



T-ES(2014)GEN-RS

## **LANZAROTE CONVENTION**

Council of Europe Convention on the protection of children  
against sexual exploitation and sexual abuse

**Replies to the general overview questionnaire**

**SERBIA**

Replies registered by the Secretariat on 31 January 2014



## GENERAL FRAMEWORK

### Question 1: Definition of “child”

- a. Does the notion of “child” under your internal law corresponds to that set out in **Article 3, letter (a)**, i.e. “any person under the age of 18 years”?

#### Ministry of Labour, Employment and Social Policy:

The national law of the Republic of Serbia does not include any statutory act containing generally applicable definition of the term ‘child’; rather it is derived indirectly on the basis of the term of full legal capacity. Under the Constitution and provisions of Family Code, a child shall come of age after reaching 18 years of age. Consequently, any person under this age limit may be regarded of as ‘a child’. By coming of age, the person shall acquire legal capacity (Art. 11. 11 of the Family Code). Prior to reaching 18 years of age, a minor may acquire full legal capacity by marriage or parenthood. In the first case, such decision shall be issued by the court upon compliance with terms of the law (Article 11, paragraphs 2 and 3 of the Family Code). Under the Family code “Everyone is under the obligation to act in the best interest of the child in all activities related to the child”, Paragraph 1 Article 6 of the Family Code).

#### Ministry of Health:

Under the Healthcare Law (Official Gazette of RS, 107/75, 72/09-st.law, 88/10, 99/10, 57/11, 119/12, 45/13-st.law), social care for health at the level of the Republic is addressed by provision of healthcare to groups of population exposed to increased risk from becoming ill, and among others, include children before their 18<sup>th</sup> birthday, school pupils and students by the end of the statutory schooling, and at the latest before they reach 26 years of age, as well as to victims of domestic violence.

Under the Law, patients are entitled, without discrimination, to independently decide and give consent to the treatment, which thus implies that they shall not, without their consent be subject to any healthcare measure, whereas the consent may be withdrawn orally prior to initiation of the measure and at any moment during the treatment. A child who reached 15 years of age and is capable of understanding may give consent to the recommended healthcare measure. Patients without legal capacity should participate in deciding on whether to give the consent to a proposed healthcare measure, in accordance to their maturity and capacity to understand. If a patient is a minor, or deprived of his legal capacity, he may be subject of a medical measure after his legal representative (parent, adoptive parent or guardian) has been notified and has given his consent, whereas in case a responsible health professional deems that the patient’s legal representative do not acts in the best interest of the child or person deprived of legal capacity, he shall without delay notify the guardianship authority.

**Law on the Rights of the Patient (‘Official Gazette of RS 45/13) regulating rights of the patients, under Article 2, paragraph 3 defines a child as a person before reaching 18 years of age, whereas under paragraph 4 thereof, the capacity of a 15-year old child to understand is defined as the child’s capacity to understand the nature of its health condition, purpose of the recommended medical measure, risks and consequences of undertaking or failure to undertake the measure, as well as the capacity to review information in the process of decision-making. Under Article 19, paragraph 4, a child who reached 15 years of age and is capable to understand may independently give its consent to a recommended medical measure. Under paragraph 5 thereof, if the child rejects the recommended medical measure, a responsible healthcare professional shall seek the consent from the child’s legal representative. Under Article 20, paragraph 3, a child who reached 15 years of age shall be entitled to examine medical documents, and under Article 24, paragraph 1, the child shall have a guaranteed right to confidentiality of the data in its medical documents.**

**Under the penal provisions of the Law, inter alia, healthcare institutions, and/or other legal persons providing healthcare services may be fined if they fail to provide the child who reached 15 years of age insight into its medical documents or if they violate the right of the child to confidentiality of the data contained in its medical documents.**

#### **Ministry of Interior:**

**Under the Constitution of the Republic of Serbia (Official Gazette of RS, 98/06), a child is a person before reaching 18 years of age, which is in line with the definition contained in the Convention on the Right of the Child.**

**Under Article 112 of the Criminal Code (Official Gazette of RS, 85/05, 88/05-corrigendum, 107/05-corrigendum, 72/09, 111/09 and 121/12) a child is a person who has not yet reached 14 years of age. A minor is a person who reached 14 years of age, and has not yet reached 18 years of age. A minor is a person who has not yet reached 18 years of age.**

**The Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles A juvenile is a person who in a moment of criminal offence has reached 14 years of age, and has not reached 18 years of age. The younger juvenile is a person who in a moment of criminal offence has reached 14 years of age, and has not reached 16 years of age. A young adult is a person who in a moment of criminal offence has reached 16 years of age, and has not reached 18 years of age.**

**The referred to categorisation is included also in the Instruction for follow-up of police officers with juveniles and younger juveniles, and Special protocol on follow-up of police officers in protection of minors from abuse and neglect.**

### **Ministry of Science and Education:**

**The Constitution of the Republic of Serbia defines a child as a person below the age of eighteen years, which is in line with the definition provided by UN Convention on the Rights of the Child.**

**The Family Law, Law on Basics of Education System, Labour Law, Law on Health Protection and Law on Prevention of Discrimination against Persons with Disabilities also apply this definition.**

### **Ministry of Justice:**

**Under Article 112, paragraph (8) of the Criminal Code (Official Gazette of RS, 85/05, 88/05 – corrigendum, 107/05, 72/09, 111/09, 121/12 and 104/13) a child is a person under fourteen years of age. Under paragraph (9) thereof, a minor is a person over fourteen years of age but less than eighteen years of age. Under paragraph (10) thereof a juvenile is a person who has not reached eighteen years of age.**

**Also, under Article 3 of the Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles, a juvenile is a person who at the time of commission of the criminal offence has reached fourteen years of age and has not reached eighteen years of age. A younger juvenile is a person who at the time of commission of the criminal offence has reached fourteen and is under sixteen years of age. An elder juvenile is a person who at the time of commission of the criminal offence has reached sixteen and is under eighteen years of age. A young adult is a person who at the time of commission of the criminal offence has reached eighteen but has not reached twenty one years of age at the time of the trial, and who meets other conditions set forth by Article 41 of this Act.**

### **NGO Astra:**

**In the Criminal code ("*Official Gazette of RS*", No. 85/2005, 88/2005 - corr, 107/2005 -corr, 72/2009, 111/2009, 121/2012 and 104/2013) a juvenile is "a person who has not attained eighteen years of age". Other than the term juvenile (article 112. paragraph 10), as a unique, generic term, the criminal code defines a "child" (a person under fourteen years of age, article 112. paragraph 8), and a "minor" (a person over fourteen years of age but who has not attained eighteen years of age, article 112. paragraph 9).**

**The same definitions are found in the Law on Juvenile Offenders and Criminal Protection of Juveniles (article 2. and 3).**

**The Family Act uses the terms "minor" and „young adult“ not defining these terms. However, according to the article 11 of the Family Act, majority is obtained by reaching 18 years of age, so every person under that age can be considered a child. Full legal capacity is obtained by reaching the age of majority (article 11. of the Family Act). Full legal capacity can be obtained, before the age of majority, by concluding a marriage with court permission or through becoming a parent. In these cases the court decides upon majority when the sufficient requirements are met. (Article 11. paragraphs 2. and 3.**

Family Act). In neither of these cases can the child be under 16 years of age. On the other hand, a person who has reached majority at the age of eighteen years retains the status as "a minor child" if he/she is unable to care for himself/herself and protect his/her rights and interests due to an illness or disturbances in mental and physical development. In this case, with the decision of the court, parental rights do not cease with age of 18.

#### **NGO Centre for Children Rights:**

Internal legislation of the Republic of Serbia does not have one precise and full definition of term "child" that would be generally binding. Such a definition may be indirectly derived on the basis of Article 37 of the Constitution of the Republic of Serbia (Official Gazette of RS 98/2006) and Article 11 of the Family Code (Official Gazette of RS 18/2005 and 72/2011) under which that coming of age commences with 18 years of age, and thus it may be concluded that child is any human being under such an age.

However, criminal law does not follow the definition of child in full, but rather under the term "child" it recognizes a person under 14 years of age, while the term "juvenile" includes a person under 18 years of age.

The Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles (Official Gazette of RS 85/2002) a juvenile is a person who at the time of commission of the criminal offence has attained fourteen years of age and has not attained eighteen years of age. Also it differentiates the term „younger juvenile“ who is a person who at the time of commission of the criminal offence has attained fourteen and is under sixteen years of age and the term „elder juvenile“ who is a person at the time of commission of the criminal offence has attained sixteen and is under eighteen years of age.

b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with **Article 11, para. 2**?

#### **Ministry of Science and Education:**

The provisions of Article 64, paragraphs 1, 3 and 5 of the Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia", No. 98/06) provide that children may exercise human rights as suitable to their age and mental maturity. The children are to be protected from any psychological, physical, economic or any other exploitation or abuse.

c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

#### **NGO Atina:**

In Serbian law, the legal age of consent for sexual activities is 14 years of age.

**NGO Astra:**

**Age for legal sexual activities is 14. In the Criminal Code of the Republic of Serbia, article 180 refers to sexual intercourse with a child and foresees a prison sentence of three to 12 years for a person who has sexual intercourse or a similar act with a child (According to CC RS Article 112, paragraph 8 a child is a person younger than 14 years age).**

**NGO Centre for Children Rights:**

**Regarding sexual relations, the Criminal Code of the Republic of Serbia (Official Gazette of RS, 85/2005, 88/2005, 107/2005, 72/2009, 121/2012 and 104/2013) under Article 180 (criminal offence sexual intercourse with a child) criminalizes sexual intercourse with a child (a person under 14 years of age) or equal act regardless of whether the child gave its consent or not. The basic form of such a criminal act is sentenced by imprisonment from three to twelve years, whereas for so called qualified form of such a criminal act (grave consequence or death) the prison sentence from 5 to 15 years (if due to intercourse with a child a grave corporal injury occurred or the offence is committed by several persons or has pregnancy as a result) i.e. imprisonment of minimum 10 if it resulted in death of the child. Under the Law, offenders shall not be punished for the offence if there is no significant difference between the offender and the child in respect of their mental and physical level of development.**

**If the victim is a child who reached 14 years of age, and has not reached 18 years of age, the criminal liability exists if intercourse was forced, is a result of a threat or abuse of a position.**

## **Question 2: Non-discrimination**

**Is discrimination, on grounds such as the ones mentioned in the indicative list in Article 2, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify. If not, please justify.**

**Ministry of Health:**

**Under the Healthcare Law (Official Gazette of RS, 107/05, 72/09 st. law, 88/10, 99/10, 57/11, 119/12, 45/13-st.law), principle of fairness is exercised by prohibition of discrimination in provision of healthcare on the basis of race, gender, age, nationality, social origin, religion, political or other belief, ownership, culture, language, type of disease, mental or corporal disability.**

**Ministry of Interior:**

**Under the Police Law (Official Gazette of RS, 101/05, 63/09 – CC, 92/11), Article 35 ‘In exercising police powers, authorised officer shall act impartially, extending the same protection under the law, without bias or discrimination on any grounds.**

**In exercising police powers, authorised officers shall proceed humanely and with respect for the dignity, honour and good name of all, and other fundamental human rights and freedoms, favouring the rights of the endangered person over those of the person violating such rights, and mindful of the rights of third parties.'**

**Under the Code of Police Ethics (Official Gazette of RS, 92/06), Article 36 'In their work police officers are guided by the principle of impartiality in enforcement of the law regardless of nationality, ethical origin, race, language, social status of the person to whom the law should be enforced, of his political, religious or philosophic conventions, of his age, marital status, sex or any corporal or mental impairment. In carrying out their jobs, police officers treat the citizens politely and responsibly in the streets, at counter, border posts and other venues of execution of official action. In communication with citizens, police officers respect human personality and dignity and safeguard high standing of the Ministry'.**

**In addition to the mentioned, police officers when carrying out their police duties shall respect also provisions of the Law on Prohibition of Discrimination (Official Gazette of 22/09).**

**Ministry of youth and sport:**

**One of the main principles of the Law on Youth ("Official Gazette RS" No 50/11) is, mentioned law).**

**Ministry of Science and Education:**

**Yes.**

**NGO Astra:**

**Aside from the Anti-discrimination Act ("*Official Gazette of RS*", no 22/2009) and the criminal code ("*Official Gazette of RS*", no. 85/2005, 88/2005 – corr, 107/2005 – corr., 72/2009, 111/2009, 121/2012 i 104/2013) specific prohibition of discrimination against children and minors can be found in various areas regulated by different laws and relating to different categories of children or minors:**

- **The law on social protection ("*Official Gazette of RS*", no. 24/2011)**
- **Law on the Foundations of the Education System ("*Official Gazette of RS*", no. 72/2009, 52/2011 and 55/2013)**
- **The Law on Juvenile Offenders and Criminal Protection of Juveniles ("*Official Gazette of RS*", no. 85/2005)**
- **General Protocol for the Prevention of Child Abuse and Neglect (Adopted by the Resolution of the Government on August 25<sup>th</sup> 2005, 05 no. 011-5196/2005)**

**Special protocol on the procedure of judicial authorities to protect minors from abuse and neglect (no. 560-01-1/2009-01 from June 17<sup>th</sup> 2009.)**



## **Ministry of Labour, Employment and Social Policy:**

**In the annual reports of independent authorities (Ombudsman and Equality Commissioner), CSO's reports, EC and on the basis of media coverage on cases of discrimination, it is concluded that there is discrimination represented in different areas in the Republic of Serbia. Reasons for it may lie in the fact that a degree of intolerance exists in every society, but also that it is a result of a long-term consequences of violent dissolution of Yugoslavia and of war conflicts which led to grave economic and social problems in the Republic of Serbia, obstacles in development of democracy and human rights and cumbersome post-socialist transformation. In one period, as a consequence of all the mentioned, the culture of intolerance was created with certain vulnerable population groups and individuals – members of such groups (national minorities – in particular the Roma, minor religious communities, women, persons with different sexual orientation and gender identity, persons with disability, older persons, children, refugees and IDP's, persons whose health condition may represent grounds of discrimination and others) were exposed to discrimination. For such reasons, under Article 25 of the Social Welfare Law of the Republic of Serbia social welfare beneficiaries shall not be discriminated on grounds of race, sex, age, nationality, social origin, sexual orientation, religion, political, trade union or other association, financial position, culture, language, disability, nature of social exclusion or other personal characteristic. Owing to the activity of state authorities and civil society organisations the culture of intolerance has increasingly been replaced by the culture of tolerance and respect.**

### **Question 3: Overview of the implementation**

Please indicate (without entering into details):

- a. the main legislative or other measures to ensure that children are protected against sexual exploitation and sexual abuse in accordance with the Convention;

## **Ministry of Health:**

**The adoption and implementation of the Special health care system protocol for protection of children from abuse and neglect represents a response from the healthcare system concerning protecting children from abuse and neglect.**

## **Ministry of Interior:**

**Laws and by-laws implemented by police officers in this field:**

- **Criminal Code (Official Gazette of RS, 85/05, 88/05-corrigendum, 107/05-corrigendum, 72/09, 111/09 and 121/12);**
- **Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles (Official Gazette of RS, 85/05);**
- **Criminal Procedure Code (Official Gazette of RS, 72/2011, 101/2011, 121/2011, 32/2013 and 45/2013)**

- Law on Special Measures for the Prevention of Sexual Crimes Against Minors (Official Gazette of RS, 32/21)
- Law Ratifying Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Official Gazette of RS – MU 1/10)

Special protocol on the follow-up of the police officers in provision of protection to minors from abuse and neglect (01 no. 1039/12-7 of 14 March 2012).

#### **Ministry of Youth and Sport:**

The National Youth Strategy (“Official Gazette RS” No 55/08), as the strategic document treating the status of the population between 15 and 30 years of age, was adopted by the Government of the Republic of Serbia in 2008 and will last until 2014. The Action Plan for its implementation in the period 2009-2014 was adopted in 2009. These documents don’t explicitly protect children and young people against sexual exploitation and sexual abuse, but contain 11 general strategic objectives that are to be achieved and, among them, one of the most important is providing safety for the relevant population. Also, drafting the Protocol on protection of children and young people against violence in recreational and sport activities is currently ongoing.

#### **Ministry of Justice:**

Under Article 178, of the Criminal Code, Rape, the following is proscribed: (1) Whoever by using of force or a threat of direct attack against at person’s body or the body of another forces that person to copulation or an equivalent act, shall be punished with imprisonment of from three to twelve years. (2) If the offence referred to in paragraph 1 of this Article is committed under threat of disclosure of information against such person or another that would discredit such person’s reputation or honour, or by threat of other grave evil, the offender shall be punished with imprisonment of from two to ten years. (3) If the offence referred to in paragraphs 1. and 2. of this Article resulted 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 from five to fifteen years. (4) If the offence referred to in paragraphs 1. and 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of minimum ten years. The Article 179 provides for the criminal offence of Sexual Intercourse with a Helpless Person. Thus, under paragraph (1) thereof, Whoever has sexual intercourse with another or commits an equal act by taking advantage of such person’s mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which the person is incapable of resistance, shall be punished with imprisonment of two to ten years. Under paragraph (2) thereof, If the helpless person suffers serious bodily harm due to the offence referred to in paragraph 1 of this Article, or the offence has been committed by several persons, or in a particularly cruel or humiliating manner, or against a juvenile, or if the act resulted in pregnancy, the perpetrator shall be punished with imprisonment of five to

fifteen years. (3) If the offence referred to in paragraphs 1. And 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of minimum ten years. Article 180 regulates criminal offence of Sexual Intercourse with a Child. Therefore, under paragraph (1) thereof, whoever has sexual intercourse or commits an equal act against a child, shall be punished with imprisonment from three to twelve years. Under paragraph (2) thereof, if the offence specified in paragraph 1 of this Article results in grievous bodily harm of the child against whom the act was committed or if several persons or the act commits the act resulted in pregnancy, the offender shall be punished with imprisonment from five to fifteen years. (3) If death of the child results due to the offence specified in paragraphs 1. and 2 of this Article, the offender shall be punished with imprisonment of minimum ten years. (4) An offender shall not be punished for the offence specified in paragraph 1 of this Article if there is no considerable difference between the offender and the child in respect of their mental and physical development. Article 181 regulates criminal offence of Sexual Intercourse through Abuse of Position. Therefore, under paragraph (1) thereof, whoever by abuse of position induces to sexual intercourse or an equal act a person who is in a subordinate or dependant position, shall be punished with imprisonment of three months to three years (2) 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 a juvenile entrusted to him for learning, tutoring, guardianship or care, shall be punished with imprisonment from one to ten years. (3) If the offence specified in paragraph 2 of this Article is committed against a child, the offender shall be punished with imprisonment of three to twelve years. (4) If the offence specified in paragraphs 1 through 3 of this Article resulted in pregnancy, the offender shall be punished for the offence specified in paragraph 1 by imprisonment from six months to five years, and for the offence specified in paragraph 2 by imprisonment from two to twelve years, and for the offence specified in paragraph 3 by imprisonment from three to fifteen years. (5) If death of the child results due to offence specified in paragraph 3 of this Article, the offender shall be punished with imprisonment of minimum ten years. Article 183 regulates Prohibited Sexual Acts. Under paragraph (1) thereof, whoever pimps a minor for sexual intercourse or an equal act or other sexual act, shall be punished with imprisonment of one to eight years and a fine. (2) Whoever procures a minor for sexual intercourse or an act of equal magnitude or other sexual act, shall be punished with imprisonment of six months to five years and a fine. Mediation in Prostitution is criminalised under Article 184 of the Criminal Code. Thus, under paragraph (1) thereof, 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 imprisonment of six months to five years and a fine. (2) If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished with imprisonment from one to ten years and a fine. Showing, procuring and possession of Pornographic Material and Juvenile Pornography is subject of Article 185. Thus, under paragraph 1 thereof, (1) whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a minor or shows to a child a pornographic performance, shall be punished with a fine or imprisonment up to six months. (2) Whoever uses a minor 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) If the offence specified in paragraphs 1 2 hereof has been perpetrated against a child, the offender shall be punished with imprisonment of six months to three years for the offence from paragraph 1 and with imprisonment of one year to eight years for the offence from paragraph 2. (4) Whoever obtains for himself or another, possesses, sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting abuse of a juvenile, shall be punished with imprisonment from three months to three years. (5) Items specified in paragraphs 1 through 4 of this Article shall be confiscated. The criminal act of inducing a Minor to Attend Sexual Acts is regulated under Article 185. Thus, under paragraph (1) thereof, whoever induces a minor to attend a rape, sexual intercourse, or an act equivalent to it, or some other sexual act, shall be punished with imprisonment of six months to five years and a fine. (2) If the offence referred to in paragraph 1 hereof has been perpetrated using force or threat, or against a child, the offender shall be punished with imprisonment of one year to eight years. Abuse of Computer Networks and Other Methods of Electronic Communication to Commit Criminal Offences Against Sexual Freedom of Minors is criminalized under Article 185b. Therefore, Under Article (1) thereof, whoever with intent to commit an offence referred to in Article 178 178 paragraph 4, Article 179, paragraph 3, Article 180, paragraphs 1 and 2, Article 181, paragraphs 2 and 3, 2. Article 182, paragraph 1, Article 183, paragraph 2, Article 184, paragraph 3, Article 185, paragraph 2, and Article 185a herein and using computer networks or other method of electronic communication makes an arrangement to meet with a minor and arrives at the prearranged meeting place in order to meet with the minor, shall be punished with imprisonment of six months to five years and a fine. (2) Whoever perpetrates the offence referred to in paragraph 1 hereof against a child, shall be punished with imprisonment of one year to eight years. Under Article 197, of the Criminal Code, Incest, the following is proscribed: 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 six months to five years. Under Article 388, of the Criminal Code, Human Trafficking, the following is proscribed: Under paragraph (1) thereof, 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, mendacity, pornography, removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of three to twelve years. (2) When the offence specified in paragraph 1 of this Article 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. (3) If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished by imprisonment of minimum five years. (4) If the offence referred to in paragraphs 1 and 2 of this article resulted in severe bodily harm, the perpetrator shall be punished with imprisonment from five to fifteen years, and in case of severe bodily harm to a juvenile person due to the offence referred to in para 3, the perpetrator shall be punished with minimum five years' imprisonment. (5) If the offence referred to in paragraphs 1 and 3 of this Article, resulted in death of one or more persons, the offender shall be punished

with imprisonment of minimum ten years. 6) Whoever habitually engages in offences specified in paragraphs 1 and 3 of this Article or if a group commits the offence, shall be punished by imprisonment of minimum five years. (7) If the offence specified in paragraphs 1 through 3 hereof has been perpetrated by an organized crime group, the offender shall be punished with imprisonment of minimum ten years. (8) Whoever knows or should have known that a person is a victim of human trafficking and abuses their position or allows another to abuse their position for the purpose of exploitation referred to in paragraph 1 hereof, shall be punished with imprisonment of six months to five years. (9) If the offence referred to in paragraph 8 hereof has been committed against a person whom the offender knows or should have known is a minor, the offender shall be punished with imprisonment of one year to eight years. (10) Person's consent to be exploited or held in slavery or servitude referred to in paragraph 1 hereof shall not prejudice the existence of the criminal offence stipulated under paragraphs 1, 2, and 6 hereof.

