the minor within the set period of time to a person or institution having custody of the minor, or to comply with enforcement of the decision granting custody of the minor to a certain person or institution or a decision stipulating the manner of maintaining the personal relationship between the minor or parent or other relative. However, if the perpetrator of the offence voluntarily hands over the minor to a person or institution entrusted with the care of the minor or enables enforcement of the custody order, the court may remit the punishment. Anyone who prevents enforcement of the decision of a competent authority setting out the manner of maintaining the personal relationships of a minor with a parent or other relative shall be punished with a fine and imprisonment of up to one year.

## **F. Consideration of the child's views (art. 12)**

58. Freedom of thought implies, in the first place, the right to expression of opinions. This freedom is exercised by all - minors and adults alike, and is guaranteed under the national judicial order.

59. The new Constitution of the Republic of Serbia, in Section II, article 43, paragraph 1, specifies: "Freedom of thought, conscience, beliefs and religion shall be guaranteed, as well as the right to stand by one's belief or religion or change them by choice." Under article 46, paragraph 1, it is specified: "The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and impart information and ideas through speech, writing, art or in some other manner."

60. The appreciation of the views of the child is a legal principle applied in all court and administrative procedures regarding the rights, interests and welfare of the child. In the domain of family justice, under the provisions of the Law on Marriage and Family Relationships ("Official Gazette of the Republic of Serbia" Nos. 22/80, 24/84, 11/88, 22/93, 25/93, 34/94, 46/95 and 29/01 - which ceased to be valid as of 1 July 2005 when it was superseded by the Family Law of the Republic of Serbia) and the Family Law ("Official Gazette of the Republic of Serbia" No. 18/05), the legal personality of the child is recognized in some cases, such as custody award proceedings, proceedings for alimony from the father, proceedings for establishing or contesting paternity or maternity, in the adoption procedure or juvenile marriage.

61. By the provisions of the criminal procedural legislation which pertains to children, such as the Criminal Procedure Law of the FRY ("Official Gazette of the FRY" Nos. 70/01 and 68/02) and the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law that entered into force on 1 January 2006 and builds on the provisions of the Optional Protocol, special protection is ensured for juveniles pending criminal proceedings, including the exemption from the obligation of participation, i.e. giving testimony.

## **G. Adoption (art. 21)**

62. Building, *inter alia*, on the provisions of the Optional Protocol which refer to adoption, and article 21 of the Convention on the Rights of the Child, the Family Law specifies that adoption is allowed in cases of children without parental care and children for whose adoption the parent's consent has been granted.

63. The adoption procedure is carried out by a competent custody authority and is based on the principle of the best interests of the child as the primary consideration in any adoption procedure. Therefore, the child may be adopted providing that it serves his best interests. Only the person who is confirmed to have such personal capacities as required to carry out the parental right in the best interests of the child can become the adoptive parent. The child must grant the consent to adoption, but only on condition that the child has attained 10 years of age and is capable of reasoning.

64. Since the children of refugee parents residing in the Republic of Serbia cannot be adopted unless they have the citizenship of the Republic of Serbia, at the proposal of the custody authority (competent centre for social work) the children of refugee parents without parental care, who are the most vulnerable group of the refugee population and are potential victims of trafficking, child prostitution and child pornography can, by submitting a request and obtaining the citizenship of the Republic of Serbia, fulfil the set conditions for adoption, in accordance with the regulations referring to the protection of the family, i.e. the Family Law, articles 88 to 109, 274 to 276 and 311 to 327 ("Official Gazette of the Republic of Serbia" No. 18/05).

65. It should be noted that the Family Law, while featuring provisions that refer to the child (eligible for adoption) and persons eligible to adopt (adoptive parents), still does not contain any specific provisions governing the issue of refugee children.

### **Inter-country adoption**

66. Pursuant to the Family Law, foreign citizens may adopt children who are citizens of the Republic of Serbia on the following conditions: if the child cannot be placed in a domestic adoptive family; and if the minister in charge of the issue of family protection grants his consent for the adoption (art. 103).

67. When applying for child adoption, foreign citizens should submit a written "Adoption request" to the Ministry in charge of protection of the family. Along with the request, it is required that foreign citizens submit evidence of their eligibility to adopt a child. In addition to identification data, data on family status, housing conditions and incomes, it is also necessary to provide the findings and professional opinion of the social services of the country in which the person resides on the capacities of the person, i.e. the personal characteristics of the potential adoptive parent. Foreign citizens are obliged further to provide the "Permission" (permitting them to adopt a child in Serbia) issued by the competent authority of their country. It is not possible to adopt a child for: persons being fully or partly deprived of the parental right; persons being fully or partly deprived of their working ability; persons being ill with such an illness that may have a detrimental effect on the child; and persons with a criminal record for criminal offences relating to marriage and family, sexual freedom or life and body.

68. The record of the foreign citizens applying for child adoption in the Republic of Serbia is kept by the Ministry in charge of protection of the family.

### **H. The right of the child to protection from economic exploitation (art. 32)**

69. The Labour Law of the Republic of Serbia, enacted in 2005 ("Official Gazette of the Republic of Serbia" Nos. 24/05 and 61/05), provides for the special protection of persons under 18 years of age. The Law regulates the minimum age and other specific conditions for admission to employment, special protection regarding the hours and conditions of employment, as well as appropriate penalties to ensure such protection.

70. Pursuant to the Labour Law, an employment relation may be established with a person who is at least 15 years old and meets other conditions prescribed for performance of certain jobs, established by the relevant act issued by the employer. Persons under 18 years of age and disabled persons are entitled to special protection.

71. Persons under 18 years of age may be employed on the basis of a written approval by either parents, adoptive parents or guardians, providing that such work does not endanger his/her health, morals and education, or providing that such work is not prohibited by law. Persons under 18 years of age may be employed only on the basis of professional findings issued by the competent health authority certifying that he/she is able to perform the tasks to which the contract of employment refers and that such tasks are not detrimental to his/her health. The cost of medical examinations shall be borne by the National Employment Service of the Republic of Serbia, providing that the person seeking employment is registered with this Service and that he/she is under 18 years of age.

72. According to the Law, full-time working hours for persons below the age of 18 shall not exceed 35 hours per week or 8 hours per day. Overtime and redistribution of working hours shall not be allowed for employees below the age of 18.

73. Employees below the age of 18 shall not work at night, except: in cases of work in the area of culture, sports, or art and advertising; when it is necessary to continue work discontinued due to the action of force majeure, under the condition that such work lasts for a definite period of time, that has to be urgently finished and the employer has no other older employees available. Employers shall, in such cases, provide supervision of work of employees below the age of 18 by an adult.

74. In addition, employees below the age of 18 shall not work at the following jobs: jobs involving strenuous physical work, work underground, work underwater and at excessive heights; work involving noxious radiation or substances that are toxic, carcinogenic or causing inherited diseases, as well as risks for health related to cold, heat, noise or vibrations; jobs that may, pursuant to advice of the competent health authority, increase health and life risks and be harmful in the light of psychophysical capacities of adolescents. The cost of medical examinations shall be borne by the employer.

75. Among other cases of termination of employment which refer to all employed persons, the employment of an employed person under 18 years of age may be terminated at the request of a parent, adoptive parent or guardian of that person.

76. The Labour Law provides for penalties against any employer failing to conform to the provisions of this Law under which the special protection of persons under 18 years of age is regulated. Thus, the Law imposes a fine ranging from 600,000 to 1 million dinars against an employer in the capacity of legal entity, a fine ranging from 30,000 to 50,000 dinars against a responsible officer employed with the legal entity, a fine ranging from 30,000 to 50,000 dinars against a private entrepreneur, due to the following misdemeanours: if they establish a contract of employment with a person under 18 years of age contrary to the provisions of this Law; if they order a person under 18 years of age to perform the work prohibited for minors; if they order a person under 18 years of age to work longer hours than stipulated under the provisions of this Law; or if they order a person under 18 years of age to work at night contrary to the provisions of this Law.

77. The Serbian Labour Inspectorate is the authority in charge of supervising the implementation of the provisions of this Law which refer to the special protection of persons under 18 years of age. During an inspection, the Labour Inspector is authorized to order, by a written Order, the employer to remedy the established violation of the Law within a defined time frame. It is binding on the employer to inform the Labour Inspectorate on the issuance of the Order within 15 days as of the closing date set for the remedy action at the latest. If the Labour Inspector establishes that the employer, director or private entrepreneur, by violating the Law or other regulations governing employment, has committed a misdemeanour, he shall file a request for the institution of proceedings.

78. Pursuant to the Criminal Code, a parent, adoptive parent, guardian or other person who abuses a minor or forces him to excessive labour or labour not commensurate with his age, or to mendicancy, or for gain induces him to engage in other activities detrimental to his development, shall be punished with imprisonment from three months to five years (art. 193, para. 2).

### **Neglecting and Abusing a Minor (article 193 of the Criminal Code)**

Paragraph 1 envisages imprisonment of up to three years for any parent, adoptive parent, guardian or other person who by gross dereliction of their duty to provide for and bring up a minor neglects a minor they are obliged to take care of

Paragraph 2 envisages imprisonment of three months to five years for any parent, adoptive parent, guardian or other person who abuses a minor or forces him to excessive labour or labour not commensurate with his age, or to mendicancy, or for gain induces him to engage in other activities detrimental to his development

79. With the aim of opening the issue of child labour in the Republic of Serbia, having regard to the provisions of the Optional Protocol, the non-governmental organization Child Rights Centre, in cooperation with international campaign Global March against Child Labour, launched a special project which included the proposal of the ratification of the MOP Convention No. 102. This project was an introduction to a series of activities aimed, *inter alia*, at establishing a relation between regional and international centres on the problem of sale and traffic in children.

80. MOP Convention or the ILO Convention concerning Minimum Standards of Social Security No. 102 (1952), that establishes worldwide-agreed minimum standards for the branches of social security (medical care; sickness benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivors' benefit) was ratified by the Republic of Serbia on 24 November 2000.

### **I. The right of the child to protection from the illicit use of narcotic drugs and psychotropic substances (art. 33)**

81. Pursuant to the Law on the Illicit Manufacturing and Trafficking in Narcotic Drugs, the manufacturing and trafficking in narcotic drugs is permitted exclusively for strictly determined purposes and on the basis of official approvals issued by the competent authority. This Law specifies the conditions of the manufacturing and trafficking in narcotic drugs, the rules for the record-keeping and the treatment of confiscated narcotic drugs by the competent authorities.

82. The Criminal Code of the Republic of Serbia incriminates the criminal offence of production, possession and sale of narcotic drugs (art. 246), and the criminal offence of facilitating the taking of narcotic drugs (art. 247). Where offences are committed against a child, they are qualified as aggravated offences; consequently, the penalty for an aggravated offence is more severe than the penalty for a basic offence and includes a higher minimum and a higher maximum.

83. The Government of Serbia launched an all-embracing campaign entitled School without Narcotics in 2002. The campaign was aimed at the prevention and suppression of psychoactive drug abuse and was supported by all relevant ministries.

84. The Ministry of Interior, in cooperation with the Ministry of Education, has been enforcing the preventive programmes The School Policeman and School without Violence, aimed at ensuring the protection of children from violence.

85. In 2002, The School Policeman programme was introduced into a certain number of schools where the issue of safety was identified as a rather pronounced problem area. The programme is still under way; at present 267 "school policemen" are engaged at 494 schools (260 primary and 234 secondary schools), i.e. 12.1 per cent of the total number of schools. Duties of the "school policemen" include, *inter alia*, the prevention and suppression of the offences related to narcotic drugs.

86. The Drugs is 0, Life is 1 campaign has been in effect since 2006 in the territory of the city of Belgrade with the aim of providing children and young people with information on the mechanisms of prevention and suppression of psychoactive substances (tobacco, liquor and narcotics) abuse. Within this campaign (during 2006 and 2007), 200 lectures were given at 109 primary schools for 19,318 fourth- and seventh-graders.

## **J.The right of the child to protection from sexual exploitation and sexual abuse (art. 34)**

87. Our country has ratified a series of international instruments regulating the protection from exploitation and abuse including, naturally, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

88. Building from these documents, the new Criminal Code of the Republic of Serbia provides for criminal offences against sexual freedom, criminal offences relating to marriage and family, crimes against humanity and other values protected under international law.

89. Criminal offences committed against particularly vulnerable groups represent aggravated offences, while some criminal offences are defined as such only when committed against children, minors, disabled or frail persons; consequently, the penalty for an aggravated offence is more severe than the penalty for a basic offence.

### **Criminal Offences against Sexual Freedom - chapter XVIII of the Criminal Code**

#### **(a)Rape (art. 178)**

The Criminal Code, in article 178, incriminates the criminal offence of forcing another to sexual intercourse or an equal act by use of force or threat of direct attack against the body of such or other person. Where the offence is committed against a child, it represents an aggravated offence; consequently, the penalty for an aggravated offence is more severe than the penalty for a basic offence and includes a higher minimum and a higher maximum.

Pursuant to paragraph 3, if the specified offence results in grievous bodily harm of the person against whom the offence is committed, or if the offence is committed by more than one person or in a particularly cruel or particularly humiliating manner or against a juvenile or the act resulted in pregnancy, the offender shall be punished with imprisonment of 3 to 15 years.

Pursuant to paragraph 4, if the specified offence results in the death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment from 5 to 18 years.

#### **(b)Sexual Intercourse with a Helpless Person (art. 179)**

Pursuant to paragraph 2, if the offence is committed against a juvenile it represents an aggravated offence and the offender shall be punished with imprisonment of 2 to 12 years

Pursuant to paragraph 3, if the offence has been committed against a child, the offender shall be punished with imprisonment of 5 to 18 years

#### **(c)Sexual Intercourse with a Child (art. 180)**

The criminal offence of sexual intercourse with a child shall be punished with imprisonment of 1 to 10 years

Pursuant to paragraph 2, the penalty for an aggravated offence shall be imprisonment of 2 to 12 years

Pursuant to paragraph 3, if death of the child results due to the specified offence, the offender shall be punished with imprisonment of 5 to 18 years

#### **(d)Sexual Intercourse through Abuse of Position (art. 181)**

Pursuant to paragraph 2, a teacher, tutor, guardian, adoptive parent, stepfather or other person who through abuse of his position or authority has sexual intercourse or commits an act of equal magnitude against a juvenile entrusted to him for learning, tutoring, guardianship or care shall be punished with imprisonment of 1 to 10 years

Pursuant to paragraph 3, if the offence is committed against a child, the offender shall be punished with imprisonment of 2 to 12 years

Pursuant to paragraph 5, if death of the child results due to the specified offence (an aggravated offence), the offender shall be punished with imprisonment of 5 to 18 years

#### **(e)Prohibited Sexual Acts (art. 182)**

A fine or imprisonment of up to three years is envisaged for the offender who commits some other sexual act under conditions specified in article 178, paragraphs 1 and 2, article 179, paragraph 1, article 180, paragraph 1, and article 181, paragraphs 1 to 3, of the Criminal Code

Pursuant to paragraph 2, if the referred to offence results in grievous bodily harm of the person against whom the act is committed, or if the act is committed by several persons or in a particularly cruel or degrading manner (an aggravated offence), the offender shall be punished with imprisonment of 2 to 10 years

Pursuant to paragraph 3, if death of the child results due to the referred to offence (an aggravated offence), the offender shall be punished with imprisonment of 3 to 15 years

#### **(f)Pimping and Procuring (art. 183)**

The offender shall be punished with imprisonment of three months to five years for the criminal offence of pimping a minor for sexual intercourse or an equal act or other sexual act

Pursuant to paragraph 2, the offender shall be punished with imprisonment of up to three years for the criminal offence of procuring a minor for sexual intercourse or an act of equal magnitude or other sexual act

### **(g)Mediation in Prostitution (art. 184)**

A fine or imprisonment of 1 to 10 years is envisaged for the criminal offence of mediation in prostitution

Pursuant to paragraph 2, if the offence is committed against a child, the offender shall be punished with imprisonment of 1 to 10 years

### **(h)Showing Pornographic Material and Child Pornography (art. 185)**

Pursuant to paragraph 1, the offender shall be punished with a fine or imprisonment of up to six months if he sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a child or shows to a child a pornographic performance

Pursuant to paragraph 2, the offender shall be punished with imprisonment of six months to five years, if he uses a child to produce photographs, audio-visual or other items of pornographic content or for a pornographic show

90. Some criminal offences of relevance to protection of children from sexual exploitation and sexual abuse are specified in chapter XIX of the Criminal Code - Criminal Offences relating to Marriage and Family. The criminal offence of "cohabitating with a minor" is defined under article 190, paragraphs 1 and 2.

## **Criminal Offences relating to Marriage and Family - chapter XIX of the Criminal Code**

### **(a)Cohabitating with a Minor (art. 190)**

Pursuant to paragraph 1, an adult cohabiting with a minor shall be punished with imprisonment of up to three years

Pursuant to paragraph 2, a parent, adoptive parent or guardian who enables or induces a minor to cohabit with an adult person shall be punished with imprisonment of up to three years

### **(b)Abduction of a Minor (art. 191)**

Pursuant to paragraph 1, a fine or imprisonment of up to two years is envisaged for a person who unlawfully detains or abducts a minor from a parent, adoptive parent, guardian or other person or institution entrusted with the care of the minor or for the offender who prevents the enforcement of a decision granting custody of a minor to a particular person

Pursuant to paragraph 2, a fine or imprisonment of up to one year is envisaged for a person who prevents enforcement of the decision of a competent authority setting out the manner of maintaining the personal relationships of a minor with a parent or other relative

Pursuant to paragraph 3, a fine or imprisonment of three months to five years is envisaged if the referred to offence is committed for gain or other base motives or if the offence results in serious impairment of health, care or education of the minor

### **(c)Change of Family Status (art. 192)**

Pursuant to paragraph 1, a fine or imprisonment of three months to three years is envisaged for a person who, by substitution, replacement or otherwise, changes the family status of a child

Pursuant to paragraph 2, a fine or imprisonment of up to one year is envisaged for a person who, by replacement or from negligence, changes the family status of a child

Pursuant to paragraph 3, the attempt of the offence specified in paragraph 1 of article 192 is also subject to punishment

### **(d)Neglecting and Abusing a Minor (art. 193)**

Pursuant to paragraph 1, imprisonment of up to three years is envisaged for a parent, adoptive parent, guardian or other person who, by gross dereliction of their duty to provide for and bring up a minor, neglects a minor they are obliged to take care of

Pursuant to paragraph 2, imprisonment is envisaged for a parent, adoptive parent, guardian or other person who abuses a minor or forces him to excessive labour or labour not commensurate with his age, or to mendicancy, or for gain induces him to engage in other activities detrimental to his development

### **(e)Domestic Violence (art. 194)**

Pursuant to paragraph 1, a fine or imprisonment of up to one year is envisaged for a person who, by use of violence, threat of attacks against life or body, insolent or ruthless behaviour, endangers the tranquillity, physical integrity or mental condition of a member of his family

Pursuant to paragraph 3, if the specified offence results in grievous bodily harm or serious health impairment or if committed against a

minor (an aggravated offence), the offender shall be punished with imprisonment from one to eight years

Pursuant to paragraph 5, a fine or imprisonment of up to six months is envisaged for a person who violates a measure against domestic violence that was imposed on them by the court in accordance with the law

#### **(f)Incest (art. 197)**

An adult who engages in sexual intercourse or an act of equal magnitude with an underage relative by blood, or an underage sibling, shall be punished with imprisonment of up to three years

### **Crimes against Humanity and Other Values protected under International Law | chapter XXXIV of the Criminal Code**

#### **(a)Human Trafficking (art. 388)**

Pursuant to paragraph 1, imprisonment of 2 to 10 years is envisaged for a person who, by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in the sale, hides or holds another person with intent to exploit such person's labour, forced labour, commission of offences, prostitution, mendicancy, pornography, removal of organs or body parts or service in armed conflicts

Pursuant to paragraph 3, if the specified offence is committed against a minor (an aggravated offence), the offender shall be punished with imprisonment of a minimum of three years

#### **(b)Trafficking in Children for Adoption (art. 389)**

Pursuant to paragraph 1, imprisonment of one to five years is envisaged for a person who abducts a child under 14 years of age for the purpose of adoption contrary to laws in force or a person who adopts such a child or mediates in such adoption or a person who for that purpose buys, sells or hands over a child under 14 years of age or transports such a child, provides accommodation or conceals such a child

#### **(c)Holding in Slavery and Transportation of Enslaved Persons (art. 390)**

Pursuant to paragraph 1, imprisonment of 1 to 10 years is envisaged for a person who, in violation of international law, enslaves another person or places a person in similar position, or holds a person in slavery or similar position, or buys, sells, hands over to another or mediates in the buying, selling and handing over of such a person or induces another to sell his freedom or freedom of persons under his support or care

Pursuant to paragraph 3, if the specified offence is committed against a minor (an aggravated offence), the offender shall be punished with imprisonment of 5 to 15 years

91.Pursuant to article 14, paragraph 2, of the Public Order and Security Act of the Republic of Serbia, imprisonment of up to 60 days is envisaged for a person who lends or rents rooms to a minor for the acts of prostitution. Under article 20 of this Law, a fine or imprisonment of up to 30 days is envisaged for a parent or guardian of the minor committing the offence specified under articles 6 to 19, if the committed offence results from a failure on the part of a parent or guardian in performing their due supervision over the minor with no justifiable case for such a failure. The referred to articles (6 to 19) include a number of other offences: insult or violence against another, inducing to mendicancy and vagrancy, illicit distribution of liquor to persons under 16 years of age, gambling and induction of minors to gambling.