**NGO Atina:**

1. The law on Juvenile Offenders and Criminal Protection of Juveniles ("Official Gazette of RS", No. 85/2005)
2. THE LAW ON SPECIFIC MEASURES TO PREVENT COMMISSION OF CRIMINAL OFFENCES AGAINST SEXUAL FREEDOM OF JUVENILES (Official Gazette No. 32/2013)
3. Criminal Code ("Official Gazette of RS", No. 85/2005, 88/2005 - amend., 107/2005 - amend., 72/2009, 111/2009 and 121/2012)
4. The Code of Criminal Procedure ("Official Gazette of RS", No. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013)
5. Law on Ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, "Official Gazette of RS – International Contracts", No. 1/2010
6. Family Law ("Official Gazette of RS", No. 18/2005 and 72/2011 – state law)
7. The law on Protection of Personal Data ("Official Gazette of RS", No. 97/2008, 104/2009 – state law, 68/2012 – decision of the Constitutional Court and 107/2012)
8. General Protocol for the Protection of Children Against Child Abuse and Neglect (adopted by the Resolution of the Government dated August 25, 2005, 05 No. 011-5196/2005)
9. Special Protocol on the procedures of judicial authorities to protect minors from abuse and neglect (No. 560-01-1/2009-01 June 17, 2009)
10. Special Protocol for the protection of children in social welfare institutions from abuse and neglect (ISBN: 86-7704-015-3, dated February 17, 2006)
11. Special Protocol on the treatment of police officers in protecting minors from abuse and neglect (01 No. 1039/12-7 dated March 14, 2012)
12. Special Protocol of health care system for the protection of children from abuse and neglect (ISBN: 987-86-82471-79-0, April, 2009)
13. Special Protocol for the protection of children and students from violence, abuse and neglect in educational institutions (ISBN: 978-86-7452-028-4 since October 4, 2007)
14. Rulebook of Protocol on treatment at the institution in response to violence, abuse and neglect (Official Gazette of RS No. 30/10)

**Guidelines on the conduct of police officers toward minors and young adults (01 No. 4898/06 since May 1, 2006)**

**NGO Astra:**

**General Protocol for the Prevention of Child Abuse and Neglect (Adopted by the Resolution of the Government on August 25<sup>th</sup> 2005, 05 no. 011-5196/2005)**

**Special protocol for the protection of children in social care from abuse and neglect (ISBN: 86-7704-015-3, from February 17<sup>th</sup> 2006.)**

**Special Protocol of the health care system for the protection of children from abuse and neglect (ISBN: 987-86-82471-79-0, April 2009.)**

**Special protocol for the protection of children and students from violence, abuse and neglect in educational institutions (ISBN: 978-86-7452-028-4 from October 4<sup>th</sup> 2007.)**

**The Criminal Code ("*Official Gazette of RS*", no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009, 111/2009, 121/2012 and 104/2013):**

**NGO Centre for Children Rights:**

**The internal law contains numerous provisions whereby protection of children from sexual exploitation and sexual abuse is provided for.**

**Criminal Code of the Republic of Serbia criminalizes various acts that fall under the category of sexual exploitation and sexual abuse under the Convention. Such offences are criminalised under the Chapter XVIII of the Criminal Code – Criminal Offences Against Sexual Freedom (rape, sexual intercourse with helpless person, intercourse with a child, sexual intercourse through abuse of a position, prohibited sexual acts, procurement of sexual services, mediation in prostitution, Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, Incitement of Minors to Attend Sexual Acts, Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles) Chapter XIX of the Criminal Code - CRIMINAL OFFENCES AGAINST MARRIAGE AND FAMILY (Cohabitation with Minors, Neglecting and Abusing Juveniles, Domestic Violence, Incest), Chapter XXXIV -CRIMINAL OFFENCES AGAINST HUMANITY AND OTHER RIGHT GUARANTEED BY INTERNATIONAL LAW (Human Trafficking).**

**As a rule, sentences that may be pronounced to the offenders of some of the referred to criminal acts are more severe if victims are children or minors than adults. Besides, sexual intercourse with a child (Article 180 of the CC), Procurement of Sexual Services (Art. 183 of the CC), mediation in prostitution (Art. 184, paragraph 2) and Incitement of Minors to**

**Attendant Sexual Acts (Art. 185a, CC) are proscribed as special criminal acts the exclusive objective of which is to protect children and other minors. By the revision of the Criminal Code in 2009, sentences for almost all criminal acts against sexual freedoms have been significantly increased, and in particular those for criminal offences against sexual freedoms in which children and minors are victims. Regarding criminal offences of procurement of sexual services and mediation in prostitution, the court is bound to pronounce a fine in addition to prison sentence. Finally, in certain cases, the Criminal Code proscribes a harsher sentence when a victim is a child than when it is other minor.**

**Under the Criminal Code, attempt, Aiding and Abetting in commission of such criminal offences are also classified as punishable acts.**

**Although the legislator has demonstrated his explicit intention to protect children and juveniles from any form of exploitation, there are certain fields, which need to be mentioned here regarding further alignment of our criminal law with the assumed international obligations. Firstly, the following forms of conduct are not explicitly criminalised, i.e. determined as criminal offences:**

- An offence of “earning or any other form of exploitation to that end” as a method of commission of a criminal act of Procurement of Sexual Services is not criminalized.**
- Cases when a criminal group has committed various forms of forced prostitution.**
- Use of services of child prostitution is not explicitly criminalized as a criminal offence, rather criminal liability is there only if the child is under 14 years of age (criminal offence of sexual intercourse with a child).**
- Wilful presence at pornographic shows in which children take part is not criminalised in the internal law.**

**Regarding offences pertaining to child prostitution, the law does not take into account as aggravating circumstance the fact that offender, intentionally or by negligence, endangered a child’s life or that such a criminal act involves grave violence or has caused severe damage to the child.**

**Regarding the offences which pertain to child pornography, the sentences determined are too mild bearing in mind that child pornography is more than pornography itself: it usually goes hand in hand with child abuse and can seriously damage and injure physical and mental integrity of the child.**

**The Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles contains a special part pertaining to children who are victims and children who are witnesses of criminal offences, and also contains a set of provisions ensuring prevention of secondary victimisation and leaving out damaging consequences of the procedure to the personality of a minor.**

**The Family Code of the Republic of Serbia regulates procedures of the pronouncement of security measures in cases of domestic violence, pronouncement of measure of deprivation of parental rights, protection of the child and other procedures of relevance for this subject matter.**

**Legal and institutional framework in this field was additionally improved in 2013, in particular given that the new Criminal Procedure Code (Official Gazette of RS 72/2011, 101/2012, 121/2012, 32/2013 и 45/2013) come into effect, which contains provisions on questioning of particularly vulnerable witnesses and also given the enactment of the Law on Special Measures for the Prevention of Criminal Offences Against Sexual Freedoms Regarding Minors (Official Gazette of RS 32/12) laying down special measures to be taken against criminal offenders who commit sexual offences against minors and to establish that criminal prosecution shall not be subject to prescription.**

**Also, by adopting in 2005 the General Protocol for the Protection of Children from Abuse and Neglect, and special protocols for the protection of children from violence, abuse and neglect to be followed in education, social welfare, healthcare, justice and law-enforcement, competences and follow-up of all actors involved in multi-sectoral protection of children in cases of child abuse and neglect**

**Although legal framework has been advanced, in practice we have problems with implementation of the enacted legal acts and of functioning of control mechanism, inefficient inter-sectoral cooperation in provision of the protection to children from violence, absence of the child-friendly justice system, and lacking programme of support, reintegration and prevention.**

- b. whether your country has adopted a national strategy and/or Action Plan to combat sexual exploitation and sexual abuse of children. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

**Ministry of Interior:**

**Adopted strategic papers:**

- **National Action Plan for Children (2004-2015);**
- **National strategy for prevention and protection of children from violence (Official Gazette of RS, 122/08);**
- **Action Plan of the National strategy for prevention and protection of children from violence (Official Gazette of RS, 15/10);**
- **National Strategy for Young Persons (Official Gazette of RS, 55/08);**
- **Action Plan of the National Strategy for Young Persons (Official Gazette of RS, 55/08);**



**Drafts:**

- **National strategy for prevention and protection of children from trafficking and exploitation, pornography and prostitution (2011 – 2015);**
- **Action plan for prevention and protection of children from exploitation and pornography by abusing information and communication technologies in the Republic of Serbia (2012-2014);**
- **National strategy of prevention and suppression of human trafficking, in particular women and children and protection of victims (2013-2018);**

**Action plan of the National strategy of prevention and suppression of human trafficking, in particular women and children and protection of victims (2014-2015);**

**NGO Atina:**

- **National Strategy for the Prevention and Protection of Children from Violence ("Official Gazette of RS", No. 122/2008)**
- **Draft of the national Strategy to prevent and combat human trafficking and protect the victims in the Republic of Serbia for the period 2013-2018.**

**Draft of the accompanying Action Plan for implementation of the Strategy for the period 2013-2014.**

**NGO Astra:**

**The recommendation of the Committee (71g) to the initial report of the Republic of Serbia on the application of the Convention on the rights of the child, which refers to the development of a comprehensive strategy to prevent child trafficking and sexual exploitation of children, has not been implemented yet, although the Government of the Republic of Serbia adopted, by their decision on 11 March 2010<sup>th</sup> an Action Plan for implementation of the National Strategy for the Prevention and Protection of Children from Violence (2010 - 2012), which defines the activity: preparation and adoption of a national strategy to combat child trafficking.**

**At the time of writing of this report the Republic of Serbia still does not have a new strategy and a national action plan to combat human trafficking. A draft Strategy for prevention and combating of trafficking and protection of victims and the Action Plan for the period 2013-2018 have been made. The draft Strategy has defined five specific objectives, with a special target number 5 referring to the children: "Children are protected from human trafficking and its consequences through special participatory programs that are implemented in their best interest."**

## Protector of Citizens:

### Joint answer for items a and b:

In 2005, the Government of the Republic of Serbia adopted the *General Protocol on Protection of Children from Abuse and Neglect*, which laid down the mandatory steps to be taken by government and other authorities in cases where they learn/suspect a child<sup>1</sup> is or could be exposed to some form of violence. The *General Protocol* defines abuse and neglect and their respective forms, including sexual exploitation and sexual violence. One of the duties imposed by the *General Protocol* is the adoption of *special protocols on protection of children from abuse and neglect*, which were adopted by the respective ministries within the next four years (by 2009).<sup>2</sup> The Ministry of Education, Science and Technological Development has also adopted the *Regulations on the Protocol of Actions in Response to Violence, Abuse and Neglect*, which gave the provisions of the *Special Protocol on Protection of Children from Abuse and Neglect in Educational Institutions* the shape of an implementing regulation, thereby making it legally binding for all educational institutions .

In late 2005, Serbia enacted the *Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles*<sup>3</sup>, a modern *lex specialis* based on the principles of restorative justice, which - in regard to the general provisions of *Criminal Procedure Code*<sup>4</sup> - lays down specific provisions governing the status of children offenders and children victims of specific criminal offences<sup>5</sup>. The latter provisions apply also to children who are victims of criminal offences against sexual freedom<sup>6</sup> and against marriage and family<sup>7</sup>. The provisions of this Law allow for the imposition of specific measures to protect a child victim from repeat victimization (prosecutors and judges have a duty to try to avoid any actions that may harm a child's personality and development; a child should be questioned with the assistance of psychologist, pedagogue or other qualified person; a child can be questioned at most twice, except if the court finds further hearings necessary; audio and video links may be used when a child is heard, without the presence of the parties and other participants in the proceeding; a possibility to question a child in a separate room or in his/her home).<sup>8</sup>

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<sup>1</sup> "Child" means a person under 18 years of age.

<sup>2</sup> Special Protocol on Actions of Police Officers in Protection of Juveniles from Abuse and Neglect, Ministry of Internal Affairs, 2006; Special Protocol on Protection of Children in Social Welfare Institutions from Abuse and Neglect, Ministry of Labour, Employment and Social Policy, 2006; Special Protocol on Protection of Children and Pupils from Violence, Abuse and Neglect in Educational Institutions; Special Protocol of the Health Care System on Protection of Children from Abuse and Neglect, Ministry of Health, 2009; Special Protocol on Procedure of Judicial Authorities in Protection of Juveniles from Abuse and Neglect, Ministry of Justice and Public Administration, 2009.

<sup>3</sup> "Official Gazette of the Republic of Serbia" No. 85/2005.

<sup>4</sup> "Official Gazette of the Republic of Serbia" Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.

<sup>5</sup> Article 150 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles.

<sup>6</sup> Rape (Article 178 paragraphs 3 and 4 of the Criminal Code); Sexual Intercourse with a Helpless Person (Article 179 paragraphs 2 and 3 of the Criminal Code); Sexual Intercourse with a Child (Article 180 of the Criminal Code); Sexual Intercourse through Abuse of Position (Article 181 of the Criminal Code); Prohibited Sexual Acts (Article 182 of the Criminal Code); Pimping and Procuring (Article 183 of the Criminal Code); Mediation in Prostitution (Article 184 paragraph 2 of the Criminal Code); Showing Pornographic Material and Child Pornography (Article 185 of the Criminal Code).

<sup>7</sup> Of relevance for this report are those provisions of the Criminal Code which pertain to the criminal offences Cohabiting with a Minor (Article 190) and Incest (Article 197).

<sup>8</sup> Article 152 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles.

The enactment of the *Law on Special Measures to Prevent Criminal Offences against the Sexual Freedom of Minors*, the so-called “Maria’s Law”<sup>9</sup>, was a major step forward in the effort to protect children against sexual violence. This Law introduced a number of novelties: impossibility to mitigate the penalty and unavailability of release on parole; imposition of special protective measures and specific legal consequences of conviction with duration up to 20 years; introduction of special records of persons convicted for any of the criminal offences listed above; and it lifted all statutes of limitation on criminal prosecution and enforcement of penalty for criminal offences against the sexual freedom of children (Rape; Sexual Intercourse with a Helpless Person; Sexual Intercourse with a Child; Sexual Intercourse through Abuse of Position; Prohibited Sexual Acts; Pimping and Procuring; Mediation in Prostitution; Showing Pornographic Material and Child Pornography; Inducing a Minor to Attend Sexual Acts<sup>10</sup>; Abuse of Computer Networks and Other Methods of Electronic Communication To Commit Criminal Offences Against Sexual Freedom of Minors<sup>11</sup>).

NGO Centre for Children Rights:

National Strategy for the Prevention and Protection of Children from Violence was adopted in 2008. Strategic general objectives include development of safe environment in which every child will be able to exercise its rights and to be protected from every form of violence. It also encompasses the goal to set up a national system of prevention and protection of children from all forms of abuse, neglect and exploitation.

Strategy to Combat Trafficking in Human Beings in the Republic of Serbia was adopted in 2006, simultaneously with its National Action Plan from 2009 through 2011, both papers treating children as a sub-issue of the wider issue of human trafficking therefore rendering measures and activities which relate to adult persons to be applicable as well to children (minors, juveniles) victims of human trafficking. None of the objectives and goals defined in these papers is exclusively focused to children, which is one of the basic faults of these documents.

Furthermore, the Republic of Serbia does not have any new human anti-trafficking strategy paper or action plan. Strategy of the Prevention and Suppression of Human Trafficking and the Protection of Victims and its Action Plan covering period from 2013 to 2018 has been drafted. It defines five special objectives of which Special Objective 5 is related to children and reads: "Children will be protected from human trafficking and its consequences by special participation programmes implemented in their best interest." By the Conclusion of the Government of the Republic of Serbia of 11 March 2010, the Action Plan (2010-2012) was adopted, which, among others, defines the activity of: Preparation and adoption of the National Strategy for Combating Child Trafficking. However, the comprehensive strategy for the prevention of trafficking in children and sexual exploitation has not been drafted to date.

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<sup>9</sup> The enactment of this Law was initiated by the father of a girl named Marija, who was raped and then murdered by an older man she knew, who had already been convicted for an identical criminal offence in the past.

<sup>10</sup> Article 185a of the Criminal Code.

<sup>11</sup> Article 185b of the Criminal Code.

**In 2010 and 2011, in cooperation with the ministries responsible for human and minority rights, public administration and local government, interior, informing and information society, social policy, Service for Coordination of the Protection of Victims of Human Trafficking, Higher Public Prosecutor's Office in Belgrade, Organisational unit of the INTERPOL for Serbia and citizens' associations Beosupport, Atina and Astra, Centre for the Right of the Child drafted National Strategy for the Prevention and Protection of Children from Trafficking and Child Exploitation in Pornography and Prostitution.**

**The Draft envisages development of three operational papers – action plans (on the prevention and protection of children from trafficking and exploitation for pornographic and prostitution purposes). In 2011, the Action Plan for the Prevention and Protection of Children from Exploitation for Pornography by Abusing Information and Communication Technologies (2012-2014) was drafted, elaborating a part from the Draft Strategy pertaining to the prevention and protection of children from exploitation for pornography by abusing ICT. The inter-sectoral working group composed of representatives of relevant ministries, state institutions and citizens' associations prepared the Action Plan Draft.**

**Both drafts, i.e. of the Strategy and of the Action Plan for the Prevention and Protection of Children from Exploitation for Pornography by Abusing Information and Communication Technologies have been communicated to the Ministry of Interior for opinion and examination, with the aim of their adoption by the Government of the Republic of Serbia.**

**Although all the relevant ministries and line organisational law-enforcement units passed positive opinion on the documents, the Ministry of Interior failed to submit them to the Government for adoption. Instead, in the draft of the Strategy of the Prevention and Suppression of Human Trafficking and Protection of Victims, it envisaged a special objective concerning child, which is related solely to protection of children who are victims of human trafficking. Thus an opportunity to define in a comprehensive and overall manner public policy of protection of children from trafficking and child exploitation for pornography and prostitution is missed.**

- c. whether your country has any guidelines to ensure a child-friendly implementation of the laws, measures and strategies referred to in letters (a) and (b) above. If so, please specify. With regard to judicial proceedings, please specify whether the Council of Europe Guidelines on Child-friendly Justice were taken as inspiration for your guidelines.

**Ministry of Justice:**

**Judges, public prosecutors and other experts on the right of the child and/or juvenile take part in the proceedings conducted with the participation of children. Under Article 44 of the Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles, a Juvenile judge and juvenile bench judges must be persons who have acquired special qualifications in the field of the rights of the child and juvenile delinquency. Lay judges are elected from the ranks of teachers, professors, educators and other qualified persons experienced in work with children and youth. Under Article 49 thereof, a juvenile shall have defence counsel during the first questioning and throughout the proceedings. If the juvenile, his legal representative or relatives fail to retain counsel, such counsel shall be**

**appointed ex officio by the Juvenile judge. Counsel for the juvenile may be only an attorney with special qualification in the field of the rights of the child and juvenile delinquency.**

**NGO Centre for Child Rights:**

**To date, in the Republic of Serbia there are no guidelines developed which are supposed to ensure law enforcement, application of measures and implementation of strategies in a child-friendly manner. Child-friendly versions have only been developed regarding the enforcement of the Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles and enforcement of criminal sanctions pronounced to juveniles, mostly covering offenders, and not children who are victims of criminal offences and children who are witnesses of criminal offences. Reform of Judiciary in part pertaining to compliance with the principle of child-friendly judiciary in civil law and administration law proceedings have not been implemented to date, thus seriously preventing children to protect their lawfully established and guaranteed rights.**

**Question 4: Child participation**

- a. Please indicate what steps have been taken to encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children (**Article 9, para. 1**);

**NGO Atina:**

**Although the participation of children has been introduced through the regulatory framework as a principle, there are no mechanisms for true and ethical participation of children in practice. If it happens, it happens ad hoc, mostly through the activities of NGOs, and without any feedback to children. There is a group of children, who creates alternative report on the implementation of the Convention and its accompanying protocols (children's report) – this process is guided by the Coalition for Monitoring Child Rights in Serbia.**

**NGO Astra:**

**The Ombudsman has chosen 30 boys and girls from all of Serbia in 2010 to form a panel of young associates as a permanent form of children's participation in the work of the institution. Other state institutions do not have the practice of enabling children's participation in the development and the implementation of state policies, programmes or other initiatives.**

**NGO Centre for Child Rights:**

**There is no a comprehensive policy of involvement of children in the process of creation and implementation of public policies, programmes and other initiatives concerning fight against sexual exploitation and sexual abuse of children.**

**Law** The report of the Centre for the Right of the Child concerning exercising the right of the child in the Republic of Serbia in 2012 from the point of view of children and young people is prepared on the basis of a research conducted in three groups of children and young persons, namely Child Information and Culture Service DH- group of children and young persons at the Centre for the Right of the Child (Belgrade), young activists of the programme of the Society for Development of Children and Young Persons – Open Club (Nis), and young members of the youth club at Centre for the Right of the Child in Uzice, which shows that share of involvement of children in policy - making is extremely low. **Law** According to the results of the research, only 3.1% of children and young persons in the Republic of Serbia participated in public debates on issues troubling children and young persons, whereas 2.8% of children and young persons attended meetings with representatives of municipality, and 67% has not been asked by anyone to voice their opinion of relevance for life in their cities and municipalities.

- b. In particular, please indicate whether, and if so, how child victim's views, needs and concerns have been taken into account in determining the legislative or other measures to assist victims (**Article 14, para. 1**).

#### **NGO Astra**

**ASTRA** develops its programmes of direct assistance to the victims of human trafficking with full participation of its clients and taking into account their needs and wishes. In our experience in working with the institutions in the system of social protection as well as those relevant for recovery and reintegration of children victims of human trafficking, they do not take into account the children's views, wishes and concerns i.e. they do it on the most basic level of participation and only declaratively.

#### **Question 5: Specialised bodies/mechanisms**

- a. Please indicate the independent institution(s) (national or local) in charge of promoting and protecting the rights of the child. Please specify its/their responsibilities and indicate how resources are secured for it/them (**Article 10, para. 2, letter (a)**);

#### **Ministry of Interior:**

**To protect children's rights, different institutional mechanisms have been in place, both at national and local levels, including:**

- **Council for the Right of the Child of the Republic of Serbia**
- **Council for Young Persons of the Government of the Republic of Serbia;**
- **Council for monitoring and promoting activities of the authorities for criminal procedure and enforcement of criminal sanctions against juveniles**

- Working group for the promotion and monitoring implementation of the Action plan of the National strategy for prevention and protection of children from violence;
- Working group of the Ministry of Youth and Sports for monitoring implementation of the National Strategy for Young Persons;
- Working group of the Ministry of Education for monitoring implementation of the Framework action plan for prevention of violence in educational institutions and of the Programme “School Without Violence” – Towards safe and stimulative environment;

**Council for Fight against Trafficking in Human Beings (Coordinator for fight against trafficking in human beings; Republic team for fight against trafficking in human beings, and Service for coordination of protection of victims of human trafficking);**

**NGO Astra:**

**Ombudsman of the Republic of Serbia (Ombudsman for Children) acts on complaints from citizens and children in cases of violation of rights in different areas of children's rights, or on his own initiative when he possesses the knowledge and information about a possible violation of the rights of the child. In every case where he/she controls the work of the administration, the best interests of the child guide the Ombudsman. Work of the Ombudsman is financed from the state budget.**

**Protector of Citizens:**

**The Protector of Citizens (Ombudsman) is an independent and autonomous public authority established under the Constitution of the Republic of Serbia<sup>12</sup> and the Law on the Protector of Citizens<sup>13</sup>, responsible for protecting the rights of citizens and controlling the work of public authorities, the authority in charge of legal protection of property rights and interests of the Republic of Serbia and other bodies and organisations, enterprises and institutions vested with public powers. The Protector of Citizens is not authorised to control the work of National Assembly, President of the Republic, Government of Serbia, Constitutional Court, courts and public prosecution's offices. The Protector of Citizens is appointed and dismissed from office by National Assembly, in accordance with the Constitution and the law. The Protector of Citizens has four deputies, wherein appropriate specialisation in protection and promotion of child's rights is ensured.**

**The Protector of Citizens exercises his control role by acting on citizens' complaints and on his own initiative, upon learning of any potential violation of child's rights.<sup>14</sup> Children may refer the Protector of Citizens personally or a complaint may be lodged on their behalf by their parents or legal representatives.<sup>15</sup> In the investigation procedure, the Protector of Citizens may request any records and documents, carry out control visits (announced or**

<sup>12</sup> Article 138 of the Constitution of the Republic of Serbia (“Official Gazette of the Republic of Serbia“ No. 98/2006).