### **K.The abduction of, sale of and traffic in children and the protection of children from all other forms of exploitation (arts. 35 and 36)**

92.Our country has ratified the United Nations Convention against Transnational Organized Crime along with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

93.The Criminal Code of the Republic of Serbia, building from these documents and from the provisions of the Optional Protocol, under article 388 incriminates "human trafficking". Pursuant to the provisions of this article, whoever, by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labour, forced labour, commission of offences, prostitution, mendicancy, pornography, removal of organs or body parts or service in armed conflicts shall be punished by imprisonment of 2 to 10 years. When the specified offence is committed against a minor, the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration.

94.If the specified offence is committed against a minor, the offender shall be punished by imprisonment of a minimum of three years.

95.If the offence of traffic in people resulted in grave bodily injury in the death of one or more persons, the offender shall be punished by imprisonment of 3 to 15 years, i.e. imprisonment of a minimum of 10 years.

96.The Criminal Code, in article 134, incriminates the criminal offence of "abduction".

97.If the specified offence is committed against a minor it represents an aggravated offence.

98.Pursuant to paragraph 3, if the abducted person is held for more than 10 days or treated in a cruel manner or his health is seriously impaired or other serious consequences resulted or if the offence is committed against a juvenile, the offender shall be punished with imprisonment of 3 to 15 years.

99.The Criminal Code also defines the elements of the following criminal offences:

**(a)Trafficking in Children for Adoption (art. 389)**

Whoever abducts a child under 14 years of age for the purpose of adoption contrary to laws in force or whoever adopts such a child or mediates in such adoption or whoever for that purpose buys, sells or hands over another person under 14 years of age or transports such a person, provides accommodation or conceals such a person, shall be punished by imprisonment of one to five years. Whoever habitually engages in the specified activities or if the offence is committed by an organized group, shall be punished with imprisonment of a minimum of three years.

**(b)Holding in Slavery and Transportation of Enslaved Persons (art. 390)**

Whoever, in violation of international law, enslaves another person or places a person in similar position, or holds a person in slavery or similar position, or buys, sells, hands over to another or mediates in the buying, selling and handing over of such a person or induces another to sell his freedom or freedom of persons under his support or care, shall be punished with imprisonment of 1 to 10 years. Whoever transports persons in slavery or other similar position from one country to another shall be punished with imprisonment of six months to five years. Whoever commits the specified offence against a minor shall be punished with imprisonment of 5 to 15 years.

**(c)Mediation in Prostitution (art. 184)**

Whoever causes or induces another person to prostitution or participates in handing over a person to another for the purpose of prostitution, or who, by means of media or otherwise, promotes or advertises prostitution, shall be punished with a fine or imprisonment of up to three years. If the specified offence is committed against a minor, the offender shall be punished with imprisonment of 1 to 10 years.

**(d)Showing Pornographic Material and Child Pornography (art. 185)**

Whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a child or shows to a child a pornographic performance, shall be punished with a fine or imprisonment of up to six months. Whoever uses a child to produce photographs, audio-visual or other items of pornographic content or for a pornographic show shall be punished with imprisonment from six months to five years. Whoever sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting from offences specified in paragraph 2 of this article, shall be punished with imprisonment of up to two years.

100.With the support of the OSCE Mission, the National (Republican) Team for Combating Human Trafficking was established in 2002. The scope of reference of this Team includes, *inter alia*, the issues related to persons under 18 years of age (children and minors). The Team is composed of the representatives of relevant government institutions, domestic non-governmental organizations and international organizations. The Team's efforts are focused on combating human trafficking, punishing the persons who participate in human trafficking and protecting the victims of human trafficking. Consequently, the three separate groups of the Team's tasks are: preventive measures; penalty measures (for persons participating in human trafficking); and protective measures (for victims of human trafficking).

101.As regards the information on progress made in the implementation of the rights specified in the Optional Protocol, it should be noted that on 16 May 2002, the Council for Child Rights was established by a Decision of the Government of the Republic of Serbia, as a counselling body of the Government of the Republic of Serbia. The members of this Council are the representatives of relevant government institutions and the non-governmental sector, who specialize in the youth problem area and promotion of rights of the child. The Council for Child Rights produced the National Plan of Action for Children which was adopted by the Government of Serbia on 12 February 2004.

102.The National Plan of Action for Children builds on the following documents: the Convention on the Rights of the Child; the A World Fit for Children Declaration; the United Nations Millennium Declaration; and on other international agreements ratified by our country.

103.The National Plan of Action for Children fully adheres to four basic principles taken over from the Convention on the Rights of the Child. The four principles (from which all other articles of the Convention follow) are:

Non-discrimination

The best interests of the child

The right to life, survival and development of the child

Participation of the child

104.The National Plan of Action for Children is a strategic document which defines the policy of the Republic of Serbia, by 2015, on

the issue of children and young people. This document defines the standards by which the protection of the fundamental rights and the improvement of conditions for equal access to the fundamental rights shall be ensured; eliminates any form of discrimination, with special reference to children belonging to excluded or marginalized population groups; acts in the capacity as a mechanism for the monitoring of child rights in the Republic of Serbia; and protects the rights of the child. It is a framework for the integration of the goals and measures to be taken with the aim of ensuring the complete range of rights to all children.

105. The priorities constituting the structure of the National Plan of Action for Children are defined according to the goals as set forth in the relevant international documents and the analyses by the Council for Child Rights based on the information on the position of children and young people in our society. These priorities are:

Reduction of child poverty

High quality education for all children

Better health for all children

The promotion of the rights and position of handicapped children

The protection of children without parental care

The protection of children from abuse, neglect, exploitation and violence

Capacity-building for solving the problems related to children in the Republic of Serbia

106. The National Plan of Action for Children reflects the fundamental principles of the A World Fit for Children Declaration. However, in the process of structuring the National Plan of Action for Children the Council for Child Rights acted primarily in accordance with the present needs and pressing problems of children in the Republic of Serbia.

107. Within the priority “The protection of children from abuse, neglect, exploitation and violence”, the following goals are set out.

### **Strategic goal**

108. To establish a thorough system for identification and protection of children from all forms of abuse, neglect, exploitation and violence.

### **Specific goals**

To raise awareness and knowledge of experts, lay persons and children themselves

To establish an efficient, operable and multisectoral network for the protection of children

To harmonize the legal framework for protection of children with the international documents

To produce a National Strategy for Protection of Children from All Forms of Abuse, Neglect, Exploitation and Violence

109. As a direct contribution to the realization of the stated goal and specific goal referring to the establishment of an efficient, operable and multisectoral network for the protection of children, the Government of Serbia adopted, on 25 July 2005, the General Protocol on Protection of Children from Abuse and Neglect which was produced by the working group formed by the Ministry of Labour and Social Policy of the Republic of Serbia with active participation of the representatives of relevant ministries and non-governmental organizations. This document has been submitted for study to competent ministries which are accordingly due to produce Special Protocols on the Treatment in Cases of Abuse and Neglect of Children, in accordance with their terms of reference.

110. To that end, the National Strategy for Combating Violence - Starting Framework was produced by a multisectoral working group formed by the Ministry of Labour and Social Policy of the Republic of Serbia, with active participation of the representatives of relevant ministries and non-governmental organizations. It was presented to the public and press on 7 October 2005.

111. As regards the specific goal of harmonization of the legal framework for protection of children with the international documents, the National Assembly of the Republic of Serbia adopted the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law which entered into force on 1 January 2006.

112. Pursuant to article 1 of this Law, the provisions of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law refer to substantive law, authorities implementing substantive law, criminal proceedings and sanctions against the minor perpetrators of a criminal offence. The provisions of this Law shall also apply to adult persons (where the conditions stipulated under this Law are met) who at the time of commission of a criminal act had not attained 18 years of age and to adult persons, who at the time of the commission of a criminal act had attained the full age but were still classified as junior adults.

113. This Law also contains special provisions on protection of children and minors as injured parties in criminal proceedings. With the aim of special protection of minors as injured parties in criminal proceedings, pursuant to article 150 of this Law, 27 criminal offences are placed within the jurisdiction of the panel of judges of the court which is presided by a judge who specializes in child rights and criminal justice protection of minors.

114. The Criminal Code, which was adopted by the National Assembly of the Republic of Serbia in 2005 and entered into force on 1 January 2006, incriminates supplementary criminal offences which interfere with the protection of rights of persons under 18 years of age.

115.The Instructions on the Conduct of Police Officers towards Minors and Young Persons is the first internal binding Act of the Ministry of Interior that was adopted (on 1 May 2006) with the aim of supporting the implementation of the provisions of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law. This document regulates police officers' treatment of underage persons in the capacity as perpetrators and injured parties.

116.The Special Protocol on the Conduct of Police Officers in the Protection of Minors from Abuse and Neglect is an internal binding Act that was adopted on 26 October 2006 by the Ministry of Interior. This document is harmonized with the National Plan of Action for Children, the strategic document of the Government of Serbia as well as the fundamental principles set out under and prepared in accordance with the General Protocol on Protection of Children from Abuse and Neglect.

117.As regards the Ministry of Education, on the basis of the General Protocol on Protection of Children from Abuse and Neglect (document adopted by the Government of Serbia) another document, the Special Protocol on the Protection of Children and Students from Violence, Abuse and Neglect in Educational Institutions, was prepared with the aim of defining the preventive measures and activities as well as the practical steps in cases of violence or abuse against children, monitoring of such illicit practices and permanent improvement of child safety on the basis of gained experiences. The essence of this Special Protocol is establishing and maintaining the cooperation between schools and relevant local authorities, organizations and institutions.

118.The School Policeman programme was introduced, in 2002, into a certain number of schools where the issue of safety was identified as a rather pronounced problem area. The programme is still under way; at present 267 "school policemen" are engaged at 494 schools (260 primary and 234 secondary schools), i.e. 12.1 per cent of the total number of schools. The research on the effects of the "school policemen" has shown that the programme has taken root and is accepted by school staff and principals, students and their parents alike.

119.The School without Violence programme is being implemented at about 60 schools. The project was prepared by the Ministry of Education in cooperation with UNICEF. It comprises a series of training courses intended for school staff, representatives of local communities, parents and children (students). The creation of networks for child protection within schools is one of the basic goals of this project. Such networks are organized through the policy of participation (participation of both the school as a whole and the school's social partners from the surroundings). Since 2007, the Ministry of Interior has also been included in the implementation of this programme.

120.The Ministry of Education of the Republic of Serbia signed with the International Organization for Migration the Memorandum of Understanding on "Prevention of Child Trafficking - How to Teach Children". This is a regional project. Its pilot stage included training courses for the teachers of primary schools of the town of Kragujevac. The training courses were focused on providing the teachers with the necessary knowledge and skills to create scenarios for their respective lessons which would include the activities aimed at the prevention of trafficking. Upon completion of this pilot programme, a manual entitled Prevention of Child Trafficking | How to Teach Children was published. When conveyed through different curriculum subjects and repeated through different activities of the students, the message of how to combat human trafficking more efficiently hits the mark. Therefore, this manual features 24 lesson scenarios which were proposed and tested by the teachers themselves.