<sup>13</sup> “Official Gazette of the Republic of Serbia“ Nos. 79/2005 and 54/2007.

<sup>14</sup> Article 24 of the Law on the Protector of Citizens.

<sup>15</sup> Article 25 of the Law on the Protector of Citizens.

unannounced) in the institutions where children stay and interview the management and staff of relevant authorities; the authorities under investigation have a duty to respond to all requests of the Protector of Citizens and to provide him with all requested information and documents. Authorities have a duty to cooperate with the Protector of Citizens, to grant him access to their premises and all information they hold that may be relevant for the procedure carried out by the Ombudsman or for the achievement of the objective of his preventive action, regardless of their classification level, unless it is contrary to the law.<sup>16</sup>

The Protector of Citizens has the power to propose bills within his sphere of competence and to launch initiatives with the Government and the National Assembly for the amendment of laws and other regulations and general acts, if he deems that violations of citizens' rights are caused by deficiencies in legislation. The Ombudsman is also authorised to initiate the enactment of new laws, other regulations and general acts when he finds it relevant for the exercise and protection of citizens' rights. The Government or the competent Committee of the National Assembly has a duty to consider the initiatives made by the Protector of Citizens<sup>17</sup>. The Protector of Citizens has been using these competences in the child's rights area, since he has found that the existing legislation requires substantial amendments for further improvement of protection and exercise of the rights of the child in Serbia.

Another power vested with the Protector of Citizens is the initiation of proceeding before the Constitutional Court for the assessment of the constitutionality and legality of laws, other regulations and general acts.<sup>18</sup>

Under the Law on the Protector of Citizens, the funds for the operations of this authority are provided in the national budget, on the basis of a proposal submitted by the Protector of Citizens to the Government for inclusion of that proposal in the draft national budget. The Law further stipulates that the annual funds for the Protector of Citizens should be sufficient to enable him to effectively and efficiently exercise his function, but within the constraints of the country's overall macroeconomic policy<sup>19</sup>.

- b. Which legislative or other measures have been taken to set up or designate mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection? (**Article 10, para. 2, letter (b)**);

**NGO Atina:**

The Law on specific measures to prevent commission of criminal offences against sexual freedom of juveniles was adopted in 2013<sup>20</sup>. This law prescribes special measures conducted toward the perpetrators of criminal offence against sexual freedom committed

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<sup>16</sup> Articles 21 and 29 of the Law on the Protector of Citizens.

<sup>17</sup> Article 18 of the Law on the Protector of Citizens.

<sup>18</sup> Article 19 of the Law on the Protector of Citizens.

<sup>19</sup> Article 37 of the Law on the Protector of Citizens.

<sup>20</sup> Official Gazette of RS No.32/2013



against juveniles, defined by this law, and governs the conduct of special records of persons convicted for such offences. In addition to that, the law stipulates the prohibition of mitigating and parole, as well as the prohibition of obsolescence of prosecution and keeping special records. There are still no records and register that this law predicts.

**NGO Astra:**

When it comes to human trafficking in Serbia there is no body that is responsible for coordinating the collection of data on trafficking and related offences. There are several sources of data on victims of trafficking, from the Ministry of Interior, which records information on the number of criminal charges that were filed in a given period for this criminal act, through the Centre for the Protection of Victims of Human Trafficking, which keeps track of identified trafficking victims, social welfare centres, including non-governmental organizations that provide assistance to victims and keep records of their clients. These data are not coordinated and comparable, primarily due to the different criteria of recording.

Regarding the data on conducted investigations, prosecutions, court proceedings and rulings, there is also no centralized database, which would enable easy access to data. Republic Public Prosecutor's Office has information on conducted investigations, charges rejected, prosecuted, first and second instance rulings (including information on the type of sentence), but these data are collected on persons who are the subject of the indictment, while the information about the injured parties do not exist. Data on persons against whom proceedings are conducted is provided as an aggregate number, i.e. without sorting by gender, age, etc.

Republic Institute for Statistics also keeps a record for the crime of human trafficking and other offences, but the data that they publish represents the aggregate number of court rulings, without detailed information on the type and length of sentence. Data on the length of the sentence awarded to traffickers is not available in a centralized form.

It is expected that, for the purposes of negotiating with the EU, some judicial data is to be collected in more details, and to be more accessible, but it is still necessary to design and implement a systematic approach to collecting data on the criminal offence of trafficking and victims of human trafficking, which will provide a valid picture of the extent of the problem in our country and the activities undertaken in the field of criminal prosecution and victim protection and assistance.

- c. Which legislative or other measures have been taken to organise the collection and storage of data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention? What is the national authority in charge of the collection and storage of such data? (**Article 37, para. 1**).

**Ministry of Justice:**

Law on Special Measures for the Prevention of Sexual Offences Against Minors special measures are laid down which shall be undertaken against offenders committing sexual

**offences against minors and regulates introduction of a special register of persons sentenced for such crimes. Under Article 6 of this Law, the sentence pronounced for a criminal offence referred to in Article 3 thereof shall have the following legal effects:**

- 1) termination of office;**
- 2) termination of employment and/or practicing profession or occupation related to work with minors;**
- 3) prohibition of appointment to office;**
- 4) prohibition of entering employment and/or practicing profession or occupation related work with minors;**

**Legal effects of the conviction referred to in paragraph 1 thereof shall come into force as of the day when the judgement becomes final.**

**Legal consequences of the conviction referred to in paragraph 1, points 3) and 4) thereof shall last 20 years.**

**Time spent serving a penalty shall not be credited to duration of legal consequences of conviction.**

**The final judgement referred to in paragraph 2 thereof shall also be communicated to the employer of the convicted person.**

**Abovementioned provisions regarding Article 6, paragraph1, point 4 shall include all professions.**

**Under Article 13 of the Law**

**A special register shall be kept on persons convicted for the criminal offence referred to in Article 3.**

**The special register referred to in paragraph 1 thereof shall include:**

- 1) Full name of the convict;**
- 2) Individual identification number of the convict;**
- 3) convict's address;**
- 4) data on the convict's employment;**
- 5) data of relevance for physical recognition of the convict and his/her photograph;**
- 6) convict's DNA profile;**
- 7) data on the criminal offence and type of penalty;**
- 8) data on legal effects of the conviction;**
- 9) data on the enforcement of special measures under the law.**

**Under Article 14, the Criminal Sanctions Enforcement Authority of the Ministry of Justice and Public Administration shall maintain the special register referred to in Article 13 thereof.**

**All the authorities of the state and other bodies, as well as legal persons or entrepreneurs shall, submit to an authorised officer of the Criminal Sanctions Enforcement Authority the data which under the law are entered into the special register maintained by the Authority, no later than within 3 days from the date of their receipt.**

**The special register data shall be maintained permanently and may not be deleted.**

**Minister responsible for judiciary shall proscribe the method of maintenance of the special register in further detail.**

**Under Article 15 thereof, the data kept in the special register may be provided to the court, public prosecutor or police in connection with the criminal proceedings conducted against the person entered in the special register, and / or competent organisational police unit, as well as organisational unit of the Criminal Sanctions Enforcement Authority responsible for the treatment and alternative sanctions, when it is required for the purpose of the activity falling under their competences. The data kept in the special register may be communicated upon reasonable request to an authority of the state, other organisation or entrepreneur, and if legal consequences of the conviction are still in effect and if there is reasonable interest grounded in the law. The state authorities and other bodies, as well as legal persons or entrepreneurs whose activities involve work with minors are bound to request the data on whether the person who is supposed to enter employment relation with them, i.e. to perform duties of a job that involves work with the minor, is entered into the special register. The data in the special register may also be communicated to foreign state authorities, under international agreements. To the data contained in the special register, unless otherwise provided for under the provision of this Law, legal provisions of the Law regulating protection of the personal data and data confidentiality shall apply.**

**Also, under Article 102 of the Criminal Code, there is a permanent criminal records maintained on all the convicted persons. Ended court cases on criminal offences are kept in the archives, in the manner proscribed under the court rules of proceedings.**

**Ministry of Interior:**

**Under the Law on Special Measures for the Prevention of Sexual Offences Against Minors (Official Gazette of RS, 32/13), a special register shall be maintained on persons sentenced for sexual offences committed to detriment of children and minors. The Criminal Sanctions Enforcement Authority of the Ministry of Justice and Public Administration shall maintain the special register.**

**NGO Astra:**

**In April 2013, Law on special measures for the prevention of crimes against sexual freedom against minors, known as "Marija's Law" was adopted. Article 14 of the proposed law stipulates that the Directorate should keep special records for Execution of Criminal Sanctions, and that the Ministry of Justice will regulate the record keeping in closer detail. The deadline for submission of data to the responsible person in the Directorate for Execution of Criminal Sanctions who keeps separate records is within three days. All state**

and other authorities, as well as legal entities or entrepreneurs are required to submit the obtained information on which special records are kept in this time period. It was proposed that the data in special records is kept permanently, as well as that it is not allowed to delete data from special records. This database has not yet been established.

**Question 6: National or local coordination, cooperation and partnerships**

- a. Please describe how coordination on a national or local level is ensured between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children. In particular, please provide information on existing or planned coordination between the education sector, the health sector, the social services and the law enforcement and judicial authorities (**Article 10, para. 1**);

**Ministry of Justice:**

Under Article 64 of the State Administration Act (Official Gazette of RS 79/05, 101/07 и 95/10), State administration authorities shall cooperate on all common issues and to submit to each other data and information necessary for their operations. State administration authorities shall establish joint bodies and project groups in order to execute tasks whose nature requires involvement of several state administration authorities. Establishment and work of joint bodies and project groups shall be prescribed in detail by a regulation of the Government. Also, under Article 19 of the Criminal Procedure Code, all public authorities are required to render necessary assistance to the public prosecutor, courts or other authorities conducting proceedings, as well as to the defendant and his defence attorney at their request with the aim of collecting evidence.

**NGO Atina:**

**Institutions and civil society organizations involved in the protection of (children) victims of human trafficking:**

Ministry of the Interior, Ministry of Labour, Employment and Social Politics, Ministry of Justice and Public Administration, Ministry of Health, Ministry of Finance and Economy, Security Information Agency, the Republic Public Prosecutor, judicial authorities of the Republic of Serbia, Social Welfare Centres, Centre for the protection of the victims of human trafficking, NGO Astra, NGO Atina, as well as other associations and other civil society organizations. In April 2012, pursuant to the Law on Social Care ("Official Gazette of RS", No. 24/2011), the Government established the Centre for the Protection of Human Trafficking Victims which comprises two organizational units: The Agency for the Coordination of Protection of Victims of Human Trafficking and Reception Centre for Victims of Trafficking. To this day, only one unit is operational, The Agency for the Coordination of Protection of Victims of Human Trafficking.

The necessary specialized forms of support and reintegration of victims' programmes have previously been provided by civil society organizations through project funds and donations, such as: shelter Safe House (accommodation and support), reintegration programmes for victims of human trafficking - NGO Atina, Helpline for victims of human trafficking, and a separate Helpline was introduced for missing children – NGO Astra.

Activities of prevention, protection of victims and prevention of human trafficking have been performed, largely, with the support of civil society organizations.

Within the project **Local Communities in the Fight Against Human Trafficking**, which was implemented in 2013 by NGO Atina, with the support of Social Inclusion and Poverty Reduction Team of the Government of the Republic of Serbia, Local Networks to support victims and prevent human trafficking were established in seven cities in which the project was implemented (Novi Sad, Subotica, Sremska Mitrovica, Kragujevac, Kraljevo, Nis and Vranje). Members of these networks (representatives of the Prosecution, the Police, Social Welfare Centers, Civil Society Organizations, Health Care, educational institutions, local authorities, National Employment Agency, Red Cross, etc.) signed Memorandums on collaboration, which defined operational details necessary for the functioning of Networks, as well as roles and responsibilities of all the parties, and the relationship and framework of this collaboration.

**NGO Astra:**

We have no information that there is a coordinating body at the level of educational / law enforcement system. Serbia has a Coordinator for Combating Human Trafficking, but he is part of the Interior Ministry and has no jurisdiction over other state agencies, i.e. he could only schedule meetings of the former National Team for Combating Human Beings (last time on May 2012).

A significant change in the National mechanism for the identification, assistance and protection of victims of human trafficking is the transformation of the Agency for Coordination of Protection of Trafficking Victims. After the adoption of the Regulation on the network of social protection<sup>21</sup>, the Government of the Republic of Serbia has founded the Center for the Protection of victims of trafficking<sup>22</sup> on April 13, 2012. The new centre was established as an institution of social protection and is supposed to coordinate the activities of providing social protection to victims, cooperate with the social welfare centres, institutions that provide accommodation to victims, as well as with other institutions and non-governmental organizations. It was established as a separate organizational unit within the Ministry of Labour, Employment and Social Policy. It is financed from the budget of the Republic of Serbia and by international organizations through the project activities.

**Centre for Child Rights:**

General Protocol for the Protection of Children from Abuse and Neglect adopted in 2005 recognises the importance of inter-sectoral cooperation in the protection of children from violence and of involvement of individuals and institutions from various systems in the process of protection (healthcare, education, social welfare, police, justice, etc.) A centre for social work, as a basic service for protection of children, which simultaneously acts as

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<sup>21</sup> „Official Gazette of RS“ 16/2012 7.3.2012.

<sup>22</sup> *The decision to establish the Centre for the Protection of Victims of Human Trafficking* ("Official Gazette of RS ", no. 35/2012)

guardianship authority, is designated as a focal point of multi-sectoral protection of children from violence.

After the adoption of the General Protocol for Protection of Children from Abuse and Neglect, special protocols were adopted in all the sectors with the objective to ensure more efficient treatment, follow-up and regulation of internal procedures within the system and individual institutions and establishments (Special protocol for the protection of children and students from violence, abuse and neglect in educational institutions – 2007, Special protocol in social welfare institutions from abuse and neglect – 2008, Special protocol on the conduct of judiciary authorities in protection of children from abuse and neglect-2009, Special healthcare protocol for the protection of children from abuse and neglect - 2009, Special protocol on conduct of police officers in the protection of children from abuse and neglect - 2006.)

However, although legislation has been advanced in this field and General Protocol has been adopted, as well as special protocols, the efficiency of inter-sectoral cooperation has still been challenge, in particular at local level, which is why it is necessary to invest efforts in promotion and improvement of mechanisms of inter-sectoral cooperation at local level. One of the challenges is a process of reform of social welfare and adoption of the system of case management in 2008 as well as Social Welfare Law in 2011, which is why it is necessary to strengthen capacities of professionals in centres for social work to respond efficiently in situations of violence against children.

One of examples of good practice is the project of the Centre for the Right of the Child, implemented in partnership with the UNICEF Belgrade Office with the aim to promote protection of children from violence by putting in practice General Protocol for the Protection of Children from Abuse and Neglect in four biggest cities in Serbia - Belgrade, Novi Sad, Kragujevac and Nis. The specific objectives of this project have been to strengthen capacity of professionals in centres for social work for efficient response to cases of violence against children and to advance inter-sectoral cooperation by developing mechanisms for implementation of the General Protocol.

The project was implemented from July 2012 to October 2013, and as a result Agreements on Inter-sectoral Cooperation in Protection of Children from Abuse and Neglect have been developed or improved. The inter-sectoral cooperation in practice has been significantly improved, and over 100 professionals in centres for social work have been successfully trained about interventions of centres for social work in protecting children from abuse and neglect.

- b. Is cooperation with a view to better preventing and combating sexual exploitation and sexual abuse of children encouraged between the competent state authorities, civil societies and the private sector (**Article 10, para. 3**)? If so, please specify how;

**Ministry of Interior:**

To advance coordination and cooperation of state authorities, civil society organisations (CSO's) and citizens in the field of protection of children from all forms of violence,

General protocol for protection of children from abuse and neglect was developed and adopted in 2005.

In November 2013, at the closing conference of the EU - supported Project *Protection of Children from Violence in the South –East Europe*” organised by the Belgrade UNICEF Office, Republic Institute for Social Protection and citizen’s association “*Centre for Children’s Rights*”, in addition to other project results, Memorandum on intersectoral cooperation towards implementation of the General protocol for protection of children from abuse and neglect were presented, which is expected to be signed by the end of 2013 in Belgrade, Novi Sad, Nis and Kragujevac.

#### **Ministry of Justice:**

Under Article 64 of the State Administration Act (Official Gazette of RS 79/05, 101/07 n 95/10), State administration authorities shall cooperate on all common issues and to submit to each other data and information necessary for their operations. State administration authorities shall establish joint bodies and project groups in order to execute tasks whose nature requires involvement of several state administration authorities. Establishment and work of joint bodies and project groups shall be prescribed in detail by a regulation of the Government. Also, under Article 19 of the Criminal Procedure Code, all public authorities are required to render necessary assistance to the public prosecutor, courts or other authorities conducting proceedings, as well as to the defendant and his defence attorney at their request with the aim of collecting evidence.

#### **NGO Atina:**

Serbia is expected to adopt a new Strategy for the fight against human and children trafficking 2013-2018. As it relates to the period from 2013 to 2018 the question of timeliness of the Strategy implementation arises, as 2013 has already passed, and there was no separation of special budget funds for 2013 nor was there planning of separation of budget funds for 2014.

The future National Strategy to prevent and suppress trafficking in persons, especially women and children 2013-2018, through state analysis, mapped certain response areas as undeveloped, as well as other areas that need continuous and further improvement:

- System of institutional and operative coordination which is still not sufficiently functional;
- A joint and comprehensive system for collection and analysis of data related to human trafficking is non-existent;
- Formalized partnerships in response to human trafficking at local, national and international level are still not completely established;
- Uneven level of professional skills and sensitization of experts who work in the field of prevention, protection of victims and suppression of human trafficking is present;
- System of identification, protection and support to human trafficking victims, especially in regard to children is insufficiently developed;

- The system has not yet developed specialized support programmes for vulnerable groups in regard to the prevention of human trafficking and support to the victims of human trafficking;
- The system does not yet have the necessary human and material resources to provide for substantial support to the victims of human trafficking;
- The mind set of people and the media in regard to the human trafficking issue still needs to be changed;
- Competencies of the employees, in regard to identification and prosecution of human trafficking cases, have not been sufficiently developed;
- There is a lack of permanent budget funds in the field of prevention, protection of victims and suppression of human trafficking;
- The Trust Fund for the victims of human trafficking has not yet been established;
- Victim's compensation claim process has proven to be very complicated and inefficient within the civil procedure, and does not allow for adequate compensation to the victims of human trafficking.

Reception Center envisaged for referral of urgent cases of human trafficking, established within the Center for the Protection of Human Trafficking Victims, is still not functional and hasn't set clear objectives and goals for improvement in this area.

#### NGO Astra:

Cooperation between state institutions and the civil society organizations is still unsatisfactory and leaves room for improvement. This cooperation is reflected primarily in the inclusion of CSO's in preparation of draft policy documents, but even then the suggestions and critics of the CSO's are rarely adopted. The cooperation is most productive in the area of prevention, where state authorities usually respond and participate in activities organized by the CSO's, which are supported by foreign donations (workshops, seminars, trainings, exhibitions....). The degree of cooperation is lesser when it comes to support and protection in direct work with victims of human trafficking. CSO's are still perceived as competitive organizations, rather than as colleagues who work on the same task. Institutions of the system that work with victims of human trafficking rarely inform their users on the services offered by civil society organizations that have years of experience in working with victims. Cooperation between CSO's and institutions is in a small number of cases regulated by signing a bilateral memorandum. Social responsibility of the private sector in Serbia is in its beginnings and it only sporadically cooperates with the government and CSO's on these issues.

#### NGO Centre for Children Rights:

In January 2011, the Government of the Republic of Serbia opened the Office for Cooperation with Civil Society, as an institutional mechanism of support and for development of civil dialogue between government institutions and civil society organisations. The significance and role of the Office for Cooperation with Civil Society is reflected in coordination of cooperation between the government institutions and CSO's in the process of creation and introduction of clear standards and procedures for involvement



of CSO's at all levels of decision-making. Within its remit, the Office is supposed to provide support to CSO's in the process of defining and implementing laws and policies, as well as monitoring effectiveness of such enforcement and implementation, and consequently of exerting positive pressure on the authorities. However, to date such cooperation has not been focused to maximisation of prevention and fight against sexual abuse and sexual exploitation of children.

- c. Are partnerships or other forms of cooperation between the competent authorities promoted with particular regard to the recipients of intervention programmes and measures for persons subject to criminal proceedings or convicted of any of the offences established in accordance with the Lanzarote Convention (**Article 15, para. 2 and Article 16**)?

#### **Ministry of Justice:**

Under Article 64 of the State Administration Act (Official Gazette of RS 79/05, 101/07 и 95/10), State administration authorities shall cooperate on all common issues and to submit to each other data and information necessary for their operations. State administration authorities shall establish joint bodies and project groups in order to execute tasks whose nature requires involvement of several state administration authorities.

Establishment and work of joint bodies and project groups shall be prescribed in detail by a regulation of the Government. Also, under Article 19 of the Criminal Procedure Code, all public authorities are required to render necessary assistance to the public prosecutor, courts or other authorities conducting proceedings, as well as to the defendant and his defence attorney at their request with the aim of collecting evidence.

#### **Ministry of Science and Education:**

The General Protocol for Protection of Children against Abuse and Neglect was adopted (2005), followed by special protocols for social protection institutions (2005), educational system (2007) and the police (2007), respectively.

#### **Question 7: International cooperation**

Has your country integrated prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states (**Article 38, para. 4**)? Please give examples.

#### **NGO Atina:**

In November 2013, a Regional Conference "Partnership Against Human Trafficking" was held, within the project Local Communities in the Fight Against Human Trafficking, which is implemented by NGO Atina, and it was concluded that, in the fight against human trafficking, prevention and protection of child victims, it is necessary to strengthen the role of local communities, initiate broader dialogue on national and local mechanisms of protection of child victims of trafficking, as well as the exchange of good practice in the EU and the region. The Conference brought together representatives of relevant institutions and organizations from the countries in the region, as well as national, local and civil

society organizations from the Republic of Serbia. Participants put special emphasis on the most important issues related to the importance of local communities in the fight against human trafficking. The Conference was supported by the Delegation of the European Union, the Office for cooperation with civil society, Social Inclusion and Poverty Reduction Team of the Government of the Republic of Serbia, Ministry of the Interior and Coordinator for Combating Trafficking in Human Beings.

## PREVENTION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

### Question 8: Education, awareness raising and training

- a. Which legislative or other measures have been taken to:
  - ensure that children, during primary and secondary education receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacities? (**Article 6, Explanatory Report, paras. 59-62**). Please also specify whether this information includes the risks of the use of new information and communication technologies (**Article 6, Explanatory Report, para. 63**);

#### Ministry of Health:

National program of healthcare for women, children, young persons and National Strategy for Young Persons identify a need for the introduction of healthcare education incorporating sexual and reproductive health and protection from violence into the educational system. However although Ministry of Health has been making great efforts to carry out this activity envisaged by the Strategy, it has not been fully carried out, i.e. the relevant contents have not yet been integrated in the secondary school curriculum.

#### Ministry of Interior:

Since 2010, Ministry of Interior and Ministry of Education, Science and Technological Development have jointly been implementing the Project titled “Safe Childhood-Development of Safety Culture for the Youth”, the objective of which is to develop a sustainable model of provision of information to students on culture of safety.

In compliance with the Project activities, police officers provide information to students in primary – level school institutions on such topics as “Prevent Peer Violence” and “Safe Internet Usage”, on the risks and threats that may endanger their safety and on the self-protection skills.

In the school years 2010/2011 and 2011/2012, the Project covered 4.693 classes with 99.500 students of the 5<sup>th</sup> grade (11 years of age) in 1.250 primary schools across Serbia.

The joint evaluation undertaken by the project lead institutions is that this Project has been exceptionally well accepted by students, teachers and parents and that it should be

implemented further. The Project is funded from the regular budget allocations of the Ministry of Interior and Ministry of Education, Science and Technological Development (2010 and 2012 financial support in the form of printed informational and educational materials was provided by the Belgrade UNICEF Office, citizens' association LINK-011 and "Save the Children").

#### **Ministry of Science and Education:**

Every class in elementary school follows a special school plan (which includes issues related to family, prevention of violence or sexual abuse and which is intended to improve social skills and communication between children and parents).

#### **Ministry of Justice:**

Under the Judicial Academy Law (Official Gazette of RS, 104/09) the Academy shall organise and conduct the initial and continuous training of judges, public prosecutors and their deputies, and the training of judicial and prosecutorial assistants and trainees and that of judicial and prosecutorial staff, including in on the juvenile delinquency law.

#### **NGO Atina:**

During 2009 and 2010, NGO Atina was developing a project "Development of local referral mechanisms and regional campaign", in cooperation with the OSCE Mission in Serbia. This project helped strengthen the capacities of professionals and local institutions in identification, referral and assistance of (children) victims of human trafficking in the region of Sandzak, through support to the networks to create local referral mechanisms at the local level. Through the implementation of regional campaign, general public was introduced to the problem of human trafficking, and alerted to various ways of exploitation that may befall them. Research of relevant actors, that deal with the fight against human trafficking in our country, showed that the region of Sandzak was seriously affected by the problem of human trafficking (it was a source, transit and destination point), and that about 60% of all identified victims from 2001-2008 was exploited in this part of Serbia. Target groups included in this project were: (children) victims of human trafficking, as well as potential victims of human trafficking, employees of Social Welfare Centers, employees of NGOs dealing with protection of human rights and provision of direct assistance to marginalized groups; medical workers, professors, police officers, prosecutors, judges, representatives of local employment agencies, as well as the general public. As NGO Atina is a member of the National Team for Combating Trafficking in Human Beings, the planning and implementation of project activities also included all other relevant actors in the fight against human trafficking, in the first place the Agency for Coordination of Protection of Human Trafficking Victims, as well as the Coordinator for Combating Human Trafficking, along with the members of his team. Within this project, NGO Atina produced and distributed short film, presentations, manuals and other materials related to the phenomenon of trafficking in human beings. In collaboration with independent production company MREZA, and with the help of NGO Atina's beneficiaries of the programme for social inclusion of victims of human trafficking, a short film was

created, and shown at four local TV stations: regional TV Novi Pazar, regional TV Jedinstvo from Novi Pazar, regional TV Raska and regional TV Enigma from Prijepolje. The film was being shown at prime time on all TV stations for a period of one month. The campaign additionally influenced the creation of local network for the identification and referral of victims of human trafficking. Also, during the period when the film was shown, from September 2009 to January 2010, six potential victims were directed to programmes of social inclusion of victims of human trafficking.

In seven cities, in which the project Local Communities against Trafficking was implemented in 2013 (Nis, Novi Sad, Sremska Mitrovica, Kraljevo, Kragujevac, Vranje and Subotica), which was supported by the Ministry of the Interior, the Republic Public Prosecutor's Office and the National Employment Agency, and implemented by NGO Atina and Novi Sad's Humanitarian Center, 23 local actions were held in organization of local networks for prevention and direct assistance to victims of human trafficking.

October 18, 2013 a conference was held in Nis, on the occasion of International Day Against Human Trafficking, which was dedicated to the role of local communities in the fight against human trafficking in the Republic of Serbia. The conference was attended by over 100 guests, professionals who deal with the problem of suppression of human trafficking. The Minister of Health, and a member of the Council for the fight against human trafficking, Slavica Djukic Dejanovic, held a speech, and pointed out that the conference in Nis is the first held at the level of a local community in our country, and that Nis will be the first city in Serbia to adopt the Declaration on combating trafficking in human beings. The Declaration on combating trafficking in human beings was adopted at the next meeting of the City Assembly, on November 29, 2013. The proposal of this Declaration was jointly submitted by parliamentary groups of government and opposition, which demonstrated the unity of all political stakeholders on this issue, regardless of which political party they belong to. Nis was the first city in Serbia that adopted this kind of document, in compliance with legal requirements and standards of the European Union countries, and it is also a form of recommendation of the City of Nis, sent to all other cities in Serbia to follow in their footsteps. Through the "Local Communities in the Fight Against Human Trafficking" project, by realization of this event, a local community had a chance to celebrate the International Day Against Human Trafficking for the first time in Serbia, with the presence of relevant stakeholders from the national level, while the adoption of Declaration provided space for formalizing the cooperation of all relevant stakeholders in the fight against human trafficking at the local level, which was previously unknown to our system.

Five actions were organized in Kragujevac:

10.10.2013. Press Conference at the premises of the City of Kragujevac

16.10.2013. Professional meeting of network members

18.10.2013. Marking of the International Day against Human Trafficking

23.10.2013. Informative workshop for members of student parliament

**30.10.2013.** The final action at the “Plaza” center, awards for the students’ competition, a thank to all members of the Network, and those who supported the Network since its establishment

**In Kraljevo, within the “Local Communities in the Fight against Human Trafficking” project, three local actions were organized:**

**A show was filmed on combating human trafficking on 15.10.2013**

**A two-day art colony was held on October 19 and 20, 2013.**

**A two-day training of peer educators was held on November 1, 2 and 3, 2013.**

**In Vranje, four actions were organized within the project:**

**10.10.2013.** In the Army Home in Vranje, an event “Reading true confessions of the victims” was held, and the confessions were read by Zoran Antic, Mayor of Vranje, Bojana Velickov, Deputy Mayor of Vranje, Danijela Trajkovic, Deputy Higher Public Prosecutor, Dr. Katarina Zivaljevic, doctor of general medicine, Borjanka Trajkovic, a member of the Council for gender equality and others.

**A lecture on “Human Trafficking” was held by the representatives of the Ministry of the Interior of the Republic of Serbia, Vranje PU;**

**On September 27, 2013, in the organization of the City of Vranje and Local Networks for the prevention and protection of the victims of human trafficking, a campaign to collect signatures for legislation, which would sanction those, responsible for the disappearance of babies from Serbian maternity hospitals, was held in front of the post office in the centre of Vranje. The Association “Parents of missing babies, of Serbia launched the initiative”, and this action was also supported by Deputy Mayor Bojana Velickov, who is also the head of the working group for the preparation of LAP to combat human trafficking.**

**Also, based on Article 17, 63, and 65 of the City Council’s Procedure Rulebook (Official Gazette of the City of Vranje No. 30/2012), on October 9, 2013 a decision has been made on the appointment of the work group for the prevention and combating human trafficking, with a task to build the capacity within local communities for the effective participation in the prevention and combating human trafficking and the protection of victims. This work group has a role of coordinator of Local Network for the fight against human trafficking, which will carry out actions at the local level.**

**Local Network for the prevention and protection of victims of human trafficking in Subotica organized three local actions:**

**24.09.2013.** Presentation of the network and activities on the initiative of the directors of primary and secondary schools

**14.10.2013.** Public forum for 100 high school students from the territory of Subotica

**18.10.2013.** Marking the International Day against Human Trafficking and signing of a memorandum on multisectoral collaboration

**Local Network for the prevention and protection of victims of human trafficking in Novi Sad organized two local actions:**

**October 16 and 17, 2013 four preventive workshops for children in elementary school Marija Trandafil Veternik**

**30. 10. 2013 the signing ceremony of the Memorandum on collaboration**

**Local Network for the prevention and protection of victims of human trafficking in Sremska Mitrovica organized five local actions:**

**Public signing of the Memorandum on collaboration of Local Network for the fight against human trafficking 15.10.2013**

**Panel for the Roma population in Local Community “Sava”, with the distribution of promotional material 25.10.2013**

**Lectures with the distribution of promotional material in secondary school of Economics “9. Maj” with first grade students – a total of 8 classes 25.10-30.10.2013.**

**Realization of lectures with the presentation of film, and distribution of promotional materials to the first grade students of the Secondary Technical School “Nikola Tesla” and Food, Forestry and Chemical School “Veljko Vlahovic” 20.10-25.10.2013.**

**Realization of lectures with an emphasis on risks, with the unemployed who are actively looking for a job 17.10.2013.**

**Project of the B92 Fund**

**Since 2013, the project “IDG” has been implemented in Serbia by the Foundation “B92 Fund”, in cooperation with the Ministry of Foreign and Internal Trade and Telecommunications and the Ministry of the Interior, with the financial support of the European Commission.**

**The aim of the project is to educate and inform citizens, particularly children and young people, but also their parents, teachers and other Internet users, on the benefits and risks of the use of information and communication technologies, methods for the safe use of new technologies, and the protection of citizens from illegal, unauthorized and harmful content and conduct on the Internet. Within this project, an online mechanism “Net Patrol” has been established, and is used for submission of reports to the Center for secure Internet, which was established for the purpose of receiving and processing reports of illegal and harmful content on the Internet. The focus of the work of this mechanism is to prevent the spread of images and videos showing sexual abuse of children, sexual exploitation and physical and psychological attacks on children.**

**In 2011, a project “Pandora’s Box” was conducted, which was implemented by the Novi Sad School of Journalism, in collaboration with partners: Media Initiative from Sarajevo, Stine Institute from Split and the Center for Independent Journalism in Budapest. The main objective of the project was to create a network of organizations in Serbia, Bosnia and Herzegovina, Croatia and Hungary, which will create the first network for the fight against paedophilia in the Balkans. The project team visited a total of forty schools in Serbia, Croatia, Hungary and Bosnia and Herzegovina, and lectured students 10 to 15 years old on the topic of Internet security.**

## **NGO Astra:**

Since September 2007 up to date, NGO Incest Trauma Center – Belgrade has been actively engaged in their Initiative to introduce the theme of Sexual Assault into the national (pre-) school curriculum and relevant textbooks. 121 state institutions and NGOs supported the Initiative.

When it comes to the issue of human trafficking, it is currently in the schools treated sporadically in teaching civic education (to be selected alternately from religious education), and depending on interest, knowledge and capacity of teachers to deal with this subject.

B92 Fund, in cooperation with the Ministry of Interior and Ministry of Foreign and Internal Trade and Telecommunications, founded the Centre for Safe Internet for the purpose of receiving and processing reports of illegal and damaging content on the Internet, especially materials that include representations of the sexual abuse and physical and psychological attacks on children, abuse of children in the virtual world (cyber bullying) and hate speech on the Internet. Reports are submitted via the on-line mechanism "Net patrol." The mechanism for the submitting reports offers an opportunity to everyone to report illegal and disturbing content through a variety of reporting methods-by filling out online forms on the website or through e-mail, anonymously if the person prefers it. Net patrol operator receives reported content, deals with the report and acts according to pre-established operational procedures approved by the police. Net patrol began operations a few months ago, so we still have no information on the results.

The project "Pandora's box" was conducted in 2011, implemented by the Novi Sad School of Journalism, in collaboration with partners: Media Initiative from Sarajevo, Institute Stine from Split and the Centre for Independent Journalism in Budapest. The main objective of the project was to create a network of organizations in Serbia, Bosnia and Herzegovina, Croatia and Hungary, which will create the first network for the fight against paedophilia in the Balkans. The project team visited a total of forty schools in Serbia, Croatia, Hungary, Bosnia and Herzegovina, and gave lectures on the topic of Internet security to pupils aged ten to fifteen.

- encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities? (**Article 5, para. 1**);

## **Ministry of Health:**

One of the foundations upon which National healthcare programme for women, children and young persons and National strategy for Young Persons rest are counselling centres for young persons at the primary healthcare which by preventive individual and group activity and work educate young persons on sexual and reproductive health, develop responsible behaviour and attitudes in young people, instruct and inform about protection, etc.

**Under Article 165 of the Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles, the activities of prevention and suppression of juvenile delinquency and criminal law protection of juveniles injured by a criminal offence is undertaken by police officers particularly trained for work with minors (1862 police officers, after having been trained attending training course held at Judicial Academy, become certified to take actions in connection to juveniles), whereas if exceptionally necessary, other police officers may also be involved (although not being duly certified) when due to circumstances of the case certified police officers are unable to follow-up.**

**Ministry of Interior:**

**Under Article 165 of the Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles, the activities of prevention and suppression of juvenile delinquency and criminal law protection of juveniles injured by a criminal offence is undertaken by police officers particularly trained for work with minors (1862 police officers, after having been trained attending training course held at Judicial Academy, become certified to take actions in connection to juveniles), whereas if exceptionally necessary, other police officers may also be involved (although not being duly certified) when due to circumstances of the case certified police officers are unable to follow-up.**

**Ministry of Science and Education:**

**There are many accredited programs for teachers, health and social workers.**

**NGO Astra:**

**A certain number of important system laws that have been adopted stipulate special training of professionals who work with children. Acquisition of special knowledge in the field of children's rights, trainings for judges, prosecutors, police representatives and lawyers are the responsibility of the Judicial Academy. At the Judicial Academy, a number of training of judges, prosecutors, police officers, lawyers and representatives of institutions responsible for the care of children has been held. The training programme is divided into three thematic cycles: basic, advanced and advanced, second part. In the period of 2010 – 2013, the Judicial Academy conducted a total of 89 training relating to juveniles in Belgrade and in other cities across Serbia.**

**According to the Family act judges acting in cases of legal protection of children shall be persons who have acquired special knowledge in the field of children's rights. Lay judges must also be persons who have relevant experience of working with juveniles. Trainings to acquire special knowledge in the field of children's rights for judges that rule in proceedings relating to family relationships are conducted by the Judicial Academy in accordance with specific rulebook. For certification in the field of family law Judicial Academy held 32 trainings and awarded 649 certificates.**

**The Law on Juvenile Offenders and Criminal Protection of Juveniles provides for the specialization of judges, prosecutors, investigating judges, the presiding judge, attorneys of**



the damaged parties. In criminal proceedings, in accordance with the provisions of the article 150 of the Law on Juvenile Justice and for special protection of minors as victims, only the prosecutors, investigating magistrates, presiding judges who have acquired special knowledge in the field of child rights and criminal protection of minors are acting. The 26 senior public prosecutor's offices, as well as 4 Appeal and the Republic Public Prosecutor's Office have special departments for minors, or specially trained bearers of public prosecutor's function (prosecutors and deputy public prosecutors), who handle cases involving juvenile offenders. The 34 basic public prosecutors offices have specialized prosecutorial office bearers (prosecutors and deputy public prosecutors) dealing with cases with juvenile victims, not the perpetrators, since the jurisdiction against juvenile offenders lies at the senior public prosecutor's offices. The 67 public prosecutors offices in Serbia currently have 637 public prosecutors and deputy public prosecutors who are certified in handling such cases by the Judicial Academy.

During the execution of police duties towards children and minors for performing certain actions in the pre-trial proceedings such as gathering information from a minor as a citizen and a hearing of a juvenile suspect in addition to other police officers, officers (from the crime, border, traffic and general police jurisdiction), which have special skills in the field of child rights, juvenile delinquency and criminal protection of minors (with the appropriate certificate issued by the Judicial Academy in accordance with Art. 165 of the Law on Juvenile Offenders and criminal Protection of Minors) are engaged. There are currently 1742 officers with these skills.

Professional training of professionals and staff in social care is envisaged in the articles 143-145 of the Law on Social Protection<sup>23</sup>, as well in the Regulation on the licensing of professionals in social care<sup>24</sup>, which entered into force on May 22, 2013. Law on Social Protection<sup>25</sup> adopted in 2011 gave the final comprehensive regulatory framework for the continuing professional development of employees in the social security system and in much detail regulated the process of accreditation of training programs. Article 165 of this Law stipulates that the Republic Institute for Social Protection performs professional and organizational activities in the accreditation of training programs, i.e. service programs that provide vocational training to skilled workers and support staff in social care and social care providers. The total number of accredited programs in the Institute for Social Security Registry is 116<sup>26</sup>. All programs are accredited in an effort by the Republic of Serbia to introduce and formalize the continuing professional education of employees in certain systems.

By attending these programs, employees gather hours of professional development they need for renewal of the license to operate (although licenses still do not exist), i.e. to be able to continue to work, although we do not know what are the sanctions in the event that a person does not have a sufficient number of hours of professional development. A major problem is funding of training. Trainings for employees in the social security system should

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<sup>23</sup> "Official Gazette of RS ", no. 24/11

<sup>24</sup> "Official Gazette of RS", no. 42/2013 14.5.2013.

<sup>25</sup> "Official Gazette of RS", no. 24/11

<sup>26</sup> Catalogue of accredited programmes for training in social protection:  
<http://www.zavodsz.gov.rs/PDF/Katalog%20akreditovanih%20programa%20obuke.pdf> (19.12.2013.)

be funded by their home institution, and for those employed in education by the local government. However, neither of them have sufficient funds for this purpose nor the implementation of quality training is relatively expensive. All ASTRA's previous trainings were free for participants, but the result is that the implementation of the training depends on the availability of funds and the willingness of donors to support this activity, which does not allow for systematic planning.

ASTRA has accredited three professional development programs so far - two for employees in the social security system and one of the employees in the education system.

In 2010, ASTRA has accredited the programme "Support to victims of human trafficking in the social welfare system - detection, assessment and planning support" in the framework of the measures and activities for the continuous professional development of professionals employed in social care (National Institute for Social Security).

The aim of the program is to train staff in social work centres and institutions for the care of children to provide adequate assistance to victims of human trafficking within their jurisdiction through the acquisition of knowledge and understanding of the phenomenon of trafficking in persons; acquiring skills to identify (potential) victims of trafficking, development of sensitivity and knowledge and skills to communicate with the victim; exploring the mechanisms for combating trafficking in Serbia and consideration of possible cooperation, knowledge and skills in needs assessment and planning support to victims of trafficking. More than 100 employees have attended this training in the social security system so far.

Another program that ASTRA accredited in the framework of the measures and activities for the continuous professional development of professionals employed in social care "Foster family as a place of recovery and reintegration of victims of trafficking" is designed for foster care counsellors, foster families and the professionals who work in the centre of foster care and provide support to foster families in order to improve their capacity to provide care and accommodation for victims of human trafficking. So far two training sessions have been implemented with the participation of about 50 foster parents and foster care counsellors.

Department of Social Welfare has accredited two more programmes on human trafficking in the framework of the measures and activities for the continuous professional development of professionals employed in social care institutions: "Identification, assistance and protection of male victims of trafficking," by the Victimology Society of Serbia and the "Center for Social work in protection of victims of trafficking" by the group of authors.

In the area of education, ASTRA has been implementing since 2008 an accredited program "Human (Child) Trafficking - Prevention and Education" which has so far been attended by about 200 teachers, experts, school pedagogues and psychologists. The Institute accredits the programme for the Improvement of Education as an optional programme of continuous professional development of education employees. Implementation of this

**program is part of ASTRA's efforts to get educational institutions to systematically deal with the prevention of human trafficking throughout the whole educational cycle.**

ensure that persons, referred to while replying to the bullet point above, have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility of reporting suspicions of a child being the victim of such acts? (**Article 5, para. 2**).

**Ministry of Justice:**

**Under the Judicial Academy Law (Official Gazette of RS, 104/09) the Academy shall organise and conduct the initial and continuous training of judges, public prosecutors and their deputies, and the training of judicial and prosecutorial assistants and trainees and that of judicial and prosecutorial staff, including in on the juvenile delinquency law.**

**NGO Atina:**

**On initiative of Incest Trauma Center, it is now possible to learn about sexual exploitation and abuse in primary and secondary public schools, and it became part of 11 school syllabuses.**

**NVO Astra:**

**We are not aware that subsequent evaluations of training and the applicability of the acquired knowledge were conducted.**

- b. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of sexual exploitation and sexual abuse of children? Please describe the material used for the campaign/programme and its dissemination. If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details (**Article 8, para. 1**);

**Ministry of Health:**

**Ministry of Health has prepared and disseminated educational material (posters and flyers) to relevant healthcare facilities enabling children and parents to become familiar with various forms of abuse, neglect and exploitation and instructs them how to report violence and seek counselling and assistance from a healthcare professional.**

**Ministry of Interior:**

**To promote the activities under the project “Safe Childhood-Development of Safe Culture for the Youth” with the assistance of the Belgrade-based UNICEF Office and the citizens’ association LINK 011, 100.000 leaflets “Let’s stop violence together” were printed out, as well as the posters on the topic “My policeman and me”. Also, in cooperation with the “Save the Children”, 20.000 leaflets on “20 rules of safe Internet use” were printed out.**

**Police officers disseminated this promotional material to primary school students and teachers across Serbia.**

- c. Which legislative or other measures have been taken to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention? If so, please provide details (**Article 8, para. 2, Explanatory Report, para. 66**).