121.By way of illustration: the integration of some of the activities aimed at the prevention of trafficking into the syllabus are listed below:

- (a) Language and literature :** the content of many works of literature can be related to the phenomenon of human trafficking;
- (b) History and geography :** the migration theme included in the existing history or geography curriculum can be supplemented with the issue of traffic in people, human rights, child labour, child pornography and child prostitution;
- (c) Foreign languages :** this enables the students to learn more of other nations and the teachers to choose texts related to the issue of traffic in people, migration, family violence or gender violence, which can be used to open discussion and raise the students' awareness;
- (d) Civics :** tuition in Civics covers various issues, including human and child rights or development of social skills, which offers numerous possibilities for incorporation of themes on trafficking, child pornography and child prostitution.

122.Lesson scenarios for these and other school subjects are provided in the Prevention of Child Trafficking - How to Teach Children manual. Other teachers are also invited to contribute with their own ideas to the integration of the stated issues into the syllabus. This manual (print run: 450 copies) was promoted in the town of Kragujevac and distributed to schools throughout Serbia.

123.A project entitled Health Education, which, *inter alia*, focuses on the issues of protection of children against all forms of abuse, is being implemented at secondary schools as a pilot programme.

124.A project entitled Continued Process of Self-evaluation and External Evaluation of Schools and Strategic School Development Planning, adopted by the Ministry of Education, focuses, *inter alia*, on the issue of child/student safety. This issue is thus placed under sustained supervision and evaluation, by which the conditions for a higher level of childcare and safety are being established.

### **III. PROHIBITION OF THE SALE OF CHILDREN, CHILDPROSTITUTION AND CHILD PORNOGRAPHY**

125.As regards the information on valid criminal and penal laws and regulations regulating the criminal offences and activities referred to in article 3, paragraph 1, of the Optional Protocol, it should be noted that the protection of children against sexual exploitation, abduction, sale and traffic in children is, within criminal legislation, regulated under the substantive and criminal procedure law as well

as other special regulations. The incriminated activities of sexual exploitation and sale and traffic in children are classified under a number of chapters of the Penal Law of the Republic of Serbia ("Official Gazette of the SRS" Nos. 66/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 and 21/90; and "Official Gazette of the RS" Nos. 16/90, 21/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 67/03 and 80/03) which ceased to be valid on 31 December 2005 and the Basic Penal Law ("Official Gazette of the SFRY" Nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 and 54/90; "Official Gazette of the FRY" Nos. 35/92, 16/93, 37/93, 24/94 and 61/01; "Official Gazette of the RS" No. 39/03) which also ceased to be valid on 31 December 2005 (both Laws were superseded by the Criminal Code of the Republic of Serbia which entered into force on 1 January 2006). The incriminated activities defined under these two Laws, valid until 31 December 2005, were: criminal offences against life and limb; against freedoms and rights of man and citizen; against human morals and dignity; against marriage and family; against humanity and international law and other social values ensuring equal protection of fundamental values for all citizens (children are citizens entitled to protection ensured under the criminal and family legislation) regardless of gender or age, such as life, health, integrity of body, human dignity and sexual morality, family and the child right to parental care. Since 1 January 2006, these criminal offences have been: criminal offences against sexual freedom; criminal offences relating to marriage and family; crimes against humanity and other values guaranteed by international law.

126. Groups of criminal offences of sexual exploitation, abduction and sale of children which are valid until 31 December 2005 include, under:

## **A. The Penal Law**

### **1. Criminal Offences against Life and Limb - chapter VII of the Penal Law**

#### **Forcible removal of organs or parts of the body (art. 54 (a))**

If the offence is committed against a minor, it is qualified as an aggravated offence

### **2. Criminal Offences against Freedoms and Rights of Man and Citizen - chapter VIII of the Penal Law**

#### **Abduction (art. 64)**

If the offence is committed against a minor, it is qualified as an aggravated offence

Pursuant to paragraph 4, imprisonment of a minimum of 7 years is envisaged if the abducted person is held more than 10 days or treated in a cruel manner or his health is seriously impaired or other serious consequences resulted or if the offence is committed against a juvenile

Pursuant to paragraph 5, imprisonment of a minimum of 12 years or imprisonment of 40 years is envisaged if the specified offence resulted in the death of the abducted person

### **3. Criminal Offences against Human Dignity and Morals - chapter XII of the Penal Law**

#### **Pimping and Procuring (art. 111)**

If the offence is committed against a minor, it is qualified as an aggravated offence

Pursuant to paragraph 1, imprisonment of three months to five years is envisaged for the criminal offence of pimping a minor

Pursuant to paragraph 2, imprisonment of up to three years is envisaged for the criminal offence of procuring a minor

Paragraph 3 stipulates punishment for pimping or procuring a female person for financial or other gain

#### **Exploitation of minors for pornographic purposes (art. 111, paras. 1 and 2)**

Pursuant to paragraph 1, imprisonment of one to five years is envisaged for the offender who makes photographic, film or other recording of a minor for the purpose of production of pornographic contents, or sells, distributes or shows such contents, or induces a minor to participate in a pornographic performance

Pursuant to paragraph 2, imprisonment of a minimum of three years is envisaged if the specified offence is committed against a child under 14 years of age

#### **Traffic in human beings (art. 111 (b), paras. 3 and 4)**

If the offence is committed against a minor or results in the death of the damaged party, it is qualified as an aggravated offence; the envisaged penalty is imprisonment of a minimum of five years

Where the specified offence is committed against a child under 14 years of age (aggravated offence), the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other specific methods of perpetration (up to 10 years)

## **B. The Basic Penal Law**

## **1.Crimes against Humanity and International Law - chapter XVI of the Basic Penal Law**

### **Holding in Slavery and Transportation of Enslaved Persons (art. 155)**

This criminal offence includes crimes such as holding in slavery or similar position (e.g. debt slavery), servitude, sale of a female person for marriage, sale or handover of a minor for any exploitative purpose by parents or guardians or other persons entrusted with the care of the minor, etc.

If the offence is committed against a minor, it is qualified as an aggravated offence

## **2.Crimes against Other Social Values - chapter XXII of the Basic Penal Law**

### **Mediation in Prostitution (art. 251)**

Criminal justice intervention is envisaged for the criminal offences of exploiting a prostituting person, causing or inducing another person to prostitution or (under paragraph 2 of this article) causing or inducing a minor person to prostitution, which is qualified as an aggravated offence

### **Showing Pornographic Material (art. 252)**

The target of protection of this incrimination is the child. The provisions of this article provide for the protection of persons under 14 years of age from potential harmful effects of pornography

Since 1 January 2006:

## **C. The Criminal Code**

### **1.Criminal Offences against Freedoms and Rights of Man and Citizen - chapter XIV of the Criminal Code**

#### **Abduction (art. 134)**

If the offence is committed against a minor, it is qualified as an aggravated offence

Pursuant to paragraph 3, the offender shall be punished with imprisonment of 3 to 15 years if the abducted person is held more than 10 days or treated in a cruel manner or his health is seriously impaired or other serious consequences resulted or if the specified offence is committed against a juvenile

### **2.Criminal Offences against Sexual Freedom - chapter XVIII of the Criminal Code**

#### **Pimping and Procuring (art. 183)**

Pursuant to paragraph 1, whoever pimps a minor for sexual intercourse or an equal act or other sexual act, shall be punished with imprisonment of three months to five years

Pursuant to paragraph 2, whoever procures a minor for sexual intercourse or an act of equal magnitude or other sexual act, shall be punished with imprisonment of up to three years

#### **Mediation in Prostitution (art. 184)**

The envisaged punishment is a fine or imprisonment of up to three years

Pursuant to paragraph 2, if the specified offence is committed against a minor, the offender shall be punished with imprisonment from 1 to 10 years

#### **Showing Pornographic Material and Child Pornography (art. 185)**

Pursuant to paragraph 1, whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a child or shows to a child a pornographic performance, shall be punished with a fine or imprisonment of up to six months

Pursuant to paragraph 2, whoever uses a child to produce photographs, audio-visual or other items of pornographic content or for a pornographic show, shall be punished with imprisonment from six months to five years

### **3.Criminal Offences against Humanity and Other Rights Guaranteed by International Law - chapter XXXIV of the Criminal Code**

#### **Human Trafficking (art. 388)**

Pursuant to paragraph 1, whoever, by force or threat, deception or maintaining deception, abuse of authority, trust, dependency

relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as an intermediary in the sale, hides or holds another person with intent to exploit such person's labour, forced labour, commission of offences, prostitution, mendicancy, pornography, removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of 2 to 10 years

Pursuant to paragraph 3, where the specified offence is committed against a minor (aggravated offence), the offender shall be punished with imprisonment of a minimum of three years

### **Trafficking in Children for Adoption (art. 389)**

Pursuant to paragraph 1, whoever abducts a child under 14 years of age for the purpose of adoption contrary to laws in force or whoever adopts such a child or mediates in such adoption or whoever for that purpose buys, sells or hands over another person under 14 years of age or transports such a person, provides accommodation or conceals such a person, shall be punished by imprisonment of one to five years

### **Holding in Slavery and Transportation of Enslaved Persons (art. 390)**

Pursuant to paragraph 1, whoever in violation of international law enslaves another person or places a person in similar position, or holds a person in slavery or similar position, or buys, sells, hands over to another or mediates in buying, selling and handing over of such person or induces another to sell his freedom or freedom of persons under his support or care, shall be punished by imprisonment of 1 to 10 years

Pursuant to paragraph 3, where the specified offence is committed against a minor (aggravated offence), the offender shall be punished with imprisonment of 5 to 15 years

127. As regards the age limit used in any definition to denote the term child, the Basic Penal Law, in the criminal law sense, in chapter VI, article 72, defines a child as any person who at the time of commission of a criminal act had not attained the age of 14 years and to whom no criminal sanctions can be applied. Pursuant to article 73, paragraph 1, a junior juvenile is any person who at the time of commission of a criminal act had attained the age of 14 years but had not attained the age of 16 years and to whom only educational measures can be applied. Pursuant to article 73, paragraph 2, any juvenile who at the time of commission of a criminal act had attained the age of 16 years but had not yet reached the age of 18 years is defined as a senior juvenile, and may be subject to educational measures and, exceptionally, may be sentenced to a juvenile custody.

128. The Criminal Code, article 112, defines a juvenile as a person who has not attained 18 years of age. Pursuant to this Code, a child is a person under 14 years of age, and a minor is a person over 14 years of age but who has not attained 18 years of age.