**Ministry of Justice:**

**Showing, procuring and possession of Pornographic Material and Juvenile Pornography is subject of Article 185. Thus, under paragraph 1 thereof, (1) whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a minor or shows to a child a pornographic performance, shall be punished with a fine or imprisonment up to six months. (2) Whoever uses a minor 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) If the offence specified in paragraphs 1. 2 hereof has been perpetrated against a child, the offender shall be punished with imprisonment of six months to three years for the offence from paragraph 1 and with imprisonment of one year to eight years for the offence from paragraph 2. (4) Whoever obtains for himself or another, possesses, sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting abuse of a juvenile, shall be punished with imprisonment from three months to three years. (5) Items specified in paragraphs 1. 1 through 4 of this Article shall be confiscated.**

**Ministry of Interior:**

**In the Republic of Serbia such acts/activities are criminalized under the Criminal Code under the Chapter XIV – Criminal Offences Against Freedoms and Rights of the Man and Citizen, and Chapter XXVII – Criminal Offence Against Security of Computer Data.**

**NGO Astra:**

**NGO Incest trauma centre (ITC has been a leader of The Council of Europe ongoing Campaign „1 in 5“ since 2010) and NGO ASTRA („Stop trafficking in children“ in 2010) have conducted campaigns to stop sexual violence against children.**

**NGO ASTRA ([http://www.astra.org.rs/eng/?page\\_id=1133](http://www.astra.org.rs/eng/?page_id=1133)) media campaign's main activity was broadcasting of 10 TV spots featuring celebrities. Additionally, it was followed by street actions, the distribution of promo-material through print media and our presence at cultural events and festivals. We are not aware which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of sexual exploitation and sexual abuse of children.**

**Please, see the reply to question 3(a).**

### **Question 9: Recruitment and screening**

- a. Which legislative or other measures have been taken to ensure that the conditions for accessing those professions whose exercise implies regular contact with children, ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children? (**Article 5, para. 3**). Please specify to which professions such measures apply. Please also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country;

#### **Ministry of Science and Education:**

**Any person commencing employment in education is required to pass psychological evaluation tests and submit proof of having no prior convictions.**

#### **NGO Astra:**

**The Law on special measures for the prevention of crimes against sexual freedom against minors ("Official gazette", no. 32/2013), stipulates keeping separate records of persons convicted of such offences. Government and other authorities, as well as legal entities and entrepreneurs are obliged to seek the information on whether someone who is to start a working relationship with them and will be working with minors is in these records. Those who have committed crimes against sexual freedom of minors cease performing public functions, employment related to working with minors, and are prohibited from seeking public office and employment that involves working with minors for the next 20 years.**

#### **Ministry of Justice:**

**Law on Special Measures for the Prevention of Sexual Offences Against Minors special measures are laid down which shall be undertaken against offenders committing sexual offences against minors and regulates introduction of a special register of persons sentenced for such crimes. Under Article 6 of this Law, the sentence pronounced for a criminal offence referred to in Article 3 thereof shall have the following legal effects:**

- 1) termination of office;**
- 2) termination of employment and/or practicing profession or occupation related to work with minors;**
- 3) prohibition of appointment to office;**
- 4) prohibition of entering employment and/or practicing profession or occupation related work with minors;**

**Legal effects of the conviction referred to in paragraph 1 thereof shall come into force as of the day when the judgement becomes final.**

**Legal consequences of the conviction referred to in paragraph 1, points 3) and 4) thereof shall last 20 years.**

**Time spent serving a penalty shall not be credited to duration of The final judgement referred to in paragraph 2 thereof shall also be communicated to the employer of the convicted person.**

**Abovementioned provisions regarding Article 6, paragraph1, point 4 shall include all professions.**

**Under Article 13 of the Law**

**A special register shall be kept on persons convicted for the criminal offence referred to in Article 3.**

**The special register referred to in paragraph 1 thereof shall include:**

- 1) Full name of the convict;**
- 2) Individual identification number of the convict;**
- 3) convict's address;**
- 4) data on the convict's employment;**
- 5) data of relevance for physical recognition of the convict and his/her photograph;**
- 6) convict's DNA profile;**
- 7) data on the criminal offence and type of penalty;**
- 8) data on legal effects of the conviction;**
- 9) data on the enforcement of special measures under the law.**

**Under Article 14, the Criminal Sanctions Enforcement shall maintain the special register referred to in Article 13 thereof Authority of the Ministry of Justice and Public Administration.**

**All the authorities of the state and other bodies, as well as legal persons or entrepreneurs shall, submit to an authorised officer of the Criminal Sanctions Enforcement Authority the data which under the law are entered into the special register maintained by the Authority, no later than within 3 days from the date of their receipt.**

**The special register data shall be maintained permanently and may not be deleted. Minister responsible for judiciary shall proscribe the method of maintenance of the special register in further detail.**

**Under Article 15 thereof, the data kept in the special register may be provided to the court, public prosecutor or police in connection to criminal proceedings conducted against the person on whom the special records has been maintained, and/or to a competent organisational unit of the police, as well as organisational unit of the Authority for Enforcement of Penal Sanctions in charge of treatments and alternative sanctions, when so required for operations falling within their remit. The data kept in the special register may be communicated upon reasonable request to an authority of the state, other organisation or entrepreneur, and if legal consequences of the conviction are still in effect and if there is reasonable interest grounded in the law. The state authorities and other bodies, as well as legal persons or entrepreneurs whose activities involve work with minors are bound to request the data on whether the person who is supposed to enter employment relation with them, i.e. to perform duties of a job that involves work with the minor, is entered into the special register. The data in the special register may also be communicated to foreign state authorities, under international agreements. To the data contained in the special register,**

**unless otherwise provided for under the provision of this Law, legal provisions of the Law regulating protection of the personal data and data confidentiality shall apply.**

**Also, under Article 102 of the Criminal Code, there is a permanent criminal records maintained on all the convicted persons. Ended court cases on criminal offences are kept in the archives, in the manner proscribed under the court rules of proceedings.**

**NGO Centre for Children Rights:**

**In April 2013, the Law on Special Measures for the Prevention of Sexual Offences against Children was adopted. The Law provides for special measures which are enforced against offenders of sexual acts against children (juveniles, minors), the offences being: rape, sexual intercourse with helpless person, intercourse with a child, sexual intercourse through abuse of a position, prohibited sexual acts, procurement of sexual services, mediation in prostitution, Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, Incitement of Minors to Attend Sexual Acts, Abuse of Computer Networks or other Technical Communication Means for Committing Sexual Criminal Offence against Juveniles) and for maintaining the special registry/records.**

**The Law has been enforced, but the registry has not been established as proscribed under the Law.**

**Under Article 13 and 14 of the Law, special register shall be maintained on persons convicted for the referred to criminal offences which shall contain the following data: Convicts full name, ID number, address, data on employment, data of relevance for physical recognition of the convict, his/her photography, DNA profile, data on the criminal offence, data on legal effects of the conviction and data on implementation of special measures under the Law (measure of mandatory reporting to a competent law - enforcement authority and Authority for Enforcement of Criminal Sanctions, prohibition to visit places where minors assemble, mandatory attendance at professional counselling centres and institutions, mandatory notifying on changes of place of residence or place of work, mandatory notifying on a travel abroad). The Authority shall keep the special register for Enforcement of Criminal Sanctions, and the data shall be kept permanently and are not subject to deletion.**

**The Law proscribes that all state authorities, as well as legal persons and entrepreneurs (sole proprietors) the activities of which involve contact with minors are bound to request information if a person they are to enter employment relation with, i.e. a person to perform duties involving contact with minors, is entered in the special register (Article 15, paragraph 3 of the Law)**

- b. Does the screening of candidates apply to voluntary activities (**Explanatory Report, para. 57**)?

**Ministry of Science and Education:**

Yes.

**NGO Astra:**

**Conviction for a criminal offence under Article 3 of the Law on special measures for the prevention of crimes against sexual freedom against minors carries the following legal consequences (Article 6): Termination of a public office, termination of employment or termination of occupation or activity related to the work with minors, prohibition of seeking public office, prohibition of employment or performance of a profession or occupation relating to work with minors.**

**Centre for Children Rights:**

**Abovementioned measures are applicable to all occupations involving contact with minors. The data from the special register are kept permanently and are not subject to deletion.**

**Question 10: Preventive intervention programmes or measures**

- a. Which legislative or other measures have been taken to ensure that persons who fear that they may commit any of the offences established in accordance with the Convention, have access to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? Please specify under which conditions, if required (**Article 7, Explanatory Report, para. 64**);

**NGO Astra:**

**To the best of our knowledge there are no such intervention programmes in Serbia or measures designed to evaluate and prevent the risk of offences being committed.**

**Ministry of Justice:**

**Under Article 42, of the Criminal Code, Within the framework of the general purpose of criminal sanctions (Article 4, paragraph 2), the purpose of punishment is: 1) to prevent an offender from committing criminal offences and deter them from future commission of criminal offences; 2) to deter others from commission of criminal offences; 3) to express social condemnation of the criminal offence, enhance moral strength and reinforce the obligation to respect the law.**

**Under Article 78 of the Criminal Code, within the general purpose of criminal sanctions (Article 4, paragraph 2), the purpose of security measures is to eliminate circumstances or conditions that may have influence on an offender to commit criminal offences in future.**



Thus, under Article 81 of the CC: (1) The court shall order compulsory psychiatric treatment and confinement in a medical institution to an offender who committed a criminal offence in a state of substantially impaired mental capacity if, due to the committed offence and the state of mental disturbance, it determines that there is a risk that the offender may commit a more serious criminal offence and that in order to eliminate this risk they require medical treatment in such institution. (2) If the requirements referred to in paragraph 1 of this Article are met, the court shall order compulsory treatment and confinement in a medical institution to an offender who in state of mental incompetence committed an unlawful act provided under law as a criminal offence. (3) The court shall 1. discontinue the measure referred to in paragraphs 1 and 2 of this Article when it determines that the need for treatment and confinement of the offender in a medical institution no longer exist. (4) The measure specified in paragraph 1 of this Article when ordered together with a term of imprisonment may last longer than the pronounced sentence. (5) Time spent in a medical institution by the offender who committed a criminal offence in a state of substantially impaired mental capacity and who has been sentenced to prison shall be credited to serving of the pronounced sentence. If time spent in a medical institution is less than the pronounced prison sentence, the court shall order, upon termination of the security measure, that the convicted person is remanded to prison to serve the remainder of the sentence or released her on parole. In deliberating to grant parole the court shall, in addition to requirements set forth in Article 46 hereof, particularly take into consideration the degree of success of treatment of the convicted person, his medical condition, time spent in the medical institution and the remaining part of the sentence. Under Article 82 of the CC proscribing a security measure of Compulsory Psychiatric Treatment at Liberty: (1) The court shall order compulsory psychiatric treatment at liberty to an offender who has committed an unlawful act provided under law as a criminal offence in a state of mental incapacity if it determines that danger exists that the offender may again commit an unlawful act provided under law as a criminal offence, and that treatment at liberty is sufficient to eliminate such danger. (2) The measure specified in paragraph 1 of this Article may be ordered to a mentally incompetent perpetrator under compulsory psychiatric treatment and confinement in a medical institution when the court determines, based on results of medical treatment, that his further treatment and confinement in a medical institution is no longer required and that treatment at liberty would be sufficient. (3) Under conditions specified in paragraph 1 of this Article, the court may also order compulsory psychiatric treatment at liberty to an offender whose mental competence is substantially impaired if he is under a suspended sentence or released on probation pursuant to Article 81, paragraph 5 hereof. (4) Compulsory psychiatric treatment at liberty may be undertaken periodically in particular medical institution if necessary for a successful treatment, with the proviso that periodical institutional treatment may not exceed fifteen days in continuity or two months in aggregate. (5) Compulsory psychiatric treatment at liberty shall last as long as there is a need for treatment, but may not exceed three years. (6) If in case referred in paragraphs 1. through 3 of this Article, the offender does not comply with treatment at liberty or abandons it of his own volition, or if despite treatment, danger of committing an unlawful act provided under law as a criminal offence is reasserted, which necessitates his treatment and confinement in an appropriate medical institution, the court may order compulsory psychiatric treatment and confinement in such institution. Under Article 83 of the CC

proscribing a security measure of Compulsory Drug Addiction Treatment: (1) the court shall order compulsory treatment to an offender who has committed a criminal offence due to addiction to narcotics and if there is a serious danger that he may continue committing criminal offences due to this addiction. (2) The measure specified in paragraph 1 of this Article shall be carried out in a penitentiary institution or in an appropriate medical or other specialised institution and shall last as long as there is a need for treatment, but not more than three years. (3) When the measure referred in paragraph 1 of this Article is ordered together with a term of imprisonment, duration thereof may exceed the pronounced sentence but its overall duration shall not exceed three years. (4) The time spent in the institution for medical treatment shall be credited to the prison sentence. (5) If the measure referred to in paragraph 1 of this Article is pronounced together with a fine, a suspended sentence, judicial caution or remittance of punishment, it shall be carried out at liberty and may not exceed three years. (6) If an offender without justifiable reasons fails to undertake treatment at liberty or abandons treatment at his own volition, the court shall order coercive enforcement of such measure in an appropriate medical or other specialised institution.

Under Article 84 of the CC proscribing a security measure of Compulsory Alcohol Addiction Treatment: (1) The court shall order compulsory treatment to an offender who has committed a criminal offence due to addiction on alcohol abuse and if there is serious threat that he may continue to commit offences due to such addiction. (2) The measure specified in paragraph 1 of this Article shall be carried out in a penitentiary institution or an appropriate medical or other specialised institution and shall last as long as there is need for treatment, but may not exceed the duration of the pronounced prison sentence. (3) The time spent in the institution for medical treatment shall be credited to the prison sentence. (4) If the measure specified in paragraph 1 of this Article is ordered together with a fine, suspended sentence, judicial caution or remittance of punishment, it shall be carried out at liberty and may not exceed two years. (5) If an offender without justifiable reasons fails to undertake treatment at liberty or abandons treatment at his own volition, the court shall order coercive enforcement of such measure in an appropriate medical or other specialised institution.

Under Article 85 proscribing a security measure of Prohibition to Practise a Profession, Activity or Duty: (1) The court may prohibit an offender from practising a particular profession, activity, or all or certain duties related to the disposition, use, management or handling of another's property or taking care of that property, if it is reasonably believed that his further exercise of that duty would be dangerous. ((2) The court shall determine the duration of the measure referred to in paragraph 1 of this Article that may not be less than one more than ten years, calculated from the day the judgement became final, and the time spent in a prison or medical institution where the security measure has been exercised shall not be credited to the term of this measure. (3) If ordering a suspended sentence, the court may order revoking of such sentence if the offender violates the prohibition to practise a particular profession, activity or duty.

Under Article 89a thereof proscribing Restraint to approach and communicate with the injured party: (1) The Court may prohibit an offender from approaching the injured party at a specified distance, from accessing the area surrounding the injured party's residence or place of work, and further harassment of the injured party, *i.e.* further communication with the injured party, provided it is reasonable to believe that any such further action

taken by the offender would pose a threat to the injured party. (2) The court shall determine the duration of the measure specified in paragraph 1 of this Article, which may not be less than six months or more than three years, calculating from the date of final decision, with the proviso that time spent in prison and/or medical institution wherein the security measure was enforced is not calculated into the duration of this measure. (3) The measure referred to in paragraph 1 hereof may be revoked before it has expired should grounds on which it was imposed have ceased to exist.

- b. Which legislative or other measures have been taken to ensure that persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention, may have access to effective intervention programmes or measures? Please specify under which conditions, if required (**Articles 15 to 17**). Please indicate in particular:
- who has access to these programmes and measures (convicts, persons subject to criminal proceedings, recidivists, young offenders, persons who have not committed a crime yet?);

**Ministry of Justice:**

**Please, see answer to question 10 (a).**

- how the appropriate programme or measure is determined for each person;
- whether there are specific programmes for young offenders;

**Ministry of Justice:**

**Please, see answer to question 10 (a).**

- whether persons have a right to refuse the proposed programme/measures?

**NGO Astra:**

**Under the Law on special measures for the prevention of crimes against sexual freedom against minors ("Off. Gazette of the RS", no. 32/2013), special measures are implemented towards the perpetrator of the crime, after serving his prison sentence, for a period of up to 20 years after the serving the sentence of imprisonment.**

**One of the special measures is mandatory counselling and visiting professional institutions, which means that it is the duty of the offender to visit professional counselling services and facilities in the programme set by the organizational unit of Directorate for Execution of Penal Sanctions responsible for treatment and alternative sanctions.**

**On the expiration of every four years since the start of implementation of special measures, the court, which issued the verdict in the first instance, ex officio, decides on the need for their further implementation.**

**The person to whom these measures apply may file request for review of the need for further implementation of special measures also.**

**We are not aware that these counselling centres were established and that these required measures are implemented in practice.**

## **Question 11: Participation of the private sector, the media and civil society**

What steps have been taken to encourage:

- a. the private sector (in particular the information and communication technology sector, the tourism and travel industry, the banking and finance sectors) to participate in the elaboration and implementation of policies, programmes or other initiatives to prevent sexual exploitation and sexual abuse of children? Please indicate which private sectors are concerned and explain how participation takes place. Please also provide information concerning any relevant code of conduct or enterprise charter aimed at protecting children from sexual exploitation and sexual abuse (**Article 9, para. 2, Explanatory Report, paras. 68-73**);

**NGO Atina:**

**B92 Fund has a steering committee Center for safe Internet, which includes Internet providers, state institutions and NGOs.**

**NGO Astra:**

**In May 2012, the company Vip mobile (Vip mobile d.o.o.<sup>27</sup>) supported ASTRA in the process of introducing the European hotline for missing children through a 2 million RSD donation. The donation was partly used for the purchase of the modern phone switchboard needed for the parallel functioning of two telephone lines – European hotline for missing children and the SOS hotline for supporting the victims of human trafficking. Alpha bank<sup>28</sup> also supported the work of this hotline.**

**The company Telenor was involved in the project with the Unit for the prevention of violence of the Ministry of education, science and technological development (unit was founded in 2012.) and UNICEF called „Stop digital violence" with the aim of raising awareness on the new forms of violence, risks connected with the use of Internet and on adequate ways of protection and reaction to the cases of violence. Trainings for students, teachers and parents were organized and the campaign „Choose words prevent the hate" was conducted inviting the youth to promote positive messages, react and report physical violence. Trainings with children and teachers on the prevention of digital violence were also held and will be continued in 2014.**

- b. the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children (**Article 9, para. 3, Explanatory Report, para. 74**);

**The Ministry of Youth and Sport:**

**The Ministry of Youth and Sport is the national holder of the CoE campaign against hate speech in the Internet, which, in a broader sense, combats all negative appearances in the virtual space, including sexual exploitation and sexual abuse of children via the Internet.**

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<sup>27</sup> <http://www.vipmobile.rs/home.8.html>

<sup>28</sup> <http://www.alphabankserbia.com/welcome.gereoo.html>

#### **NGO Atina:**

**When it comes to reports of local media on the trafficking of children, child pornography and exploitation of children in prostitution, media in Serbia generally respect certain ethical principles. However, the biggest problem remains the issue of the protection of identity of children, which is abused in this way. Media research relating specifically to these two issues has not been conducted in our country. However, at the end of 2012, a study was presented on media coverage of violence against children, which was conducted by the Association of Journalists of Serbia and UNICEF. This study included nearly 1,400 texts written between July 15 and November 10, 2012. The analyzed texts and images on violence against and among children were published in national newspapers: Politika, Danas, Blic, Press, Vecernje Novosti, Kurir and Alo, while TV viewings included in this analysis broadcasted on public service RTS, commercial national stations TV B92 and Prva TV, and on Belgrade city TV Studio B. The research showed that most of the leading mainstream media respect the fundamental ethical rules when reporting on children, especially on child victims and perpetrators of violence, but that a threat to children's right to privacy and identity protection is still present. Ethics violation is less present on TV, because the stations are usually not included in risk of reporting on specific cases where victims of violence are children. When it comes to newspapers, although the cases of disclosure of the child's identity are rare, the Code is violated by the publication of photographs and information that make a child – victim of violence – indirectly identifiable.**

#### **NGO Astra:**

**Regarding the question of reporting of domestic media on child trafficking, child pornography and child prostitution, some ethical principles are mostly respected. However, the biggest problem is still the question of protecting the child's identity. No research on the media reporting on these two topics has been conducted in Serbia still. However, in the end of 2012 the research on media reporting on violence on children was presented, conducted by the Journalists' Association of Serbia and UNICEF. This research was conducted on about 1400 articles written between 15<sup>th</sup> of July and 10<sup>th</sup> of November 2012. Analysis included articles and photographs about violence on and between the children published in national newspapers: Politika, Danas, Blic, Press, Vecernje novosti, Kurir and Alo, as well as the television reports on public service RTS, commercial TV stations TV B92, TV Prva and the Belgrade city television station Studio B. The research showed that most of the leading media followed the basic ethical norms when reporting on children, especially on children victims and perpetrators of violence, but noted the presence of violations of children's right to privacy and right to protection of identity. Ethics violations are to a lesser extent present on the television stations, as they usually do not risk reporting on specific cases where the victims of violence are children. When it comes to printed media, although the cases of direct exposure of child's identity are rare, the ethical codes are violated by printing of photographs and the information that make a child – victim of violence indirectly recognizable.**

- c. the financing, including, where appropriate by the creation of funds, of the projects and programmes carried out by civil society aimed at preventing and protecting children from sexual exploitation and sexual abuse (**Article 9, para. 4, Explanatory Report, para. 75**). May the proceeds of crime be used to finance the above mentioned projects and programmes? Please provide details (**Article 27, para. 5, Explanatory Report, para. 193**).

#### **The Ministry of Youth and Sport:**

**In accordance with the National Youth Strategy, the Ministry of Youth and Sport, since its founding in 2007, has financially supported nearly 20 projects (total amount: more than 20.000.000 RSD), implemented by different non-governmental organisations and promoting safety, methods of non-violent communication, combating gender-based violence and other similar issues.**

#### **NGO Atina:**

**Cooperation of state agencies and institutions with civil society organizations is still unsatisfactory, and leaves room for improvement. This cooperation is reflected primarily in the inclusion of CSO's in drafting of strategic documents. However, even then suggestions and criticism of CSO's are adopted with difficulty. In terms of support and protection in direct work with victims of human trafficking, the degree of cooperation is smaller. CSO's are still seen as a competitive organization, and not as collaborators working on the same task. CSO's receive close to no assistance for the help of victims from the budget of the Republic of Serbia, or the support is at the project and short-term level, so their work in most cases depends on donor funding of the international community. State institutions that work with the victims of human trafficking rarely refer users to the services offered by civil society organizations, which have years of experience in working with victims. Baring in mind that majority of victims are minors Atina have a concern regarding the fact there are no specific procedures, employees in Centre are not sensitized to work with children, they haven't passed any trainings, and they are not using the resources that already exist such as experience CSO has (for example Center for youth integration).**

#### **NGO Astra:**

**CSOs do not yet receive funding from the budget of Republic of Serbia for supporting the victims and their work is still exclusively dependent from donor funds. ASTRA programme for protection of children victims of human trafficking, as well as the European hotline for missing children 116000 are not supported by the state budget funds.**

#### **Question 12: Effectiveness of preventive measures and programmes**

- a. Please specify whether an assessment of the effectiveness and impact of the preventive measures and programmes described in replies to questions 4, 10 and 11 is regularly carried out;

**Ministry of Justice:**

**The Authority for Enforcement of Criminal Sanctions as a body integral to the Ministry of Justice and Public Administration organises, implements and monitors enforcement of imprisonment, juvenile prison sentence, community service, probation on remand, measure of security measure of psychiatric treatment and confinement in a health institution, the security measure of mandatory treatment of alcoholics and the measure of mandatory treatment of drug addicts, educational measure of remand to correctional facility.**

**NGO Astra:**

**To this day the body for independent monitoring and evaluation of activities connected to child trafficking, child pornography and prostitution hasn't been established in Republic of Serbia.**

- b. Please provide examples of the good practices in preventing sexual exploitation and sexual abuse of children.

**NGO Astra:**

**As an example of good practice we can name the reports that ASTRA receives from the citizens through the SOS hotline.**

**PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN VICTIMS  
OF SEXUAL EXPLOITATION AND SEXUAL ABUSE**

**Question 13: Reporting suspicion of sexual exploitation or sexual abuse**

- a. Are professionals working in contact with children bound by confidentiality rules? Do these rules constitute an obstacle for reporting to the services responsible for child protection any situation where they have reasonable ground for believing that a child is a victim of sexual exploitation or sexual abuse? Please indicate the criteria or guidelines which allow for the waiving of confidentiality rules (**Article 12, para. 1, Explanatory report, para. 89**);

**Ministry of Health:**

**The best interest of the child is one of the principles implemented in the Health Care Law, Family Code, etc. Also, the Patient's Rights Law enabled the child capable of understanding, regardless of age to be entitled to confidential counselling and without the parent's consent, when it is in the best interest of the child. Furthermore, when it reaches 15 years of age, the child capable of understanding is entitled to individually given consent to medical intervention.**

## NGO Atina:

Social Welfare Centres, whose work has been monitored through the project **Local Communities in the Fight Against Human Trafficking**, are usually passive when it comes to detection of trafficking victims (recognizing victims, suspicion that it is a victim in question in a given case, which entails a duty to inform the Agency for Coordination of Protection of Trafficking Victims for purposes of identification). Reports were (during that period) sent only by the social welfare centres from Subotica (2 reports, in August 2012, and July 2013) and Kraljevo (2 reports, in April 2013). Passivity of monitored centres, when it comes to reporting (potential) victims of human trafficking, is confirmed by the reports for the period of August, September, November of 2012<sup>29</sup> and reports for six months of 2013.<sup>30</sup> It is clear that the police are still the most active in this area as well (detection and addressing to the Center for Protection of Victims of Human Trafficking), which may imply (persistent) overbalance of the criminal dimension of the phenomenon (although identification of a victim is not dependent on the existence of the possibility of prosecution in a present case). Respondents frequently pointed out that the police are the one who first come into contact with the victim. One of the difficulties in identifying victims of human trafficking, that interviewed experts point out, is related to cultural diversity and the so-called "common law of the Roma", referring to the early establishment of a "community of life" of Roma girls under the age of 16. Experts express uncertainty about the need for response, not realizing the obligation to protect the interests and rights of children who are threatened by that life scenario, both in terms of children's rights defined by the international Convention on the Rights of the Child, and in terms of "welfare rights" granted by the Family Law. They also have difficulty in assessing the vulnerability of the rights and interests of children in these situations, which, combined with the aforementioned uncertainty regarding the acceptance and tolerance of cultural diversity, makes reaction of canter significantly reduced in these situations,<sup>31</sup> and the protection of interests and rights of children inadequate. Particular confusion arises about deciding on the implementation of measures in the field of family legal protection, mostly in the part of implementation of measures of guardianship protection and temporary guardianship, when it comes to children victims of trafficking. It is evident that in these cases canter usually occupy two opposite attitudes, depending on their own experience and fear of failure (fear of failure is related to an order that the Ministry of Labour, Employment and Social Policy or the Provincial Secretariat for Social Security could send in a concrete case if the beneficiary's record is referred on appeal to appellate process). Measures are implemented uncritically and unnecessarily, which can lead to repressive decisions, or they are not being implemented at all, and the protection is carried out without an adequate framework. In both cases, child protection is inefficient, untimely and without corresponding effects on a child victim of trafficking. It is the same with adult beneficiaries with the experience of trafficking, where the implementation of measures and legal regulations is also absent. This is particularly indicative given that social welfare centres are good at recognizing risk

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<sup>29</sup> Reports for October and December were not available

<sup>30</sup> Reports and statistics <http://www.centarzztlj.rs/index.php/statistika>

<sup>31</sup> Center for the protection of victims of trafficking, in the process of identification, classifies this type of behavior in the corpus of behavior within the criminal act of human trafficking, determines the status of victim of human trafficking to juvenile Roma women (exploited or potentially exploited).



factors for the development and safety of children and adult beneficiaries<sup>32</sup> and provide a quality description of characteristics of vulnerable groups of beneficiaries. It can be concluded that social welfare centres have difficulties in providing adequate support to children - victims of trafficking in the process of their recovery and (re) integration, partly because of the lack of organization in the system and unsynchronized treatment of various institutions, and partly because of the lack of competence, and lack of resources in local communities for the provision of necessary services. Awareness of centres of support options, roles and jurisdictions of different institutions, including the Centre for the protection of victims of trafficking, and of activities of NGOs is still insufficient to ensure fast and quality support of beneficiaries.

#### NGO Astra:

Professionals who work with children have a legal obligation to report a crime. Article 280 paragraph 1 of The Code on criminal proceedings ("Official Gazette RS", no. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013), stipulates that state and other authorities, legal entities and natural persons have an obligation to report crimes that are prosecuted ex officio, of which they were informed, or they learn otherwise, under the conditions provided for by law or regulation. According to paragraph 3 of the same article they are obliged to present evidence that they are familiar with and to take measures to preserve traces of a criminal offence and the objects on or with which the criminal offence was committed and any other evidence. The Criminal Code foresees in which cases not reporting a crime is a criminal offence (article 331, 332).

#### NGO Centre for Children Rights:

(3) 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 the guardianship authority on reasons for the protection of a child's rights (Article 263, paragraph 3 of the Family Code).

However, although obligation to report the doubt that there was a criminal offence committed is provided for under the law, under the Criminal Code of the Republic of Serbia, failure to report criminal offence by officials and responsible persons when they have become aware of in performance of their duty is defined as criminal act only if the criminal act in question is punishable under the law with prison sentence exceeding five years or with more severe sentence, which means that there are no mechanisms in place to control criminal offence that is punishable with the sentence not exceeding five years (c.f. basic form of sexual intercourse through abuse of a position, illicit sexual acts, incitement

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<sup>32</sup> All the risk factors that centers identify are listed in the analysis *Social Welfare Centers in protection of victims of human trafficking – possibilities and perspectives*: "In cases when victims of trafficking are minors, the following problems are present: running away from home, drug abuse, alcohol abuse, domestic violence, physical abuse and neglect, sexual abuse, intellectual disabilities, poverty, lack of parental cooperation, educational neglect, mental illness, emotional abuse and the loss of a significant person, conflict with the law and physical illness. Estimated problems of adult victims are: emotional abuse, social isolation and financial insecurity of existence, domestic violence, physical abuse, sexual abuse, drug abuse and exploitation, intellectual difficulties, trouble with the law, the loss of a significant person and physical illness and self-neglect." D. Cukic-Vlahovic, op. cit., p. 20.

of minors to attend to sexual acts, abuse of computer networks or other technical communication means for committing sexual criminal offence against juveniles, etc.)

The General Protocol for Protection of Children from Abuse and Neglect regulates method of reporting the doubt about the possible criminal offence committed to centre for social work, which may be reported by an individual (citizen or professional), or institution concerned for the child. The doubt may be reported in writing or orally, including over the telephone, and if a professional orally reports it over the telephone, it is recommended that it should be accompanied by a written report within the following 24 hours.

When a professional reports the case to a centre, it would be better if prior to filing a report, he/she has a discussion with the family of the child and express his/her concern for the child, seek required information from the parents or notify them that he/she will report the case to the centre. However, this procedure should only be followed in cases when such a discussion will not increase the risk from injury of the child, that is, not endanger further procedure of the protection of the child.

The report is supposed to contain all the data on the child and family that the professional/reporting service is aware of at the moment, as well as reasons for the doubt that the child has been subject to abuse / neglect. All such professionals, after they have reported their doubt about the possibility of abuse and neglect, should actively assist competent authorities and services (centre, internal affairs authority, prosecutor's office) through the process of child protection. They are to respond to invitation of the centre to be prepared to take part in the meeting at which the child situation will be examined and decisions taken on security measures and services to be provided to the child and family. Also, they are to be ready to take part in implementation of the protection plan as well, i.e. in provision of the agreed services.

- b. Are there any rules encouraging any person who knows about or suspects, in good faith, sexual exploitation and sexual abuse of children to report the facts to the competent authorities? If so, please specify under which conditions and to which authorities (**Article 12, para. 2, Explanatory Report, para. 91**). Please provide examples of good practice.

#### **Ministry of Justice:**

Under the Criminal Procedure Code, state and other authorities, legal and natural persons are bound to report criminal offences that are persecuted ex officio on which they have been notified, informed or have otherwise become aware of them. Failure to report a criminal offence may be construed as a criminal offence under the Criminal Code. When submitting criminal proceedings reports, state authorities and legal entities shall indicate evidence known to them and undertake measures to preserve traces of the offence, the objects upon which or by means of which the offence was committed as well as other evidence. A criminal report shall be submitted to the competent public prosecutor, in writing, orally, or by other means. If a criminal report is submitted orally, a transcript will be made thereof and the submitter will be cautioned about the consequences of false reporting. If the criminal report is communicated by telephone or other telecommunications medium an official note will be made, and if the complaint was

submitted by electronic mail it will be saved on an appropriate recording medium and printed. If a criminal report was submitted to the police, an incompetent public prosecutor or a court, they will receive the complaint and deliver it to the competent public prosecutor immediately.

#### **Ministry of Health:**

- **In 2009, after the Government of the Republic of Serbia adopted the General protocol for protection of children from abuse and neglect signed by Ministry of Health and countersigned by Ministry of Education and Ministry of Labour, Employment and Social Policy, the Special healthcare system protocol for protection of children from abuse and neglect was issued by the Ministry of Health, intended for healthcare staff and healthcare associates directly involved in child healthcare, at all levels of healthcare.**
- **In 2012, to advance prevention and protection of children from abuse and neglect, Manual for implementation of Special healthcare protocol for protection of children from abuse and neglect was developed and widely disseminated in form of a leaflet/matrix for urgent and easy use, providing every healthcare officer and healthcare associate guidelines for immediate work in the field, and recommendations on who to hold interview with children on experiences painful for them.**
- **The Special protocol takes into account all the children who come into contact with healthcare staff and healthcare associates regardless of their gender, age, family status, and ethnic origin or any other social and individual characteristics (colour, language, belief, nationality, etc.).**
- **One of the basic principles underlining the Special protocol is the principle of best interest of the child implying that the interest of the child is prevailing over interest of the parent or guardians, institution or community in situations when such interests are different from the interest of the child.**
- **The child's participation is ensured by allowing the child to be consulted, to enabling them to receive relevant information and to allow them to express their wishes, views and opinion in all the phases of the protection process in child-friendly manner and adjusted to their age and understanding of the situation.**
- **Due to the complexity of problem and need for multidisciplinary approach, the Special protocol establishes the obligation for healthcare facilities to set up an expert team for protection of children from abuse and neglect responsible to recognize when child is abused and neglected and to provide optimum solution, i.e. to take care of the abused and neglected child within the healthcare system in a best**

possible manner. Every member of the staff working in a healthcare facility are to be informed on the existence of such expert team, their members, active in their healthcare institution. Every member of the healthcare staff, and healthcare associate is bound to notify the expert team in their healthcare facility on every individual case or doubt about child abuse and neglect, whereas the expert team is bound to notify other responsible field-specific and professional institutions.

- **Currently, there are 160 expert teams for protection of children from abuse and neglect (around) set up at primary level, i.e. in primary-level healthcare facilities, and at secondary and tertiary level in paediatric wards/clinics recognized in the National Healthcare Facilities Network Map. In addition to the mentioned teams, there are four regional teams in Belgrade, Novi Sad, Nis and Kragujevac set up to ensure coordination of the expert teams and provide support required for more efficient implementation of the Special protocol for protection of children from abuse and neglect. The expert team in every facility is bound to submit the annual report on its activities to Ministry of Health.**
- **Under the Project titled Implementation of the Special Healthcare System Protocol for Protection of Children from Abuse and Neglect”, implemented in cooperation with Ministry of Health, UNICEF and Mental Health Institute, 120 healthcare staff and healthcare associates have been trained from over healthcare facilities at all levels of healthcare on how to follow Special protocol for protection of children from abuse and neglect.**

**Ministry of Health has continually organised training courses for healthcare staff and healthcare associates involved in protection of children from abuse and neglect.**

**Ministry of Interior:**

**Under the Criminal Procedure Code, state and other authorities, legal and natural persons are bound to report criminal offences that are persecuted ex officio on which they have been notified, informed or have otherwise become aware of them. Criminal Code stipulates in which cases failure to report a criminal offence shall be regarded of as a criminal act.**

**When reporting on children and juveniles, police officers shall respect principles of ethics and comply with certain limitations under the law. Under the Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles “No publication of the course of juvenile criminal proceeding or the disposition of such proceeding will be allowed without permission of the Court» (Article 55). This is also applicable in the proceedings in which juveniles appear as the injured party (victims).**

**As police usually gets first to know about a committed criminal act or misdemeanour in which juveniles may be involved, the police officers are not allowed to disclose confidential**

data in order not to endanger proceedings and exercise adverse impact on dignity, mental and physical and social development of the juvenile and respect of his family.

Under the Special protocol on the follow-up of the police officers in provision of the protection of minors from abuse and neglect, when statements are given, only initial letters of the minor's full name shall be given, and not any single other data on the basis of which the identity of the minor may be inferred. The statement may contain only short description of the development (date, time and general place of the event, data on the juvenile's age and gender).

**NGO Astra:**

The right and duty of all children's, health and educational institutions, institutions for social protection, justice and other state institutions, organizations and citizens to inform the public prosecutor or guardianship authority on the need for protection of a child's rights is written in the article 263, paragraph 3 of the Family law ("Official Gazette RS", No. 18/05).

Article 281 of the Code on criminal proceedings regulates the procedure of filing and entering criminal charges. Criminal charges are filed with the responsible public prosecutor in writing, orally or by other means. If a criminal complaint is filed with the police, public prosecutor that does not have jurisdiction or with the court, they shall receive and immediately forward it to the responsible public prosecutor.

#### **Question 14: Helplines**

Which legislative or other measures have been taken to encourage and support the setting up of information services, such as telephone or internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity? (**Article 13, Explanatory Report, para. 92**).

**Ministry of Interior:**

Under the Civil Law Code, citizens may report criminal acts to the police orally (by personal appearance, over the telephone calling 192 or using other telecommunication means), in writing (by mail, electronic mail) or other means.

All the information and useful advice citizens may consult and find uploaded on the web portal of the Ministry of Interior [www.mup.gov.rs](http://www.mup.gov.rs)

Also, citizens may use the address [info@mup.gov.rs](mailto:info@mup.gov.rs), to submit relevant acts and seek additional explanation on the issues falling within remit of the Ministry of Interior.

To protect children from paedophilia over the Internet, on the web page of the Ministry of Interior there is the e-mail [childprotection@mup.gov.rs](mailto:childprotection@mup.gov.rs), to be used for submission of electronic messages to which all citizens (including children) may report criminal offence committed, i.e. seek help and protection from the police.

### **Ministry of Science and Education:**

Since 2010, telephone or Internet help-lines were established within the Ministry of Education. Also, Ministry has established a Unit for Prevention of Violence, in association with UNICEF, to provide relevant advice to callers, in a confidential manner.

### **NGO Astra:**

Pursuant to Article 189 Paragraph 4 of the Social Protection Law, the Ministry of Labour, Employment and Social Policy issued the Regulation on Licensing of Social Protection Professionals, which came into force on May 22, 2013.

The system of licensing of social protection organizations and professionals, which is regulated under this law, should have as a goal improvement and standardization of the quality in the field of social protection. However, the entire system of licensing is completely adapted solely to institutions that are part of social protection system, while CSO have to face many challenges and difficulties. All the conditions stipulated in this Regulation puts civil society organizations in unfavourable position compared to persons employed in the social protection system and to a great extent marginalize vast experience CSO's have in the areas of violence and human trafficking. As a result, the greatest segment of CSO professionals are excluding from the social protection system because formally they cannot fulfil conditions prescribed by the said Regulation.

Beside, CSO's have a various technical challenges ahead, regarding licensing, and in order to fulfil all those conditions they need additional funding, which they do not have. As a result, only the biggest organizations, and mostly in the capital, will be able to file for licensing, while hundreds of small ones, in smaller communities will have to close their offices, even though they have been providing services for years.

NGO ASTRA runs SOS line, specialized for victims' assistance that is the only one of that kind in Serbia. This line has a double role: giving preventive-educational information (enables informing of the citizens on the human trafficking issue, safe migrations and legal work abroad) and creating the direct contact with the (potential) victims in order to offer assistance to them and their families, persons who are in the trafficking chain or who has managed to escape without receiving adequate psycho-social assistance.

NGO ASTRA also coordinates the unique SOS line for missing children 116000 that became operational in Serbia May 25<sup>th</sup> 2012. This way Serbia became the only country outside the EU in which this number operates, and also one of 24 European countries in which this form of assistance is available. The line for missing children is open non-stop, during whole year (24/7/365). From the day of opening up to date ASTRA covered all costs for its functioning through programme intended for victims of human trafficking. Serbia still does not have a budget line for covering these expenses. In the process of

introduction of SOS line for missing children, ASTRA was supported by the company Vip<sup>33</sup> and Alpha bank<sup>34</sup>. Two years ago ASTRA initiated signing of Memorandum of understanding with the Ministry of interior, but so far this document has not been signed, even though it would significantly increase the efficiency in solving the cases of missing children.

In the middle of October 2005, SOS Children's line, free, confidential, non-stop available and free of charge telephone line. The number of this line is easy to remember (0800 123456). HRH Crown Princess Katherine Foundation supported the project in the cooperation with Ministry of Labour, Employment and Social Policy; National office of President of Republic of Serbia, Ministry of education and sports, Ministry of health, and it was also supported by the Centre for protection of infants, children and youth.

### **Question 15: Assistance to victims**

- a. Please indicate which types of assistance described in **Article 14** are provided to victims of sexual exploitation and sexual abuse of children. (**Explanatory Report paras. 93-100**)  
Please specify:
- how the assistance is adapted to the victims' age and maturity;

#### **Ministry of Health:**

Healthcare of school age children and young persons who do not fall within the category of student population is exercised through activities of:

- Paediatric services, general medicine services, occupational health and gynaecology, multifunctional visiting nurse services at primary healthcare facility and outposts located in schools, students' homes, etc.
- Counselling centres for young persons integral to healthcare service for children attending primary school, which follow a well-developed model of work in the field of reproductive health of young people, and some begin to introduce other contents along in practice applied model of active counselling.
- Mental health services at primary health care facilities predominantly focused to secondary prevention.

Under the Rulebook on detailed requirements for healthcare activity performance at healthcare facilities and other forms of healthcare services (Official Gazette of RS 43/06, 112/09, 50/10, 79/11, 10/12 – st. law, 119/12 – st. law, 22/13),

#### **Article 4, paragraph 1 point 2:**

At level of school children healthcare, the staff should consist of: one doctor of medicine – a specialist of paediatrics or a doctor of medicine and one nurse with post-secondary or secondary qualifications per 1.500 school children, and an advance practice nurse (“higher nurse”).

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<sup>33</sup> <http://www.vipmobile.rs/home.8.html#>

<sup>34</sup> <http://www.alphabankserbia.com/welcome.gereoo.html>

**In the centre of an administrative district, and/or in municipality with at least 7.000 school children age between 10 and 18, a counselling centre for young persons may be organised with the following staff: one doctor of medicine –specialist in paediatrics and one advance practice nurse, and one psychologist and one doctor of medicine- specialist in gynaecology and obstetrics for part-time, and when needs be, a doctor of medicine of other specialisation and a social worker.**

**Item 3 thereof:**

**At level of healthcare for women: one doctor of medicine – specialist in gynaecology and obstetrics, and one nurse versed in gynaecology and obstetrics (midwife) as per 6.500 women above 15 years of age, and another nurse versed in gynaecology and obstetrics (midwife) as per three such teams.**

**Under Article 22, paragraph 2, point 2:**

**In a day-care hospital in the field of psychology and mental health care – one doctor of medicine – specialist in psychiatry (neuropsychiatry) and one nurse with post-secondary i.e. secondary level qualifications as per 15 patients in one shift, and as per two teams – also one psychologist, social worker and advanced practice/intermediate (‘higher’) occupational therapist each.**

**Under the Law on the Procedure of Pregnancy Interruption at Healthcare Facility (Official Gazette of RS 16/95, 101/05-st.law) regulating requirements and the procedure of interruption of pregnancy, at healthcare facility, in case of pregnancy interruption of a person below 16 years of age and person completely deprived of legal capacity, a written consent of the parents is required, and/or of a guardian, and if the consent cannot be obtained from one of the parents, and/or guardian, the consent of a competent guardianship authority is required. Under Article 6, paragraph 1 of the Law, abortion is allowed up to completed 10 weeks of pregnancy, and under paragraph 2 thereof, in exceptional cases, an abortion may be performed after such a period when pregnancy is a result of a committed criminal offence (rape, sexual intercourse with helpless person, sexual intercourse with a child, sexual intercourse through abuse of position, incest, seducing on false pretences promising marriage and incest). Interruption of pregnancy before completed 20<sup>th</sup> week of pregnancy is carried out at healthcare facility with hospital service in the field of gynaecology and obstetrics, operating room and transfusion blood service. Abortion after completed 20 weeks of pregnancy is performed at: clinic, institute, clinical and hospital centre or clinic centre. Abortion before completed 10 weeks of pregnancy may be performed also in a primary healthcare facility, i.e. surgery of a specialist of gynaecology and obstetrics, with women’s healthcare provided and ambulance service. Interruption of pregnancy under anaesthesia is performed in a healthcare facility, i.e. surgery of a specialist of gynaecology and obstetrics, staffed with specialist of anaesthesiology and resuscitation.**



## **Ministry of Interior:**

**In the process of provision of protection to juveniles, police plays significant role and is bound to act in compliance with the Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles, as well as procedures given in the Special protocol on the follow-up of police officers in provision of protection to minors from abuse and neglect. In the said Protocol, procedures of police follow-up are clearly defined, both in case of actions taken against persons committing criminal acts and petty offences and juveniles who may be injured parties as a result of criminal offence and certain petty offences committal against public order or traffic security. In this binding internal act of the Ministry of Interior, general measures of protection of minors in the capacity of injured parties by criminal acts and petty offences with elements of violence committed, possibility of selection of a person of trust is given as well as guidelines to the police are provided on how to interview persons under 18 years of age in such situations.**

**Police may become aware that a criminal act with elements of violence to the detriment of minor has been committed in the following way: directly, indirectly, and ex officio (acting on their own initiative).**

**An interview with a minor who is a party injured by a criminal offence is conducted by a police officer (certified) who has acquired special skills and knowledge in the field of the right of the child and criminal law protection of juveniles (1862 police officers – after the training courses conducted by the Judiciary Academy, become certified to follow –up in cases including juveniles), mandatory in presence of a parent or guardian. When the parent, adoptive parent or guardian cannot be present at the interview (not accessible or there are justifiable doubts that they have committed a criminal offence detrimental to the child) or when it is in the best interest of the child, collection of information and date will be conducted in presence of a guardianship authority or residential care for juveniles, i.e. person of trust selected by the juvenile, in consultation with a representative of the guardianship authority.**

**After information on the event has been collected, the public prosecutor (certified) who acquired special skills and knowledge on the right of the child and criminal law protection, competent centre for social work (guardianship authority) shall be notified on the established facts and circumstances.**

**In situations when it is established that the parent has committed the criminal offence to detriment to own child, the police is bound to ensure presence of a professional from the guardianship authority who instead of the parent will be present at the interview with the child and undertake relevant measures within his competence, and appoint provisional guardian to the child.**

**In case of reporting of the criminal offence in which life and health of the minor are under immediate threat, the police are bound to intervene urgently.**

**Ministry of Justice:**

**Bearing in mind the aforesaid, if an offender of a criminal act of which a victim is a child is a parent or persons taking care of the child they shall be liable for the committed criminal act under the Criminal Code and Criminal Procedure Code.**

**NGO Atina:**

**Special shelters for children victims of trafficking do not exist in Serbia. Children are being placed in shelters (receiving centres), returned to their primary family or are being placed in foster care. Children victims of human trafficking, in cases when they are unaccompanied by a parent/guardian, or if the parent is deprived of custody temporarily or permanently, are placed in institutions for children and youth, along with other groups of children. They are being worked with the same way as the other children, without the creation of special reintegration programmes. An exception is NGO Atina, which, as a civil society organization, places minor victims 15-18 years old in their Transition Home, with the prior permission of a parent/guardian, and with the recommendation of the mandated Center for social work. It is possible to determine, with a high degree of certainty, that child accommodated in the Transition house had their basic needs urgently met, and that the social inclusion programme included key activities of empowerment and provision of basic forms of support for the child, with the full consent and cooperation of the child, that is that the social inclusion programme facilitated compliance of all the rights.**

**NGO Atina:**

**Depending on the needs of beneficiaries, specific programmes of reintegration of children victims of human trafficking, conducted by NGO Atina, are adapted to each beneficiary individually. In the context of providing basic needs of children victims of human trafficking, civil society organizations are still the ones that have the necessary resources, necessary knowledge, skills, budgets (secured by international donor assistance) and mechanisms to timely react and respond to the needs of these children. When it comes to state institutions, it was observed that resources are modest, and that an approach based on individual needs of the child is often not applied, which is partly a consequence of the lack of funds, and partly a consequence of the interpretation of values, rights and standards that the system guarantees.**

- how due account is taken of the child's views, needs and concerns;

**NGO Atina:**

**In Serbia, there are registered cases of forced marriage of girls who are sold by their parents or close relatives, and which were, upon the release from this situation, returned to their primary families again. The principle of participation of the child, when Center for social work (CSW) is making these decisions, is not respected. In addition, children are**

being imposed with pre-prepared solutions, and are not being consulted on issues related to direct work with them.