129. As regards other criminal offences which are subject to punishment according to the laws of States parties but are not included in article 3, paragraph 1, of the Optional Protocol, in the Republic of Serbia they are as follows:

## **D. The Penal Law (valid until 31 December 2005)**

### **1. Criminal Offences against Human Dignity and Morals - chapter XII of the Penal Law**

#### **Rape (art. 103, para. 3)**

Imprisonment of a minimum of five years is envisaged if the specified offence is committed against a minor or resulted in the death of a female person (aggravated offence)

#### **Coercion to Sexual Intercourse or Unnatural Act (art. 104, para. 3)**

Imprisonment of a minimum of three years is envisaged if the specified offence is committed by more than one person, or in a particularly cruel or particularly humiliating manner, or against a minor who has attained the age of 14 years, or resulted in pregnancy or serious contagious disease (aggravated offence)

#### **Sexual Intercourse or Unnatural Act with a Helpless Person (art. 105, para. 4)**

Imprisonment of a minimum of five years is envisaged if the specified offence is committed against a minor who has attained the age of 14 years or resulted in the death of a helpless person (aggravated offence)

#### **Sexual Intercourse or Unnatural Act with a Person Under the Age of 14 Years (art. 106, paras. 1 to 4)**

By virtue of positive legislation of our country, the Basic Penal Law in chapter VI prescribes a criminal non-responsibility of children under the age of 14 years, which means that all sexual contacts with children under the age of 14 years and in all situations are subject to punishment, including those where such contacts are seemingly voluntary

#### **Sexual Intercourse or Unnatural Act Through Abuse of Position (art. 107)**

If the offence is committed against a child under the age of 14 years, it is qualified as an aggravated offence

Pursuant to paragraph 2, imprisonment of 1 to 10 years is envisaged if the specified offence is committed by a teacher, tutor,

guardian, adoptive parent, or other person who is entrusted with the care, custody or teaching of the minor over the age of 14 years

Pursuant to paragraph 3, imprisonment of a minimum of three years is envisaged if the specified offence is committed against a minor under the age of 14 years, or resulted in pregnancy or serious contagious disease

### **Acts of Indecency (art. 108)**

Pursuant to this article, imprisonment of up to three years is envisaged for the offender who, in cases referred to in articles 103 to 107 of the Penal Law, commits an act of indecency as a single offence

### **Seduction (art. 109)**

If the offender commits a criminal act of seduction under a promise of marriage and induces a female minor over the age of 14 years to sexual intercourse, he shall be punished with imprisonment of three months to three years. A civil action can be maintained for seduction under a promise of marriage

### **Unnatural Act (art. 110)**

If the offence is committed against a minor over the age of 14 years, it is qualified as an aggravated offence

Pursuant to paragraph 3, imprisonment of a minimum of five years is envisaged if the specified offence is committed against a person under the age of 14 years or resulted in the death of the person

Pursuant to paragraph 4, imprisonment of up to one year is envisaged if the specified offence is committed against a male minor over the age of 14 years

## **2.Criminal Offences against Marriage and Family | chapter XIII of the Penal Law**

### **Cohabitation with a minor (art. 115)**

Pursuant to paragraph 1, imprisonment of three months to three years is envisaged for an adult who cohabits with a minor. Paragraph 2 provides for the punishment of the parent, adoptive parent or other person entrusted with the care of a minor, who allows or induces a minor over the age of 14 years to cohabit with another person. Paragraph 3 envisages the imprisonment of one to three years in the event that the offender referred to in paragraph 2 commits the offence for financial or other gain. Pursuant to paragraph 4, if the marriage is contracted, the procedure shall be abandoned or dismissed if under way.

### **Detaining or abducting a minor (art. 116)**

Pursuant to paragraph 1, imprisonment of up to one year is envisaged for anyone who unlawfully detains or abducts a minor from a parent, adoptive parent, guardian or other person or institution entrusted with the care of the minor or whoever prevents enforcement of the decision granting custody of a minor to a particular person. Paragraph 2 defines a more serious form of the specified criminal offence, when this offence is committed for gain or other base motives or the minor is taken abroad, and envisages imprisonment of 1 to 10 years.

### **Incest (art. 121)**

Pursuant to this article, sexual intercourse with a relative by blood or sibling is a criminal offence subject to punishment. Imprisonment of up to three years is envisaged for the offender

130. As stated above, the Criminal Code of the Republic of Serbia entered into force on 1 January 2006 and superseded the theretofore valid Penal Law of the Republic of Serbia and the Basic Penal Law.

## **IV. CRIMINAL PROCEDURE**

### **A. Court jurisdiction**

131. When it comes to the jurisdiction of the Republic of Serbia over the prosecution of those who have committed a criminal action, i.e. an offence as contained in the Optional Protocol, it is emphasized that:

According to the Criminal Code (art. 6), the criminal legislation of the Republic of Serbia shall apply to anyone who commits a criminal offence in its territory.

The criminal legislation shall also apply to anyone who commits a criminal offence on board a domestic ship, regardless of the ship's whereabouts at the time the act was committed. Serbian criminal legislation shall be binding upon those who commit a crime on board a domestic civil aircraft in flight or on board a domestic military aircraft as well, irrespective of the aircraft's whereabouts at the time the criminal offence was committed.

Criminal prosecution of a foreign citizen in cases specified above may be transferred to another State, under the terms of reciprocity.

132. The criminal legislation of the Republic of Serbia (article 8 of the Criminal Code) shall also be applicable to a Serbian citizen who commits a criminal offence abroad, if found in the Serbian territory or if extradited to the Republic of Serbia. Serbian criminal legislation shall also be binding upon an offender who became a citizen of the Republic of Serbia after the commission of the offence.

133. Furthermore, Serbian criminal legislation shall also apply to a foreigner who commits a criminal offence against Serbia or its citizen outside the territory of Serbia, if found in the territory of the Republic of Serbia or extradited to it.

134. The criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence abroad against a foreign State or foreign citizen, when such offence is punishable by five years' imprisonment or a heavier penalty, pursuant to the laws of the country of commission, if such person is found in the territory of Serbia and is not extradited to the foreign State.

## **B. Extradition**

135. The obligation of international legal cooperation with other countries, acting towards preventing, detecting and punishing the criminal offenders involved in the sale of children, child prostitution and child pornography is stipulated by the criminal legislation. Thus, the Criminal Procedure Code of the Republic of Serbia regulates the legal cooperation with other countries in the criminal legal field. At the same time, this cooperation is also regulated by international agreements, bilateral (37 agreements have been concluded with 30 countries) as well as numerous multilateral conventions (the United Nations and the Council of Europe).

136. The provisions of international agreements have precedence over the provisions of the Criminal Procedure Law, which means that its provisions shall be applied only in the absence of an international agreement or if certain issues are not envisaged by the provisions of international agreements.

137. The Criminal Procedure Law stipulates the cooperation of the Republic of Serbia with other countries with regard to all forms of international assistance in criminal matters: general forms (certain processing activities - examination of the accused and witnesses, crime scene investigation, expert evaluation, search of persons and premises, seizure of objects, submission of evidence and related material in connection with the performed criminal acts); extradition of the accused and convicted, transferring and undertaking criminal prosecutions; and carrying out verdicts reached abroad.

138. The Criminal Procedure Law provides that international legal assistance, which also includes extradition, shall not be conditional upon the existence of international agreements. In case of the extradition of the accused and sentenced persons, it should be indicated that if the extradition of a person is refused, that person may be prosecuted in the Republic of Serbia for the crime he/she committed.

## **C. Seizure and confiscation**

139. Where the seizure and confiscation of goods and proceeds specified in article 7 (a) of the Optional Protocol is concerned, the Criminal Law of the Republic of Serbia, in its General Part, article 87, underlines that the objects used or intended for use in the commission of a criminal offence or resulting from the commission of a criminal offence may be seized, if they are the property of the offender. The objects may be seized even if they are not the property of the offender if so required by interests of general safety or if there is still a risk that they will be used to commit a criminal offence, if without prejudice to the right of third parties to compensation of damages by the offender.

140. The law may stipulate the mandatory seizure of the objects and/or their mandatory destruction. The law may also stipulate the requirements for seizure of particular objects in specific cases.

141. In chapter VII "Confiscation of Material Gain", article 91, the Criminal Law regulates the grounds for the confiscation of material gain, i.e. ensures that no one may retain material gain obtained by criminal offence and that the gain shall be seized on the conditions provided by this law and decision of the court determining the commission of a criminal offence.

142. The provisions of article 92 specify the conditions and manner of the seizure of material gain, i.e. money, items of value and all other material gain obtained by a criminal offence shall be seized from the offender, and if such seizure should not be possible, the offender shall be obligated to pay a pecuniary amount which is commensurate with the obtained material gain.

143. Material gain obtained by a criminal offence shall also be seized from the persons it has been transferred to without compensation or with compensation that is obviously inadequate to its actual value. If material gain is obtained by an offence for another, such gain shall be seized.

144. As regards the temporary or permanent closure of the facilities used for the commission of an offence in accordance with article 3, paragraph 1, of the Optional Protocol, our legal system still does not contain the provisions that may regulate the undertaking of such action. This legal gap should be eliminated and, for this purpose, adequate provisions shall be proposed to amend the Criminal Code.

## **V. PROTECTION OF THE RIGHTS OF CHILD VICTIMS**

145. With respect to the information within the meaning of articles 8 and 9, paragraphs 3 and 4, of the Optional Protocol on the measures of a legislative, judicial and administrative nature adopted to protect the rights and interests of child victims of offences prohibited by the Optional Protocol in all stages of the criminal procedure, respecting the right of the accused to have a fair and impartial trial, it is indicated that the leading principle "the best interests of the child" is set out in the Family Law of the Republic of Serbia, by which, for the first time in our domestic legislation, the rights of the child are regulated as separate rights. Pursuant to article 6 of the Law, everyone is under the obligation to act in the best interests of a child in all activities concerning the child. The State is bound to respect, protect and advance the rights of the child and undertake all necessary measures to protect the child from negligence, physical, sexual and emotional abuse, and every form of exploitation.

146. If a child's right is threatened, the legal action for the protection of the child's right may be submitted to the relevant court by: the child; the child's parents; the public prosecutor; and the guardianship authority. All children's health and educational institutions or

social service institutions, judicial and other State authorities, associations and citizens have the right and duty to inform the public prosecutor or guardianship authority of reasons for the protection of the child's right (article 263 of the Family Law).

147.If adverse interests exist between the child and the child's legal representative, whatever the procedure (judicial or administrative), the child is to be represented by a collision guardian. The collision guardian shall be appointed by the guardian authority or court, depending on the circumstances of the case in question. A child that has reached the age of 10 and who is able to reason has the right to request from the guardian authority or court, personally or through another person or institution, to appoint a collision guardian and/or temporary representative for him/her, due to the existence of adverse interests between him/her and his/her legal representative (articles 265 to 267 of the Family Law).

148.If the court finds that, in a dispute over the protection of a child's right or in a dispute over the exercise and/or deprivation of parental rights, the party is a child able to form his/her own opinion, the court is under the obligation to: take care that the child duly receives all necessary information; allow the child to directly express his/her opinion and pay due attention to the child's opinion in accordance with his/her age and maturity; and determine the child's opinion in a manner and place that is in accordance with the child's age and maturity, unless that would be manifestly in contrast to the best interests of the child.

149.Every child that is able to form his/her opinion is entitled to freely express that opinion. A child who has reached the age of 10 has the right to express his/her opinion freely and directly in every judicial and administrative procedure determining his/her rights. In order to enable a child to freely express his/her opinion, it is stipulated that the child is allowed to receive duly all the information necessary to form his/her opinion and that due attention is to be paid to the child's opinion in all matters related to him/her and all actions deciding his/her rights, in accordance with the age and maturity of the child.