#### **NGO Atina:**

The competent CSW decided to return a girl (15) to live with her parents and younger brother, after the Agency for Coordination of Protection of Trafficking Victims identified her as a victim of human trafficking in 2012. Since the family has a housing issue, CSW was involved in the provision of accommodation; Atina was contacted and the girl was referred to social inclusion programme, when it was necessary to provide material support to the family, which CSW was unable to do. Meanwhile, through the presence of Atina's representatives in case conferences, it was learned that the girl clearly refuses to live in the place where she was exposed to exploitation, and in the place where there is the largest number of people who used her sexual services while she was in the situation of trafficking, because she was afraid someone might recognize her. However, CSW only managed to find a home in that place, and did not express desire to engage further and find a different solution, or leave it to CSO. Constant efforts and insistence of CSO's involved in the protection of the child resulted in finding a better solution for the family, and the wishes and needs of this girl were met.

- if the assistance (in particular emergency psychological care) is also provided to the victims' close relatives and persons responsible for their care.

#### **NGO Atina:**

In the period from January 2008 to June 2013, 62 juvenile victims (41 female and 21 male) were referred to the programmes of social inclusion of victims of human trafficking, conducted by NGO Atina, i.e. to three programme areas Field Support Team, Reintegration Center and Temporary Home. All the victims were formally identified by the Agency for Coordination of Protection of Trafficking Victims/Center for the Protection of Victims of Trafficking. Out of the total number of referred victims, six were foreign nationals, two were citizens of Afghanistan, two were citizens of Montenegro, one was a citizen of Macedonia and one was a citizen of Albania. All the other children that were supported within the programme of NGO Atina in this period (56 of them) were citizens of the Republic of Serbia. The most common type of exploitation was sexual (a total of 39 victims), forced marriage (12 victims), five of them were the victims of labour exploitation, two were victims of forced begging, and four of them were identified based on the intent of exploitation. Countries of final destination, in the cases of beneficiaries that were supported by NGO Atina in this period, were Sweden, Switzerland, Germany, Austria, Kosovo, Italy. Based on the data NGO Atina has, through direct work with children referred to the programmes of NGO Atina, during the period covered by this report, there was an increase in internal trafficking, while sexual exploitation of girls 12-14 years old was the most common form of exploitation.

Programme of sustainable social inclusion of victims of human trafficking and other forms of exploitation is aimed to provide full social inclusion and economic empowerment of victims of human trafficking and other forms of exploitation in conditions of economic

**crisis and reduced state intervention. As one of the consequences of the economic crisis is a dramatically reduced capacity of existing systems to allow the process of (re) integration of victims of human trafficking and other forms of exploitation through their interventions, and especially reduced capacity of sustainable social inclusion and empowerment through full involvement in the education system and the labour market, NGO Atina's programme offers a viable solution for the provision of comprehensive protection of victims and their families, as multiple victims of transition and crisis. An approach directed parallel to the rehabilitation of consequences of the situation of trafficking and other forms of exploitation on the one hand, and acting on the causes of entry in the situation of trafficking on the other hand, are an additional quality in regard to the existing approaches in this area, but also a guarantee of success, long-term duration and sustainability of the programme itself and of forms of protection.**

**Due to the lack of standards for evaluation of the success of existing programmes, and also the results of research into the reasons why victims refuse various assistance programmes, Atina's basic starting point is – the creation of programme activities according to the requirements and needs of each victim. In addition to that, NGO Atina successfully performs all activities of further monitoring and measuring the effects of the inclusion of each individual beneficiary – among other things, professionals from NGO Atina are in constant contact with 90% of the former beneficiaries, so the programme effects are measured by their achievements and their level of inclusion as well.**

**The entire programme is designed to empower beneficiaries for independent living, overcoming past traumas and violence, and recognition of risky situations. The system of providing psychological support is specifically developed in this area, and includes work on self-help group, when the beneficiaries are interested in it (NGO Atina's self-help group is recognized as an example of good practice at international level).**

**Together with the NEXUS Institute from Washington and King Boudouin Foundation from Belgium, NGO Atina, and other organizations, members of the TVRP network dealing with social inclusion of victims of human trafficking in the region, developed an instrument for monitoring the success of local social inclusion programmes. The instrument is used since 2009, and represents a means for monitoring the performance of services, and provides qualitative and quantitative monitoring of services provided to victims of human trafficking.**

**NGO Astra:**

**Social Welfare Centres that are responsible for children who are victims of trafficking are yet to develop services specifically tailored to children victims of trafficking. In the context of providing for the basic needs of children victims of trafficking, civil society organizations are still those that have the necessary resources, knowledge, skills, budget (secured through international donor assistance) and mechanisms to react and respond to these needs. CSO's provide long-term psychological, medical and legal assistance, as well as accommodation services. Special shelters for children victims of trafficking in Serbia do not exist. Children are placed in shelters (reception centres), homes for children without parental care,**

returned to the primary family or placed in foster care. Children victims of trafficking, if they are unaccompanied by a parent/guardian or if the parent is deprived of custody temporarily or permanently, are placed in institutions for children and youth, along with other groups of children. They are treated as all the other children, without formulation of special reintegration programmes. Due to the lack of accommodation capacities in the country, children are placed in the safe house of NGO ATINA together with adults.

The programmes implemented by CSO's with the aim of re-integration and social inclusion of children cover all the key activities for empowerment and provision of basic forms of support for the child and are adapted to each child individually. Working with children typically involves the inclusion of people from his immediate surroundings that are close to the child.

When it comes to state institutions, it is observed that resources are modest, and they often do not apply an approach based on the individual needs of the child, which is partly a consequence of the lack of funds and partly a consequence of the interpretation of the values, rights and standards that the system guarantees.

A certain number of important system laws that are adopted ask for special training of the professionals who work with children (see question 8.a (2)).

- b. Please specify if and to what extent internal law provides for the possibility of removing (**Article 14, para. 3, Explanatory Report, para. 99**):
- the alleged perpetrator, when the parent or persons caring for the child are involved in his or her sexual exploitation or sexual abuse;
  - the victim from his or her family environment when parents or persons caring for the child are involved in his or her sexual exploitation or sexual abuse.

#### **Ministry of Interior:**

**In addition to the procedures given in the Special protocol on the police officers' follow-up in provision of protection to the minors from abuse and neglect, under Article 38 of the Police Law**

**“Authorised officers who have undergone appropriate special training may enforce police powers against juveniles, young adults and minors.**

**In exceptional cases, other authorised officers may enforce police powers against such minors if specially trained officers are unable to act.**

**Police powers against a minor shall be enforced in the presence of the parent or guardian or, if these are unavailable, in the presence of a representative from social services who is neither a member of the police nor involved in the case, excepting special circumstances of urgent need.**

**Representatives from social services may be present, if possible, in cases where parental presence is detrimental to the minor; in cases of domestic violence or similar; or when parental presence causes a serious disturbance likely to interfere with police work.**

If representatives from social services cannot be present pursuant to paragraphs 3 and 4 of this Article, another person with legal capacity who is neither a member of the police nor involved in the case, shall be present.

**Ministry of Labour, Employment and Social Policy:**

A parent who abuses parental rights, who physically, sexually or emotionally abuses the child, or exploits the child by forcing him/her to excessive labour, or to labour that endangers the moral, health or education of the child, or to labour that is prohibited by law, may be completely deprived of parental responsibility. The court shall issue the decision on deprivation of parental right and separation of the child from the parent. Under this decision, the court may also pronounce a measure of protection from domestic violence in the form of a warrant for eviction from a family apartment or house, regardless of a right to property or a lease to immovable property.

If for the sake of the safety of the child it is required that it should be urgently displaced from the natural family or other endangering circumstances, the decision on provision of placement for the child, with the aim to ensure security of the child victim from abuse shall be issued by the guardianship authority, by applying the measure of temporary guardianship protection. The decision on temporary placement of the child in a situation which calls for urgent intervention shall be issued within 24 hours at the latest from the date when it became clear that urgent intervention is necessary. In such situation it is mandatory that the temporary guardian shall be designated to the child and extent of guardianship powers set that should be adequate to the circumstances of the case.

**NGO Astra:**

According to the article 60 paragraph 3 of the Family Act the court can make a decision to separate the child from its parents if there are reasons to completely or partially deprive the parents of their parental rights or in case of domestic violence. General Protocol for the Prevention of Child Abuse and Neglect, in the framework of the Emergency intervention predicts that if the case requires that the right of custody is taken from the parents, pending a court decision, the Social welfare centre will provide a temporary guardian to the child. By providing a temporary guardian the child's identity, rights and interests are protected in accordance with the law. In this process a decision can be taken on relocation of the child i.e. taking the child out of the endangering environment (Article 332 paragraph 2 of the Family Act). This decision is taken in emergency procedure, at the most within 24 hours from determining the need for the child's relocation from the family.

**NGO Centre for Child Rights:**

Under the Family Code the issuance of a warrant for eviction from a family apartment or house, regardless of a right to property or a lease to immovable property is proscribed among the measures against domestic violence (Family Code, Art. 198). Security measures are pronounced for the period of one year, but may be extended until the reasons for which they had been ordered cease to exist.

- c. If internal law does provide for this:
- are the conditions and duration of such removal to be determined in accordance with the best interests of the child?
  - are social programmes and multidisciplinary structures in place to provide the necessary support for victims, their close relatives and for any person responsible for their care? (**Article 11, Explanatory Report, paras. 87-88**).

**NGO Astra:**

**In the General Protocol for the Prevention of Child Abuse and Neglect it is predicted that, if during the emergency intervention the decision of institutionalizing the child is taken, it is necessary to, as soon as possible, preferably within a period of seven working days, find a durable solution for the child in the family or outside it.**

**Long-term satisfaction of the child's needs should be discussed on the case conference, scheduled by the Social welfare centre. Along with the experts from the centre in charge, the experts from other services that had provided help to the child and/or the family before, should discuss and evaluate the circumstances of the case, the needs and the characteristics of the child, parents and the family as a whole.**

**In ASTRA's experience children in these cases are not participating in the process of finding a durable solution.**

- d. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (**Article 38, para. 2, Explanatory Report, paras. 258-259**).

**PROSECUTION OF PERPETRATORS OF SEXUAL EXPLOITATION  
AND SEXUAL ABUSE OF CHILDREN**

**Question 16: Criminal law offences**

- Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law;
- Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify;
- Please highlight whether there are any other offences not included in the box below incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included;

**Ministry of Justice:**

**As replied to the Question 3(a)**

**NGO Astra:**

- 1) rape (Article 178 paragraph 3 and 4 of the Criminal Code);**
- 2) sexual intercourse with a helpless person (Article 179 paragraph 2 and 3 of the Criminal Code);**
- 3) sexual intercourse with a child (Article 180 of the Criminal Code);**
- 4) sexual intercourse through abuse of position (Article 181 of the Criminal Code);**
- 5) prohibited sexual acts (Article 182 of the Criminal Code);**
- 6) pimping and procuring (Article 183 of the Criminal Code );**
- 7) mediation in prostitution (Article 184 , paragraph 2 of the Criminal Code);**
- 8) Showing, obtaining and possessing pornographic materials and the abuse of minors in pornography (Article 185 of the Criminal Code);**
- 9) Incitement of a minor to be present during the sexual acts (Article 185a of the Criminal Code);**
- 10) Abuse of a computer network or communication with other technical devices for committing sexual offences against a minor (Article 185b of the Criminal Code).**

**NGO Centre for Children Rights:**

**Under the Criminal Code of the Republic of Serbia, large number of criminal offences committed with intent referred to in the box is criminalized. Such offences are criminalised under the Chapter XVIII of the Criminal Code – Criminal Offences Against Sexual Freedom (rape, sexual intercourse with helpless person, intercourse with a child, sexual intercourse through abuse of a position, prohibited sexual acts, procurement of sexual services, mediation in prostitution, Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, Incitement of Minors to Attend Sexual Acts, Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles) Chapter XIX of the Criminal Code - CRIMINAL OFFENCES AGAINST MARRIAGE AND FAMILY (Cohabitation with Minors, Neglecting and Abusing Juveniles, Domestic Violence, Incest), Chapter XXXIV -CRIMINAL OFFENCES AGAINST HUMANITY AND OTHER RIGHT GUARANTEED BY INTERNATIONAL LAW (Human Trafficking).**

**Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities (Article 18, paragraph 1), is defined as a criminal offence under Article 180 of the CC – Sexual Intercourse with a Child).**

**Engaging in sexual activities with a child where - use is made of coercion, force or threats; abuse is made of a recognised position of trust, authority or influence over the child, including within the family; abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence – is classified as a criminal act under the Criminal Code in Article 178 – Rape, Article 179 – Sexual Intercourse with Helpless Person, Article 181 – Sexual Intercourse Through Abuse of a Position, Article 182 – Illicit Sexual Acts.**



**Child prostitution (Article 19) is defined as a criminal offence in the Criminal Code under Article 183 - Procurement of Sexual Services, Article 184 – Mediation in Prostitution, Article 388 – Human Trafficking. However, use of services of child prostitution has not been explicitly established as a criminal offence. In case the child had been under 14, a user of services of child prostitution would definitely have been liable for the criminal offence of intercourse with a child. If the victim child had reached 14 years of age, and had not reached 18 years of age, there would have been liability only if force or threat was used in case the user of services of child prostitution would have been liable for the criminal offence of rape. Also, cases when a criminal group has committed various forms of coerced / forced prostitution are not criminalised, i.e. the qualifying form of such criminal offence when committed by a group is not provided for. (N.B. 'qualifying form' - it is not envisaged as a criminal offence when the result is death or grave consequences result for such a crime).**

**Child pornography (Article 20) and Participation of a Child in Pornographic Performances (Article 21) are criminalised under Article 185 of the Criminal Code - Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, and covers conduct described in Articles 20 and 21 except Knowingly attending pornographic performances involving the participation of children, which is not criminalised in internal law. Also, “profiting from or otherwise exploiting a child for such purposes”, as a form of commission of the offence of procurement of sexual services is not criminalised.**

**Corruption of Children (Article 22) is criminalised under Article 186 of the Criminal Code - Incitement of Minors to Attend Sexual Acts.**

**Solicitation of Children for Sexual Purposes (“grooming”) (Article 23) is criminalised under Article 185 (b) - Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles.**

**Also, in this illicit practice the elements of the following criminal offences may be found, such as Domestic Violence (Article 194 of the CC), Cohabitation with Minors (Article 190 of the CC), Neglecting and Abusing Juveniles (Article 193 of the CC), Incest (Article 197 of the CC) and Human Trafficking (Article 388 of the CC).**

d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

**NGO Centre for Children Rights:**

**A child’s age is not relevant for establishing the gravity of criminal offence, whereas the legislator with regard to a number of sexual offences (criminal offences against sexual freedoms) makes distinction of an criminal offence committed against a child - meaning the child under 14 years of age, and against a minor who has reached 14 years of age and has not yet reached 18 years of age. The criminal offence committed against the child under 14 years of age is a qualifying form of criminal offence (it falls within such a criminal**

offences with higher degree of seriousness and gravity) that more serious criminal sanction is proscribed for in comparison to the basic form of a criminal offence: Rape – CC, Art 179, Sexual Intercourse with Helpless Person – CC, Article 179, Sexual Intercourse Through Abuse of a Position – Article 181, Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles – Article 185, Inducing a Minor to Attend Sexual Acts—Article 185a, Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles- Article 185b of the Criminal Code.

**Sexual Abuse (Article 18)**

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where
  - use is made of coercion, force or threats;
  - abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
  - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

**Ministry of Interior:**

**The referred to practice is criminalized under Chapter 18 of the Criminal Code of the Republic of Serbia – Sexual Offences (Art 178 – 185b) of the Criminal Code**

**Child Prostitution (Article 19)**

1. Recruiting a child into prostitution or causing a child to participate in prostitution;
2. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
3. Having recourse to child prostitution.

**Ministry of Interior:**

**The referred to practice represent elements of criminal act of Pimping and Procuring (Art. 183 of the Criminal Code) and Mediation in Prostitution (Article 184 of the Criminal Code).**

**Child Pornography (Article 20)**

1. Producing child pornography;
2. Offering or making available child pornography;
3. Distributing or transmitting child pornography;
4. Procuring child pornography for oneself or for another person;
5. Possessing child pornography;
6. Knowingly obtaining access, through information and communication technologies, to child pornography.

**Ministry of Interior:**

**The referred to practice are elements of the criminal act of Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, Art. 185 of the Criminal Code**

**Participation of a Child in Pornographic Performances (Article 21)**

1. Recruiting a child into participating in pornographic performances or causing a child to participate in such performances
2. Coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes
3. Knowingly attending pornographic performances involving the participation of children.

**Ministry of Interior:**

**The referred to practice are elements of the criminal act of Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, Art. 185 of the Criminal Code**

**Corruption of Children (Article 22)**

The intentional causing, for sexual purposes, of a child who has not reached the internal legal age for sexual activities, to witness sexual abuse or sexual activities, even without having to participate.

**Ministry of Interior:**

**The referred to practice represent elements of the criminal act of Incitement of Minors to Attend Sexual Acts, Art.185a of the Criminal Code**

**Solicitation of Children for Sexual Purposes (“grooming”) (Article 23)**

The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age for sexual activities as established by internal law, for the purpose of committing sexual abuse or producing child pornography, where this proposal has been followed by material acts leading to such a meeting.

**Ministry of Interior:**

**Such practice represents elements of criminal act of Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles, Art. 185b of the Criminal Code**

**Aiding or abetting and attempt (Article 24)**

1. Intentionally aiding or abetting the commission of any of the above offences.
2. The attempt to commit any of the above offences.

**Ministry of Interior:**

**The attempt to commit a criminal act is provided for under Article 30 of the Criminal Code, and Co-perpetrating under Article 33, Instigation under Article 34 and Aiding and Abetting under Article 35 of the Criminal Code**

**Question 17: Corporate liability**

Does your system provide that a legal person may be held liable for an offence established in accordance with **Article 26**? Please specify under which conditions.

**Ministry of Justice:**

**Under the Law on Liability of Legal Entities for Criminal Offence (Official Gazette of RS, 97/08), the Law shall regulate conditions governing liability of legal entities for criminal offences, penal sanctions that may be imposed on legal entities as well as procedural rules when ruling on the liability of legal entities, on imposing penal sanctions, passing a decision**

on rehabilitation, termination of security measure or legal consequences of the conviction, and on enforcement of court decisions. Under Article 2 thereof, a legal entity may be liable for criminal offences constituted under a special part of the Criminal Code and under laws if the conditions governing the liability of legal entities provided for by this law are satisfied.

Article 6 proscribes legal grounds for liability of legal entities. Under this Article, a legal person shall be held accountable for criminal offences, which have been committed for the benefit of the legal person by a responsible person within the remit, that is, powers thereof. The liability referred to in paragraph 1 of this Article shall also exist where the lack of supervision or control by a natural person allowed the commission of crime for the benefit of the legal person by a natural person operating under the supervision and control of the responsible person.

Article 7 proscribes limits of the liability of legal entities. Therefore, Liability of legal entities shall be based upon culpability of the responsible person. Under the conditions referred to in Article 6 of this Law, a legal person shall be held accountable for criminal offences committed by the responsible person even though criminal proceedings against responsible persons have been discontinued or the act of indictment refused. Article 8 proscribes termination or change of status of legal entities. Therefore, should a legal entity cease to exist before the completion of criminal proceedings, a fine, security measures and confiscation of the proceeds from crime may be imposed against the legal entity being a legal successor thereof, if the liability of the legal entity that ceased to exist had been established.

Should the legal entity cease to exist after the final completion of the proceedings where the liability has been established and a penal sanction for a criminal offence imposed, a fine, security measures and confiscation of the proceeds from crime shall be enforced against the legal entity being a legal successor thereof. A legal entity which, after the commission of a criminal offence changed its legal form which it had operated within, shall be liable for criminal offences under the conditions stipulated in Article 6 of the Law. Article 9 proscribes liability of legal entities in cases of bankruptcy. Therefore, a legal entity that has bankrupted shall be liable for criminal offences committed before the instigation of or in the course of the bankruptcy procedure. The punishment of confiscation of the proceeds from crime or a security measure of confiscation of instrumentalities shall be imposed against the liable legal entity referred to in paragraph 1 of this Article. Under Article 10, a legal entity shall be liable for an attempt of a criminal offence under the conditions stipulated in Article 6 of this Law if law as punishable provides for the attempt. An accountable legal entity may be imposed a punishment for an attempt as provided for by this Law, but it may be also punished less severely. A legal person who has prevented the commission of a criminal offence to complete may be exonerated from the punishment. Article 11 proscribes measures in case of continuance of a criminal offence. Therefore, a legal person shall be liable for the continuance of a criminal offence if, in compliance with Article 6 of this Law, it is accountable for several criminal offences committed by two or several responsible persons, provided that the criminal offences constitute a joinder as mentioned in Article 61, paragraph 1. The sanction imposed against the liable person for

**the continuance of a criminal offence may be aggravated to the extent of a double amount stipulated in Article 14 of this Law.**

**Question 18: Sanctions and measures**

- a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (**Article 27, Explanatory Report, paras. 182-193**);

**Ministry of Justice:**

**The sanctions provided for under the Criminal Code fall within the ranges as proscribed under the Code.**

- b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (**Article 29, Explanatory Report, paras. 203-208**).

**Question 19: Jurisdiction**

With regard to the offences referred to in question 16, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (**Article 25, Explanatory Report, paras. 165-176**).