150.A child that has attained the age of 10 may personally, or through another person or institution, address the court or administrative authority and request assistance in order to realize his/her right to freely express his/her opinion. The court and administrative authority shall determine the child's opinion in an informal conversation carried out in an appropriate place, in cooperation with a school psychologist, and/or guardian authority, family counselling or other institution specialized in mediation in family relations, all in the presence of a person chosen by the child himself/herself.

151.A parent who abuses his/her parental right in such manner as to abuse his/her child physically, sexually or emotionally or exploit the child by forcing him/her into overwork, or work that threatens his/her morals, health or education, and/or work prohibited by law, may be deprived fully of his/her parental right. A decision on the deprivation of the parental right and separation of the child from his/her parent is made by the court.

152.If the safety of the child is endangered due to which an urgent move away from the parental family is demanded or due to other threatening circumstances, the decision on the child's residence with an aim to ensure the safety of the child may also be made by the guardian authority, with temporary guardianship protection measures being applied. The decision on the child's temporary residence, in the situation which calls for an immediate intervention, is to be made not later than within 24 hours from the day the necessity for the immediate intervention became known. In such a situation, the child shall be appointed a temporary guardian and the scope of guardianship authorities, compatible with the circumstances of the case, shall be determined.

153.As already stated in the present report, it is particularly indicated that, in 2005, the Republic of Serbia adopted the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under the Criminal Law.

154.The Law also contains specific provisions regarding the protection of children and minors as injured parties in the criminal procedure. Pursuant to article 150 of the Law, with the aim of special protection of minors as injured parties in criminal proceedings, 27 criminal offences are placed within the jurisdiction of the panel of judges of the court which is presided by a judge who specializes in child rights and criminal justice protection of minors.

155.The Instructions on the Conduct of Police Officers towards Minors and Young Persons represent, as mentioned above, the first internal binding Act of the Ministry of Interior of the Republic of Serbia, passed on 5 May 2006, with the intention of supporting the implementation of the provisions regarding the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law. This document prescribes the police treatment of minors who appear as offenders and parties harmed by a criminal offence.

156.The Special Protocol on the Conduct of Police Officers in the Protection of Minors from Abuse and Neglect is an internal binding Act, passed by the Ministry of Interior on 26 October 2006.

157.The Special Protocol on the Conduct of Police Officers in the Protection of Minors from Abuse and Neglect treats minors as citizens entitled to protection ensured by the criminal, misdemeanours and family legislation, in compliance with the duty and responsibility of the police to investigate the cases of abuse and neglect of minors. It represents an instrument that shall ensure professional, ethical and law-based conduct of police officers in the process of the protection of minors from abuse and neglect.

158.In addition to legal regulations defining the civil legal and criminal responsibility of parents or persons who assumed parental responsibility, in 2005 the Government of the Republic of Serbia adopted the above-mentioned document named The General Protocol on Protection of Children from Abuse and Neglect. The document acknowledges the fact that the protection of child victims of abuse and neglect is a complex process that involves a range of institutions, organizations and individuals from different systems and branches (social protection, education, health care, police, justice administration etc.) and that effective intervention requires cooperation and coordinated action of all those who participate in such a process. Therefore, anyone working with children and families (also including those who work with parents in the first place) should be fully confident that he/she knows how to act when a suspicion is raised that a child is exposed to abuse or neglect. In the same way, every citizen whose legal and civic obligation is to report a threat or suspicion, and/or awareness that a child is abused or rudely neglected, should be familiar with the procedure that follows the filing of a charge.

159. The General Protocol should contribute to the establishment of the effective and coordinated procedure for the protection of the child who is a real or potential victim of abuse and neglect, the guidelines of which shall enable an adequate intervention, recovery and conditions for the future safe development of the child.

160. The General Protocol question should, among other things, encourage the development and spreading of the network of multidisciplinary teams for the protection of children in local communities, as well as the applicability of the integrated model of these teams at the municipal level all over Serbia. Such an approach is aimed at emphasizing that the protection of a child is a unique process, although different systems participate in it, each one of them having its own particularities that are to be known and respected.

161. In The General Protocol, the definitions of certain forms of abuse and neglect of children are accepted, including sexual abuse and sexual exploitation, adopted by WHO at the Consultation on Child Abuse Prevention held in Geneva in 1999. These definitions are also accepted by the International Society for Prevention of Child Abuse and Neglect in a document named Intersectoral Approach to Child Abuse dated 2003. In order to promote the process of creating a unique concept of abuse and neglect among experts from different sectors, in addition to the original definitions by WHO contained in the General Protocol, the Instruction Manual on the Implementation of the General Protocol on Protection of Children from Abuse and Neglect was made and released in early 2007. It is intended for professionals from all relevant services and State agencies, containing, among other things, the explanations of the used terms and the difficulties the experts come across most frequently when defining the term of abuse and neglect of children being highlighted.

162. Where the protection of refugee children is concerned, the Commissariat for Refugees of the Republic of Serbia provides and finances all forms of protection for refugee child victims of child prostitution and child pornography, primarily by providing accommodation in social protection institutions or with other families, if the primary family does not function in such a way that is necessary for the protection, development and upbringing of children.

163. When it comes to the protection of the rights of child victims in media, the rights of children are regulated by two media:

The Public Information Law ("Official Gazette of the RS" Nos. 43/03 and 61/05):

Article 41 stipulates that, with a view to protecting the rights of minors, media outlets must take into particular consideration that their content or manner of distribution do not impair the moral, intellectual, emotional and social development of minors. According to paragraph 1 of the article, the content of the media outlet that may jeopardize the development of minors must be clearly and visibly indicated as such in advance and distributed in a manner making it highly unlikely that a minor will use it.

A minor shall not be made recognizable in the information that is liable to violate his/her rights or interests.

The provisions of article 68 of the Broadcasting Law ("Official Gazette of the RS" Nos. 42/02, 97/04, 76/05, 79/05 and 62/06) specify general programme standards that are to be observed by all broadcasters. This article (para. 1, point 4) puts the broadcasters under an obligation to contribute to raising the overall culture and awareness of citizens; its provisions also ensure the participation of the social community in information programmes.

The Code of Serbian Journalists (2006):

The Code frames the ethical standards of the professional conduct of journalists which, among other things, or first of all, protect the rights of children in newspaper reporting. Its clauses oblige a journalist to ensure that a child is not jeopardized or exposed to risk because his/her name, photo or a recording of his/her image, house, community he/she lives in or recognizable surroundings are published.

164. With a view to ensuring that a child's best interests are of foremost importance in all measures undertaken by the criminal justice system in the treatment of child victims, while opposing all forms of abuse, neglect, exploitation and violence over children, the police activity is aimed at:

Prevention (proactive action before the event) - obstruction

Repression (reactive action after the event) - suppression

Suppression of various forms of abuse and exploitation of children - reaction

165. The repressive function is carried out by police officers after the commission of a criminal offence, in a pre-criminal procedure which formally comes before criminal proceedings, enabling at the same time its institution in compliance with the provisions of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law, the Criminal Proceedings Law, the Law on Police and other relevant regulations.

166. Activities and tasks in the situations where children and minors appear as injured parties are prioritized and carried out in the child's best interests, using, rationally, the existing organizational and functional potential. All reports containing elements of abuse and exploitation of children require immediate police action.

167. The suppression of criminal offences incriminated by positive domestic criminal, misdemeanour and family legislation, and/or activities prohibited by the Optional Protocol, implies the undertaking of measures and actions with an aim of detecting the offenders and bringing them to the competent authorities, providing evidence as well as giving assistance and support to children and minors harmed by the criminal offence. Depending on the assessment of the situation and danger, necessary measures and activities may be conducted in an immediate (urgent) and/or regular procedure.

168. Police treatment of minors and children in situations where they appear as parties harmed by a criminal offence is defined by the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law, the Law on Criminal Procedure, the Law on Police as well as The Special Protocol on the Conduct of Police Officers in the Protection of Minors from Abuse and Neglect.

169. When an injured party appears at the police premises, alone or accompanied by a parent, adoptive parent, guardian or another person who intends to report a criminal offence performed on him/her or to the detriment of the child or minor, the ensuing procedure is to be undertaken by a police officer trained for work with children, who has acquired special knowledge in the field pertaining to children's rights and criminal legal protection of minors.

170. When they undertake measures and activities in the presence of children and minors, police officers shall be obliged to act considerately, especially while collecting information in situations where the children and minors appear as injured parties (victims of criminal acts or offences), taking into account their maturity, other personal features and the protection of the minor's privacy, with an intention that the undertaken work, measures and activities should not affect negatively the future development of children and minors.

171. An adequate approach to the treatment of minors who appear as parties harmed by criminal acts and offences demands permanent education of the police officers specially trained for work with minors, in accordance with article 165 of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law as well as other police employees, along with the constant improvement of the cooperation with all subjects of the social community.

172. As already stated in the present report, in May 2001 the Yugoslav Team for Combating Human Trafficking was established and the following year continued its operation as the National (Republican) Team for Combating Human Trafficking (pertaining to both children and minors). The Team gathers together all relevant government institutions, national non-governmental organizations and international organizations. Within the scope of its activities, among other things, there is a special group of tasks dealing with the issues of assistance and protection of victims.

173. As regards a national institution in charge of coordinating the provision of assistance to the victims of trafficking, it exists in the form of the Agency for the Coordination of Protection of Human Trafficking Victims and is an organizational part of the Institute for Education of Children and Youth in Belgrade, operating in the entire territory of the Republic of Serbia. The Agency was established in December 2003 as a joint project between the Ministry of Labour and Social Policy and the OSCE Mission to Serbia; it started its work in May 2004.

174. The role of the Agency is to establish the coordination among a number of bodies from the country and abroad, which assist and provide protection to the victims of human trafficking, in particular to child victims. At the same time, it is a service that provides information on the available medical, psychosocial and legal services of relevance to the victims of trafficking in the country and abroad. Another important duty of the Agency is to keep records and documentation of all victims it has had contact with. Such records are kept uniformly for the whole territory of the Republic of Serbia. According to the records of the Agency, in the period between 1 March 2004 and 24 March 2005, through its intervention, along with the active participation of the centres for social work, 14 minors were taken care of.

## **VI. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

175. As regards the information referred to in article 9, paragraphs 1, 2 and 5, and article 10, paragraphs 1 and 3, of the Optional Protocol, the Ministry of Interior has undertaken the following legislative, judicial and administrative measures and prevention policies and programmes aimed at combating the offences listed in the Optional Protocol:

### **Prevention of various types of child abuse and exploitation of children and minors | Prevention**

176. The Ministry of Interior accomplishes its prevention-related function with the aim of protecting the lives and personal safety of children and juveniles through: carrying out consistent and systematic activities; undertaking measures and actions in accordance with the laws; keeping track of occurrences and conducting analyses of the status of safety; supervising the implementation of plans, programmes and actions in this field; informing the public about the issues concerning child abuse and exploitation of children; developing cooperation and providing professional help for citizens, as well as other government bodies and organizations, institutions of territorial autonomy and local authorities, State firms, institutions, non-governmental organizations and other citizen organizations, particularly regarding uncovering instances of exploitation, abducting or selling of children; and implementing existing programmes and initiating new programmes and activities as well, which would result in greater success in prevention of various forms of abuse and exploitation of children and juveniles.

*177. The Ministry of Interior, in collaboration with other ministries, especially the Ministry of Education, participates in the implementation of preventive measures and programmes meant for protecting children and minors from all forms of violence and crime. The programmes are: Action Plan - The School; a Central Action of Firmer Control of Traffic of Selected Content in School; an Action of Firmer Control of Prohibited Sale and Pouring of Alcoholic Drinks to Minors; Preventive Measures towards School Children and Youth; and Drugs is 0, Life is 1.*

178. For the purposes of preventing criminal conduct and misdemeanours in institutions providing education and upbringing and in their surroundings, police officers in uniforms are consistently conducting the aforementioned action, entitled The School. The safety of pupils has thereby been improved considerably and the criminal conduct rate and number of offences among pupils are thus reduced.

179. Based on a safety evaluation of the facilities in the surroundings of a school building, adequate operative and preventive measures

and occasional specific activities are undertaken. The aim of the said activities is to prevent the commission of criminal acts and offences with the elements of violence. Warnings and orders are issued, identification documents are checked and strip searches are conducted at the school entrance in search of weapons and objects which may cause harm and injuries. In order to improve efficiency of the action, police officers have been assigned long-term posts in the security sector. This has shown great results, especially in respect of control and supervision of potential criminal offenders.

180. In order to increase the safety of pupils in traffic, at the beginning of each new school year the traffic police officers implement a central action entitled School, which is an action of enhanced control of traffic of selective content. It is implemented on roads and streets in school zones around elementary schools and high schools. At the same time, as part of the preventive and educational segment of this action, police officers of the traffic police hold lectures in schools in order to raise traffic safety awareness of children and improve their protection.

181. As part of the Action of Firmer Control of Prohibited Sale and Pouring of Alcoholic Drinks to Minors, special attention was directed towards the tracking and uncovering of offences providing alcoholic drinks to drunk or juvenile persons.

182. In 2005, the criminal police officers specially trained to work with minors started to implement prevention-related activities with schoolchildren and youth, in collaboration with the principals and psychological and pedagogical departments of educational and upbringing institutions in the territory of the Republic of Serbia. The activities are based on the model of workshops. The goals of these activities are directed towards improving the safety in educational and upbringing institutions and in their immediate surroundings, as well as towards informing the pupils on an impartial and timely basis about their rights and obligations in accordance with the Convention on the Rights of the Child.

183. Since 2006, the action Drugs is 0, Life is 1, has been carried out, with the support of the City Hall of the city of Belgrade, with the aim of informing the children and youth about the mechanisms of prevention and suppression of the abuse of psychoactive substances (tobacco, alcohol and drugs).

184. Apart from the aforementioned programmes, the Ministry of Interior, in collaboration with international organizations OSCE and the Department for International Development (DFID), the National Police Agency of the Kingdom of Norway, and the Swiss Agency for Development and Cooperation, has conducted a pilot project named Police in the Local Community. It involved several municipalities in the territory of the Republic of Serbia. Its aim was to demystify police work and bring the police closer to the citizens. Within the framework of the said project, numerous programmes of prevention directed towards children and young adults have been carried out. Programmes such as: the Programme for Prevention of Child Abuse; the Programme for Prevention of Crime in Schools and that which is Aimed at Pupils; the Programme for Prevention of Rape; the Programme for Prevention - Self-defence Against Rape; the Programme for Education Regarding Preserving the Tracks of Criminal Acts and Observing Significant Details in Space; the Programme for Prevention of Drug Abuse; the Programme for Prevention of Violence in Schools; the Programme for Prevention of Violence at Sporting Events; the Programme for Prevention of Violence in Families; the Programme for Prevention of Alcoholism; and many other programmes, are still in effect.

185. On the other hand, activities undertaken in the domain of the safe use of the latest information technology, particularly the Internet, deserve mention. In that respect, as a result of the action of the police units in charge and their collaboration with the international factors, several networks that were spreading child pornography over the Internet have been crashed.

186. With regard to the prevention of various forms of abuse of children and minors, i.e. the offences listed in the Optional Protocol, the Ministry of Labour and Social Policy of the Republic of Serbia, directly as well as in collaboration with the Republic Institute for Social Security and a network of city centres and municipal centres for social work, carries out the following tasks:

Analysing, coordinating, producing, promoting, and keeping track of the programmes for proving the social status of children and their protection and also the programmes for preventing social problems that may affect children

Improving the cooperation with the civil sector regarding programmes directed towards children

Establishing sectors within the government body for the purposes of analysis, conducting discussions and formulating suggestions on the improvement of the social position and protection of children

Analysing the laws on child protection and child social status improvement, and producing and proposing new legal drafts and amendments

Cooperating with other national and foreign government institutions regarding international adoption programmes

Liaising with international and foreign organizations and institutions, and providing technical cooperation within the programmes on children (which involve collaboration on an international level)

187. The Republic Institute for Social Protection and the network of centres for social work play a very important role in the domain of prevention of misdemeanours as defined in the Optional Protocol.

188. The Ministry of Labour and Social Policy provides both financial and technical support for programmes aimed at prevention of abuse and exploitation of children, developed by the national non-governmental organizations (funding and subsidizing of programmes initiated and conducted by the civil sector). The main objective of such support is raising awareness and contributing to the efficient prevention and protection of children from the offences referred to in the Optional Protocol.

189. As regards the issue of prevention of the sale of refugee children and suppression of sexual exploitation of these children, the Republic of Serbia, i.e. the Commissariat for Refugees in cooperation with other government institutions and domestic and foreign non-governmental organizations, has undertaken numerous activities aimed at prevention of various forms of abuse of refugee children

and minors, i.e. offences referred to in the Optional Protocol, such as presentations, round tables, posters, video clips etc.

190. On the other hand, the Commissariat for Refugees, in compliance with its competencies, reacts to any clue of traffic in refugee children, child prostitution or child pornography that may be taking place not only in the refugee community centres, but in the refugees' private accommodations as well. The Commissariat accordingly files a request for the protection of the interests of the refugee children to the relevant social and police authorities.

191. As regards the sale of children and pertinent to problems, the Government of Serbia, in cooperation with the Ministry of Labour and Social Policy, the Ministry of Interior and the National Team for Combating Human Trafficking, in December 2006, adopted a full-scale Strategy for Action against Trafficking in Human Beings, which, *inter alia*, contains provisions on combating the sale of children. The preparation of the Action Plan commenced in 2007.

192. As regards the means used to present the broad public with the offences prohibited by the Optional Protocol, the organization of seminars and training courses (as one of the basic instruments in that field) for professionals engaged directly in the prevention of the sale of children, child prostitution and child pornography, was mainly carried out by national and international non-governmental institutions. Seminars for judges and prosecuting attorneys were organized by OSCE, in cooperation with the Association of Judges of Serbia. In the past three years, there were 20 seminars of this type.

193. Professional training for judges presiding in family relations proceedings is conducted continually in accordance with the obligation prescribed by the law. The training programme is regulated by the by-laws. Its objective is to provide the judges who preside in family relations proceedings (at all three levels of ruling) with specific knowledge in the area of child rights. The training is being carried out by the Judicial Training Centre of Serbia.

194. Since 1 January 2006, when the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law entered into force, the Judicial Training Centre of Serbia has taken charge of the implementation of (mandatory) permanent professional advancement programmes and training intended for judges, prosecutors and police officers who specialize in the treatment of minors, public prosecuting attorneys and judges who participate in criminal proceedings on criminal offences set forth in article 150 of the Law on Juveniles, experts from social care and juvenile penalty institutions, and lawyers in the domain of the rights of children. The Judicial Training Centre of Serbia acted in cooperation with competent ministries, scientific institutions, professional associations and non-governmental organizations. Upon completion of the first stage of training, over the course of 16 regional seminars, the Centre issued certificates for 4,642 attendees (out of whom 478 were police officers). The certificates were given primarily for knowledge acquired in the area of treatment of juvenile delinquents and treatment of juvenile victims of criminal offences; the validity of certificates is limited and shall be extended only upon repeated checks, if attendees' results prove satisfactory.

195. The first phase of the training programme was preceded by 11 seminars that took place during 2005 entitled Child Rights and Juvenile Legislation, within the project Children's Chance for Change - an Initiative for Reforming the Juvenile Legislation in Serbia. The seminars were organized by the Centre for the Rights of the Child, a non-governmental organization, with the support of the UNICEF Belgrade office, with the aim of creating conditions for the implementation of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law.

196. During 2007, within the second stage of training and professional advancement programme, pursuant to article 165 of the Law Dealing with Juvenile Perpetrators of Criminal Acts and Protection of Juveniles under Criminal Law, the Ministry of Interior, in cooperation with the Judicial Training Centre of Serbia, held 23 seminars for the police officers who specialize in work with minors, entitled Juveniles and Legislature in Practice - Criminal-justice Aspect. The main aim of these seminars was to ensure the acquisition of specialist knowledge and skills in the treatment of juvenile perpetrators of criminal acts.

197. Training courses for experts in the fields of social protection, judiciary, interior affairs, education and health care, on the implementation of the General Protocol on Protection of Children from Abuse and Neglect were held during the period January-February 2007, through five regional two-day seminars that included 150 professionals from all relevant authorities and institutions of local communities in one fifth of the total territory of the Republic of Serbia.

*198. The Ministry of Interior, in cooperation with non-governmental organization Child Rights Centre and with the support of the OSCE Mission in Serbia since 2007, within the project The Protection of the Child Victims of Human Beings Trafficking in the Light of Reform Projects of the Ministry of Labour and Social Policy and the Ministry of Interior, has held three pilot seminars for the police officers with specific expertise in the domain of the rights of the child, youth delinquency and criminal justice protection of minors, and for the coordinators of teams (within the social care system) for protection of children without parental care. The implementation of these projects is being continued in 2008, with the aim of providing the full picture of the position in which the child victims of trafficking are placed during the process of their protection, with special reference to, and invariable application of, procedures set forth in the General and Special Protocol on Protection of Children from Abuse and Neglect.*

199. Upon ratification of the ILO Convention concerning the Prohibition and Immediate Action for the elimination of the Worst Forms of Child Labour No. 182 (1999), and Recommendation No. 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999), the Ministry of Labour and Social Policy and the non-governmental organization Child Rights Centre jointly created a project entitled Child Labour. This research project was aimed primarily at identifying the actual level of awareness in our society on the issue of child labour, but also at collecting the information on the nature and presence of child labour in Serbia. Special reference was made to the status, i.e. presence of this phenomenon in foster and Roma families, as particularly vulnerable groups. This was also an opportunity to identify the strong and weak points of the legislation and its current practice, and provide recommendations aimed at harmonizing the legal norms with the actual status and needs in the field. The results of this project were presented in a brochure, entitled Child Labour in Serbia, which was published in early 2006. According to this research, the potential for change is currently relatively low, both in terms of the level of individual consciousness and of the readiness for taking the actual constructive course of action. Namely, the examinees and participants mostly consider that

the term “child labour” denotes only the most extreme forms of child labour abuse (those which are most evident - mendicancy, prostitution and theft) while only an insignificant number of participants recognize such forms of abuse that in fact are more present but are less evident and primarily take place within the family. The results received also indicate that physical labour for profit (such as mendicancy, but also crime-related jobs) is a fact of life for a significant number of Roma children. The age at which Roma children begin “to work” on the street is the lowest calendar age. Most of the children placed in foster families in rural environments participate in regular house chores; still, a large portion of such house chores may actually be classified as field work or cattle and poultry breeding. It is indicative that these children are involved in household jobs within their households to a greater extent than is generally considered to be justifiable. This segment of child work is considered to be the hardest and the one that makes these children different from other children in their surroundings. The problems and phenomena revealed by this research (the first of this type in our country) should be looked upon as a part of reality which requires improvement through the implementation of the Government’s Strategy of Development of the System of Social Protection (including the Strategy for Giving Greater Privileges to the Roma Population and the Overall Status of the Roma People) aimed at promoting and protecting child rights in Serbia.

## **VII. INTERNATIONAL ASSISTANCE AND COOPERATION**

### **A. Prevention**

200. As regards the improvement of international cooperation with the aim of eliminating the causes of criminal offences referred to in the Optional Protocol, in particular poverty and underdevelopment, in accordance with the Poverty Reduction Strategy of the Government of Serbia (2002), the provision of welfare services, i.e. the programme- and project-based development of the welfare services within the reform introduced into the social care system, has been continued in partnership between the State and other parties, primarily non-governmental organizations. This fact was given special prominence in the Second Report on the Implementation of the Poverty Reduction Strategy, produced by the team in charge of its implementation in the composition of members of the Cabinet of the Deputy Prime Minister. Also, the continuity of the activities of the Social Innovation Fund and Fund for Disabled Persons has been ensured, especially with regard to the welfare services under the jurisdiction of the local governments.

201. Technical and financial support provided by international donors (DFID, UNDP, the Government of the Kingdom of Norway, the European Union/European Agency for Reconstruction and UNICEF) has contributed to the development of programme- and project-based provision of welfare services in the area of social care.

202. The realization of activities financed by the funds of the National Investment Plan of the Republic of Serbia and the new World Bank Project depends, among other things, on the completion of the systemic solutions in the area of public welfare, in order to, by applying the learned lessons to the regular system of social care, overcome the overly long piloting and projecting spans for the services and procedures in the field of social care.

### **B. Protection of victims**

203. As regards international cooperation in providing assistance and support to child victims during their mental and physical recovery, their reintegration into society and repatriation, the body in charge of coordination in the process of organizing and providing all modes of assistance to the child victims of trafficking, child prostitution and child pornography is the Agency for the Coordination of Protection of Human Trafficking Victims, within the government sector. This Agency is an organizational unit of the Institute for Education of Children and Youth in Belgrade, operating in the entire territory of the Republic of Serbia.

204. As stated earlier, the Agency was established in December 2003 as a joint project between the Ministry of Labour and Social Policy and the OSCE Mission to Serbia, and it started its activities in May 2004. In the first two years of operation, the Agency was financed by OSCE, and since March 2006 it has been financed from the State Budget.

205. As regards international cooperation with the countries in the region, cooperation in the field of provision of assistance and relief to individual victims can be described as satisfactory. The experiences to this day indicate that, on the point of protection of victims, direct relations are established between our relevant social services and the social services of Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro and Romania. In some cases, cooperation is established directly by the Agency and sometimes the relations have been established through the intervention of the International Organization for Migration. When necessary, cooperation is realized through the mediation of the Ministry of Foreign Affairs and the Ministry of Labour and Social Policy. Upon return of the juvenile victims of trafficking to the country of origin, assistance is also provided by the Ministry of Interior, when it is mandated by the necessity of higher security for the victim. Cooperation with Italy is also satisfactory. In instances when our juvenile citizens are identified as victims of human trafficking in that country, the relevant social services of Italy contact the field ministries of the Republic of Serbia. Regarding Greece, cooperation takes place through the Embassy of our country in Athens and this mechanism functions very well thanks to the diplomatic staff in the Embassy, who are very aware of the issue.

206. International cooperation is also achieved in the process of repatriation of children who are potential victims of trafficking. In that sense, expert and financial assistance and cooperation during the period 2004-2006 was provided by the International Organization for Migration, especially in the segments providing adequate cooperation with the relevant offices in the countries of origin of the children and minors caught in Serbia with the status of illegal immigrants (Albania, Turkey and Middle East countries). The aim is to arrange their return to the country of origin (providing necessary travel documents and professional escorting, as well), to ensure their takeover by the competent authorities and to watch over their process of reintegration, i.e. adequate protection. The assistance was provided through a project conducted jointly by the International Organization for Migration and the Ministry of Interior of the Republic of Serbia.

207. In addition, in May 2001, with the support of the OSCE Mission, the aforementioned Yugoslav Team for Combating Human Trafficking was established. The following year, it was transformed into the National Team of the Republic of Serbia for Combating Human Trafficking. The operation of this National Team refers, *inter alia*, to minors (children and juveniles).

## **C. Implementation of the law**

208. As already stated in the present report, with regard to the cooperation and assistance that our State provides in all stages of the criminal procedure pertaining to the offences listed in article 3, paragraph 1, of the Optional Protocol, it is indicated that international legal cooperation with other countries in order to prevent, detect and punish criminal offenders related to the sale of children, child prostitution, and child pornography is stipulated by criminal legislation. In this respect, the international legal cooperation in the area of criminal law is regulated by the Criminal Procedure Law of the Republic of Serbia. At the same time, this cooperation is also regulated by international bilateral and multilateral agreements.

209. Our State signed bilateral agreements on legal assistance in criminal, civil, family, and administrative issues with Austria, Algeria, the Bahamas, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, France, Greece, Hungary, Italy, Iraq, Mongolia, Poland, Romania, Russia, Turkey and Slovakia. Apart from the Criminal Procedure Law and the signed bilateral agreements, the issue of international legal cooperation with other countries regarding committed criminal offences is also regulated by multilateral conventions of the United Nations and the Council of Europe.

210. As regards the conventions of the United Nations and its organizations, the emphasis should be placed on the United Nations Convention against Transnational Organized Crime (with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air), the International Convention for the Suppression of the Traffic in Women and Children and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

211. With respect to the conventions of the Council of Europe, we need to draw attention to the European Convention on Mutual Assistance in Criminal Matters of 1959, with its supplement Protocols of 1978 and 2001, the European Convention on Extradition of 1957, with its supplement Protocols of 1975 and 1978, the European Convention on the Transfer of Sentenced Persons of 1983, with its Supplement Protocol of 1997, the European Convention on the International Validity of Criminal Judgments of 1970, the European Convention on the Transfer of Proceedings in Criminal Matters, of 1972, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 and the Council of Europe Convention on Action against Trafficking in Human Beings (which is so far only signed).

212. The Ministry of Interior of the Republic of Serbia organizes international assistance and cooperation in the field of the protection of children and their rights from sexual exploitation, abduction, sale and traffic through the organizational unit of the Department for Organized Crime - Sector for International Police Cooperation - National Central INTERPOL office in Belgrade. In the field of prevention, in order to improve the general knowledge about the issues of sexual exploitation and child trafficking and in order to establish mechanisms for efficient protection of potential victims of these criminal activities, police officers, representatives of judicial organs, institutions of social protection and health care, education and media are being educated.

213. The National Central INTERPOL office in Belgrade, in order to implement the provisions of articles 6 and 10 of the Optional Protocol, conducts an exchange of operative information, material of the offenders and photographs of the victims, with foreign criminal law enforcement offices, i.e. national central offices of member countries of INTERPOL. Cooperation is achieved through INTERPOL's secured communication system called I-4/7, in order to determine the identities of members of criminal groups operating on a regional and international level and the identities of victims of criminal activities. It is also used to determine the way these activities are carried out, to disclose the international routes, and paedophile chains inside which child trafficking takes place most frequently for the purpose of their sexual and labour exploitation.

214. In respect of the protection of the victims, in accordance with article 10 of the Optional Protocol, the exchange of information with foreign criminal law enforcement offices and international organizations is carried out in order to locate the victims and enable their return to Serbia.

## **D. Financial and other assistance**

215. As regards international cooperation regarding the provision of financial and technical assistance, along with the previously mentioned forms of such assistance, the said cooperation has also been provided through organizing numerous educational programmes that were attended by members of the National Team for Combating Human Trafficking, members from a network of non-governmental organizations in the entire territory of our country, a significant number of employees of the Ministry of Interior, prosecuting attorneys, court judges and professionals from family law and social protection institutions. Thus, only in 2006, the OSCE Mission to Serbia provided financial support for the organization and activities of several seminars on the subject of Protection of Child Victims of Trafficking in Light of Reform Projects of the Ministry of Labour and Social Policy and the Ministry of Interior. A few more seminars are planned for the professionals who work directly on providing care and enabling reintegration of the child victims of trafficking.

216. The Government of the Republic of Austria finances the functioning of the Shelter for Victims of Human Trafficking which is operated by one of our national non-governmental organizations. The Ministry of Labour and Social Policy of the Republic of Serbia provides one third of the required financial funding. The contract was signed in 2006 and the funding will continue in the next three years. For the time being, it is the only shelter of this kind in the country, where, along with the victims of violence within families, the women victims of human trafficking are placed in separate facilities, including juvenile girls found in the territory of the Republic of Serbia with the status of victims.

## **VIII. OTHER PROVISIONS**

217. Our State ratified the United Nations Convention against Transnational Organized Crime ("Official Gazette of the FRY - International Agreements" No. 6/01), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and

Children (“Official Gazette of the FRY - International Agreements” No. 6/01) and the Protocol against the Smuggling of Migrants on Land, Sea and Air (“Official Gazette of FRY - International Agreements” No. 6/01) in 2001.

218. In 2003, our State also ratified ILO Convention No. 182 concerning the Prohibition and Immediate Action for the elimination of the Worst Forms of Child Labour (1999) and Recommendation No. 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) (“Official Gazette of FRY - International Agreements” No. 8/03).

219. By ratifying this Convention and the recommendations of the ILO, our State has undertaken to adopt the necessary measures in order to ensure the prohibition and prevention of the worst forms of child labour. With regard to the Optional Protocol, the term “the worst forms of child labour” includes procuring or offering of a child for prostitution purposes, production of pornography or pornographic performances.

*220. At the 28th Convention of the European Ministers of Justice (25-26 October 2007), the Republic of Serbia signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse .*

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