**Ministry of Justice:**

**The jurisdiction rules under the Criminal Code (Articles 5-13).**

**Temporal Application Article 5(1) The law in force at the time of committing of criminal offence shall apply to the offender.(2) If after the commission of a criminal offence, the law was amended once or more times, the law most lenient for the offender shall apply.(3) A person who commits an offence prescribed by a law with a definite period of application shall be tried under such law, regardless of the time of trial, unless otherwise provided by such law. Applicability of Criminal Legislation on the Territory of Serbia Article 6(1) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on its territory.(2) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on a domestic vessel, regardless of where the vessel is at the time of committing of the act.(3) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence in a domestic aircraft while in flight or domestic military aircraft, regardless of where the aircraft is at the time of committing of criminal offence.(4) If criminal proceedings have been instituted or concluded in a foreign country in respect of cases specified in paragraphs 1 through 3 of this Article, criminal prosecution in Serbia shall be undertaken only with the permission of the Republic Public Prosecutor.(5) Criminal prosecution of foreign citizens in cases specified in paragraphs 1 through 3 of this Article may be transferred to a foreign state, under the terms of reciprocity.**

**Applicability of Criminal Legislation of Serbia to Perpetrators of Particular Criminal Offences Committed Abroad Article 7Criminal legislation of Serbia shall apply to anyone committing abroad a criminal offence specified in Articles 305 through 316, 318 through 321 and Article 391 through 393a hereof or Article 223 hereof if counterfeiting relates to domestic currency. Applicability of Criminal Legislation of Serbia to Serbian Citizen Committing Criminal Offence Abroad Article 8(1) Criminal legislation of Serbia shall also apply to a citizen of Serbia who commits a criminal offence abroad other than those specified in Article 7 hereof, if found on the territory of Serbia or if extradited to Serbia.(2) Under the conditions specified in para 1 of this Article, criminal legislation of Serbia shall also apply to an offender who became a citizen of Serbia and Montenegro after the commission of the offence. Applicability of Criminal Legislation of Serbia to a Foreign Citizen Committing a Criminal Offence Abroad Article 9(1) Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence against Serbia or its citizen outside the territory of Serbia other than those defined in Article 7 hereof, if they are found on the territory of Serbia or if extradited to Serbia.(2) 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 laws of the country of commission, if such person is found on the territory of Serbia and is not extradited to the foreign state. Unless otherwise provided by this Code, the court may not impose in such cases a penalty heavier than set out by the law of the country where the criminal offence was committed. Special Requirements for Criminal Prosecution for Offences Committed Abroad Article 10 (1) In cases referred to in Articles 8 and 9 hereof, criminal prosecution shall not be undertaken if: 1) the offender has fully served the sentence to which he was convicted abroad; 2) the offender was acquitted abroad by final judgement or the statute of limitation has set in respect of the punishment, or was pardoned; 3) to an offender of unsound mind a relevant security measure was enforced abroad; 4) for a criminal offence under foreign law criminal prosecution requires**

a motion of the victim, and such motion was not filed.(2) In the case referred to in Articles 8 and 9, paragraph 1, of this Code criminal prosecution may be undertaken only if a criminal offence is also punishable under the law of the country where it was committed, unless there is a permission by the Republic Public Prosecutor, or when so provided by a ratified international agreement.(3) In case referred to in Article 9 paragraph 2 hereof, if the act at time of commission was considered a criminal offence under general legal principles of international law, prosecution may be undertaken in Serbia following the permission of the Republic Public Prosecutor, regardless of the law of the country where the offence was committed. Calculating Detention and Time Served Abroad Article 11 Detention, any other depriving of liberty in respect of a criminal offence, depriving of liberty during extradition procedure, as well as the punishment that the offender has served abroad pursuant to the judgement of a foreign court shall be calculated in the punishment imposed by a domestic court for the same criminal offence, and if the punishment is not of the same kind, calculation shall be done according to the assessment of the court. Liability of Legal Entities for Criminal Offences Article 12 Liability of legal entities for criminal offences as well as sanctions to be imposed on legal entities for criminal offences shall be regulated by a separate law.” Applicability of the General Part of this Code Article 13 Provisions of the General Part of this Code shall apply to all criminal offences provided under this Code or other law.

#### **Question 20:        Aggravating Circumstances**

Please indicate which of the circumstances referred to in **Article 28**, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (**Explanatory Report, paras. 194-202**).

#### **Ministry of Justice:**

Under Article 54 of the CC, (1) The court shall determine a punishment for a criminal offender within the limits set forth by law for such criminal offence, with regard to the purpose of punishment and taking into account all circumstance that could have bearing on severity of the punishment (extenuating and aggravating circumstances), and particularly the following: degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behaviour after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender. (2) In determining the fine in particular amount (Article 50), the court shall afford particular consideration to financial status of the offender.(3) The circumstance which is an element of a criminal offence may not be taken into consideration either as aggravating or extenuating, unless it exceeds the degree required for establishing the existence of the criminal offence or particular form of the criminal offence or if there are

two or more of such circumstances, and only one is sufficient to define the existence of a severe or less severe form of criminal offence.

Under Article 54a of the CC, if a criminal offence is committed from hate based on race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such circumstance as aggravating except when it is not stipulated as a feature of the criminal offence. All the criminal offences under the Criminal Code, enlisted in the reply to the question 3 (a), when committed against the child, minor, and/or juvenile are qualified forms of such criminal offences.

**Question 21: Measures of protection for the child victim**

- a. Please describe the measures taken to inform child victims of their rights, the services at their disposal, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role as well as the outcome of their cases (**Article 31, para. 1, letter (a) and para. 2**). Please also indicate what is done to provide all relevant information in a manner adapted to the child's age and maturity and in a language that he/she may understand;

**Ministry of Justice:**

Under Article 56 of the Criminal Procedure Code, If the injured party is a minor or a person declared completely incompetent, his legal representative is authorized to make all statements and perform all actions to which the injured party is entitled under this Code. The legal representative may exercise his rights through a proxy. Under Article 11, paragraph 3 of the CPC, Parties, witnesses and other persons participating in proceedings are entitled to use their own languages and scripts during proceedings, and, where proceedings are not being conducted in their language and unless, after being advised on their right to translation, they declare that they know the language in which the proceedings are being conducted and that they waive their right to translation, the interpretation of what they or others are saying, as well as translation of instruments and other written evidence, are secured and paid from budget funds.

Under Article 8 of the CPC, The authority conducting proceedings is required to advise the defendant or other participant in the proceedings, in accordance with the provisions of this Code, about the rights to which they are entitled. Where a defendant or other participant in the proceedings might omit to perform an action or fail to exercise a right due to ignorance, the authority conducting proceedings is required to caution him about the consequences of the omission.

**Ministry of Interior:**

Please see the Answer to Question 15.

**NGO Astra:**

Article 65 of Family Act regulates how the child's opinion is taken into consideration:



- (1) A child who is able to form his/her own opinion has the right to free expression of this opinion.**
- (2) A child has the right to duly receive all information necessary to form his/her own opinion.**
- (3) Due attention must be given to a child's opinion in all issues concerning the child and in all proceedings where his/her rights are decided on, in accordance with the age and maturity of the child.**

**Article 266, paragraph 3 of the same Act states:**

- (3) If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights, the party is a child able to form his/her own opinion, the court is under the obligation to:**
  - 1. take care that the child duly receives all necessary information;**
  - 2. allow the child to directly express his/her opinion, and pay due attention to the child's opinion, in accordance with the age and maturity of the child;**
  - 3. determine the child's opinion in a manner and place that is in accordance with the child's age and maturity.**

**Special protocol on the conduct of judicial authorities in protection of children from abuse and neglect states that the obligatory of the state, determined by the Family Act, and international legal documents, among other things, is to ensure that the proceeding is conducted so that:**

- 1) Vulnerability of minors from abuse and neglect are recognized and the procedural rules are adapted in order to respect child's special needs, including their special needs as witnesses;**
- 2) Child is informed of his/her rights and role, the time schedule and the process of reviewing their cases;**
- 3) it allows in the proceedings in which child's best interest is jeopardized, present and discuss the position, needs and concerns of minors, in a manner consistent with the procedural rules of national procedural law; Also, to provide appropriate support by services to minors throughout the trial;**
- 4) it protects, in appropriate way, the privacy and identity of a child and takes actions in accordance with the law in order to avoid the dissemination of information that could lead to child's identification;**
- 5) avoids unnecessary postponement of cases and execution of commands or decrees granting compensation to minors.**

**NGO Centre for Children Rights:**

**Informing a child victim on its rights, services available to it, subsequent activities /follow-up on complaint submission, institution of criminal proceedings, overall course and progress of investigation or proceedings, and its role and outcome of the case, is in practice generally ensured through the victim's counsellor, i.e. proxy who provides information to the victim. Such a representative is mandatory under Article 154 of the Law on Juvenile**

**Crime Offenders and Criminal Law Protection of Juveniles - A juvenile who is a victim shall have a legal representative from the first questioning of the defendant. If the juvenile does not have a legal representative, he shall be appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles. The costs of representation shall be borne by the Court budget. Thus, it is ensured that all children victims have legal aid free of charge during criminal proceedings. However, there are no guidelines for provision of information to the child in a manner adjusted to its age and maturity, nor there are prepared papers and documents by state authorities on all the rights, services and subsequent actions (follow-up) that child may use in understandable language, which is why the quality of information completely depends upon the degree of sensitization of an individual counsellor representing the child in the trial and his capacities to inform the child in a manner adjusted the child's age and maturity.**

**The child victim is entitled to legal aid free of charge only during trial, i.e. criminal proceedings, but not in civil law proceedings (law suits, litigations). This represents a major problem, given that timely child protection from violence often requires litigation (contentious proceedings) to be instituted as well (in particular the proceedings to order a security measure against domestic violence, deprivation of parental responsibility, as well as indemnification, i.e. enforcement of property law request which usually is not a matter of decision-making in criminal law but in civil law - judges refer injured parties / victims to resolve such a request in litigation).**

**Also, another problem is absence of an independent legal proxy /representation of a child, i.e. absence of special representative of the victim who would represent the child in the proceedings in an independent manner and who would institute all the necessary proceedings before criminal, civil, administrative and independent bodies to ensure adequate protection for the child.**

**It is particularly so in situations which require institution of more than one proceedings before court in different processing systems (e.g. criminal offence of domestic violence in which a child victim is in the criminal proceedings and where it has legal aid free of charge, alongside which simultaneously the procedure for pronouncing security measure against domestic violence should be instituted before civil courts, i.e. family council where the child is not provided under the law with legal aid free of charge nor independent legal representative/counsellor).**

- b. Please also indicate which measures have been taken to enable the child victim to be heard, to supply evidence and to choose the means of having his/her views, needs and concerns presented, directly or through an intermediary, and considered (**Article 31, para. 1, letter (c)**);

**Ministry of Justice:**

**Under Article 94, paragraph 2 of the Criminal Procedure Code (CPC), Juveniles who are in view of their age and mental development not capable of understanding the significance of the right not to have to testify may not be questioned as witnesses, except if the**

defendant so demands. Every person capable of presenting his knowledge or impressions in connection with the subject-matter of the testimony has a capacity to give evidence. (Article 92, paragraph 1 of the CPC). Under Article 103 of the CPC, the authority conducting proceedings may ex officio, at the request of parties or the witness himself, designate as an especially vulnerable witness a witness who is especially vulnerable in view of his age, experience, lifestyle, gender, state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances. The ruling determining a status of an especially vulnerable witness is issued by the public prosecutor, president of the panel or individual judge. If it deems it necessary for the purpose of protecting the interests of an especially vulnerable witness, the authority conducting proceedings referred to in paragraph 2 of this Article will issue a ruling appointing a proxy for the witness, and the public prosecutor or the president of the court will appoint a proxy according to the order on the roster of attorneys submitted to the court by the bar association competent for designating court appointed defence counsels (Article 76). No special appeal is allowed against a ruling approving or denying a request. Under Article 104 Rules on Examining an Especially Vulnerable Witness of the CPC, An especially vulnerable witness may be examined only through the authority conducting the proceedings, who will treat the witness with particular care, endeavouring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings. If the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination is conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located. An especially vulnerable witness may also be examined in his dwelling or other premises or in an authorised institution professionally qualified for examining especially vulnerable persons. In such case the authority conducting proceedings may order application of the measures referred to in paragraph 2 of this Article. An especially vulnerable witness may not be confronted with the defendant, unless the defendant himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defence. No special appeal is allowed against a ruling referred to in paragraphs 1 to 3 of this Article. Under Article 50 The injured party is entitled to:1) submit a motion and evidence for realising a restitution claim and a motion for interim measures for securing it; 2) present facts and propose evidence of importance for proving the claim; 3) retain a proxy from amongst attorneys; 4) examine the files and objects serving as evidence; 5) be notified about the dismissal of a criminal complaint or abandonment of criminal prosecution by the public prosecutor; 6) submit objections to the public prosecutor's decision not to conduct criminal prosecution or to abandon criminal prosecution;7) be advised about the possibility of assuming criminal prosecution and representing the prosecution;8) attend the preparatory hearing;9) attend the trial and participate in examining evidence;10) file an appeal against the decision on the costs of the criminal proceedings and the adjudicated restitution claim;11) be notified about the outcome of the proceedings and be served the final judgment;12) perform other actions where provided for by this Code. The injured party may be denied the right to examine the case files and objects until he is questioned as a witness. The public prosecutor and the

court will inform the injured party of the rights referred to in paragraph 1 of this Article. Under Article 58 of the CPC, An injured party as a subsidiary prosecutor is entitled to:1) represent the prosecution in accordance with the provisions of this Code;2) submit a motion and evidence for realising a restitution claim and a motion for interim measures to secure it;3) retain a proxy from amongst attorneys;4) request the appointment of a proxy;5) perform other actions provided for by this Code. Besides the rights referred to in paragraph 1 of this Article, a subsidiary prosecutor also exercises the rights of the public prosecutor, except those that the public prosecutor has in his capacity as a public authority.

#### **NGO Atina:**

A girl, 14 years old, victim of human trafficking identified in 2012, was being sold by her father to an older cousin for a bottle of spirits or a pack of cigarettes, in a village in northern Serbia. Exploitation lasted a year; the girl got pregnant during that time, and had a baby. After her father physically abused her mother, and she reported this to CSW, their relatives started talking at the centre about the abuse the two daughters and the mother suffered through in the family. Although this family is registered with the CSW, and they were aware that the sisters ran away from home, according to their records they never imposed corrective action of supervision of the parents, nor have they visited the family and monitored what was going on within. Only after a relative reported it did CSW notify the police, so the father was arrested and detained. The girl was referred, by the Agency for Coordination of Protection of Trafficking Victims, to Atina's programmes for reintegration of victims of human trafficking. She was provided with urgent medical care, and necessary financial assistance, food, fuel, clothing. During the court proceedings against her father and relative for trafficking, she was required to testify several times. On several occasions, the girl had bouts of crying, and couldn't calm down and return to reality for days after that. She had to be present while the defendants (her father and uncle) answered the questions of the prosecutor and the judge. In this case, CSW had not previously informed the child about the court proceedings, nor had the CSW's psychologist prepared the girl for testifying, which the girl badly needed. From the point of referral to reintegration programmes, Atina takes over the monitoring of the child and her family at the trials, as well as the preparation for giving statements, gathering all the necessary documents and informing on all the important aspects of protection. First instance verdict for trafficking was rendered, and the father was sentenced to 5 years, and the uncle was sentenced to 4 years for lewd acts with a child. The decision of the Appellate Court is currently waiting.

In practice, victim's testimony is always asked for. In the above-described case, a testimony was asked for, and done, by the girl and her sister. Even after the testimony, they are called to re-attend the trial. They are exposed to extra efforts, victimization, travel, stress, and costs.

#### **NGO Astra:**

**Special protocol on the conduct of judicial authorities in protection of children from abuse and neglect regulates all these measures. The court will determine the best interests of the child by taking into the consideration following elements:**

- **Characteristics of a child (age, sex, origin, disability, refugees, a disruption in social behaviour and other related circumstances);**
- **The safety of the child;**
- **The wishes and feelings of a child (considering his age and understanding / maturity);**
- **- Child's needs (physical, emotional, medical, educational, needs related to housing, food, clothing ... );**
- **The ability of parents / others to meet the identified needs of a child;**
- **Resources that can be used for providing supportive conditions of growth and development;**
- **Expected impact of any changes in the circumstances of a child;**
- **The time required to adapt to the new environment and the elimination of the consequences of deprivation, or abuse and neglect.**

## **NGO centre for Children Rights:**

**Under the Law on Juvenile Crime Offenders and Criminal Protection of Juveniles the following measures are proscribed ensuring the child victim to be questioning and to participate in the proceedings: When conducting proceeding for criminal offences committed against juveniles, the state prosecutor, investigative judge and judges of the bench shall treat the victim with care, having regard to his age, character, education and living circumstances, particularly endeavouring to avoid all possible prejudicial consequences of the proceeding on his character and development. Questioning of a child or juvenile shall be conducted with the assistance of psychologist, pedagogue or other qualified person. If a juvenile is questioned as witness who is victim of a criminal offence specified in Article 150 hereof, the questioning may be conducted at most twice, and exceptionally more if necessary to achieve the purpose of criminal proceeding. If the juvenile is questioned more than twice, the judge shall particularly have regard for the protection of personality and development of the juvenile. If, due to the nature of the criminal offence and the juvenile's character the judge considers it necessary, he shall order questioning of the juvenile with the aid of technical devices for transmitting of image and sound, and the questioning shall be conducted without presence of the parties and other participants in the proceeding in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogue, social worker or other qualified person. Juveniles may be questioned as witness victims in their apartment or other premises and/or authorised institution – organisation that is professionally qualified for questioning of minors. In questioning of the witness victim, the authorities referred to in paragraph 1 of this Article may order application of measures under paragraph 3 of this Article.**

**When a juvenile has been questioned in cases specified in paragraphs 2, 3 and 4 of this Article the record of his testimony shall always be read at the main hearing or a recording of the questioning heard. Article 153 If a juvenile is questioned as witness, who due to the nature of the criminal offence, consequences or other circumstances is particularly vulnerable or is in a particularly difficult mental state, confrontation between him and the defendant is prohibited. Article 154A juvenile who is a victim shall have a legal representative from the first questioning of the defendant. If the juvenile does not have a legal representative, he shall be appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles. The costs of representation shall be borne by the Court budget. Article 155 If recognition of the defendant is done by a juvenile who is a victim, the Court shall proceed with particular care and shall conduct such recognition in all phases of the proceeding in a manner that completely prevents the defendant from seeing the juvenile. However, these legal solutions have not been fully enforced in practice, in particular those concerning questioning of the child by use of technical devices for transmission of picture and sound and possibility to question the child in the flat or some other room, and/or authorised institution-organisation professionally trained to question the juvenile. Also, the child's right to information has not been enforced to a sufficient degree, in particular given the absence of the guidelines for informing the child in a language understandable to it, but**

also given absence of obligation by bodies in charge to act to inform victims of the status of the defendant, in particular his/her apprehension.

Further, absence of a comprehensive system of psychosocial support and social reintegration for the child victim and of prevention of stigmatisation represents a special problem that needs to be solved. Also, there are no developed systems of psychosocial support for the family of the victim child. Currently, the support system is ensured on the basis of projects, mostly through NGOs.

- c. What kind of support services are provided to child victims and their families so that their rights and interests are duly presented and taken into account? (**Article 31, para. 1, letter (d)**);

**NGO Astra:**

Beside the measures prescribed by the court that are not always respected, and Social Welfare Centres, families and children mostly have to rely on the available services of CSO.

- d. Please describe the measures taken to protect the privacy, the identity and the image of child victims (**Article 31, para. 1, letter (e)**);

**Ministry of Justice:**

Under Article 304 of the Criminal Procedure Code If it is necessary in order to protect the interests of national security, public order and morality, interests of minors, privacy of participants in proceedings, or for other justified interests in a democratic society, the authority conducting proceedings which conducts an evidentiary action shall order persons he is questioning or examining or who are attending evidentiary actions or are examining the case-file to maintain confidentiality of certain facts or data learnt on the occasion, and warn them that disclosure of a secret represents a criminal offence under the law. Under Article 363 of the CPC, from the commencement of the hearing until the conclusion of the trial, the panel may ex officio or upon a motion by a party or the defence counsel, but always after they had stated their positions, exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting:1) the interests of national security;2) public order and morality;3) the interests of minors;4) private lives of the participants in the proceedings;5) other justified interests in a democratic society.

**NGO Astra:**

The paragraph 1 in the Article 206 of Family Act states that in the proceedings regarding family relations the public is excluded, which is also applicable in the situations involving a child.

Exclusion of the public does not apply to the parties, their legal representatives, and attorneys. In addition, the court may allow on the hearing at which the public is excluded, the presence of certain officials and experts, if it is of interest to their service, or scientific

or public activity. At the request of the, no more than two persons the party names may be present.

According to articles in the hearing is open to the public (Article 291, Paragraph 1. CPC), but the council in order to protect the interests of a child (from the beginning to the end of the trial), ex officio or at the request of the parties exclude the public from the main hearing or from a part of it (Article 292 CPC).

However, in practice there are cases when a minor is a victim/witness in the trials that are open for the public in the court, that are not for minors. In such cases the child is exposed to direct contact with accused and their family and friends.

- e. Please describe the measures taken to provide the safety of the child victims and witnesses and their families from intimidation, retaliation and repeat victimisation (**Article 31, para. 1, letter (f)**);

**Ministry of Justice:**

Under Article 89a of the Criminal Code (1)The Court may prohibit an offender from approaching the injured party at a specified distance, from accessing the area surrounding the injured party's residence or place of work, and further harassment of the injured party, *i.e.* further communication with the injured party, provided it is reasonable to believe that any such further action taken by the offender would pose a threat to the injured party.(2) The court shall determine the duration of the measure specified in paragraph 1 of this Article, which may not be less than six months or more than three years, calculating from the date of final decision, with the proviso that time spent in prison and/or medical institution wherein the security measure was enforced is not calculated into the duration of this measure. (3) The measure referred to in paragraph 1 hereof may be revoked before it has expired should grounds on which it was imposed have ceased to exist.

**NGO Astra:**

Articles 105 and 106 of the Criminal Procedure Code regulate conduct in situations when there is a possibility of intimidation and retaliation of victims, witnesses and their families, while the art. 103 and 104 of the same Code regulate conduct in situations where there is a possibility of new victimization. When it comes to victims of human trafficking, to our knowledge victims' was never assigned the status of protected witness, but they were granted the status of especially vulnerable witnesses in situations when the experts and the court that there is a possibility of secondary victimization estimated it. In such cases, it was acted in accordance with the recommendations from the mentioned articles of the Code.

Also, according to the article 89a of the Criminal Code:

(1) The court may prohibit the offender to come close to a victim, to prohibit access to the place of residence or work of the victim, or to a nearby place and prohibit further harassment, or further communication with the victim, if there is a reason to believe that continuance of such actions may be dangerous for the victim.



**(2) The court determines that the duration of the measures referred to in paragraph 1 of this Article shall not be less than six months nor more than three years from the date of the final decision, provided that the time spent in prison or in a medical facility where the security measures were performed is not included in the duration of the measure.**  
**(3) Measures referred to in paragraph 1 of this article may be terminated prior to the expiration date set, if the reasons for which it was set stop.**

f. Please specify whether the victim and his/her family are informed when the person prosecuted or convicted is released temporarily or definitely from detention or custody. Please indicate who delivers this information and how (**Article 31, para. 1, letter (b)**);

**NGO Astra:**

**According to information that ASTRA has, victims were never officially informed when the person prosecuted or convicted is released temporarily or definitely from detention or custody. Passing that kind of information to victims is more exception than a rule and is mostly up to CSO that are involved with the case to inform the victim if they receive new information.**

**NGO Centre for Children rights:**

**There is no clearly proscribed obligation of the bodies that act in the proceedings to inform victims of the status of defendant, in particular on his/her apprehension and release from detainment, to ensure security and protection for the victim child. There are examples of good practice, but often the child victim and its family do not have information on the status of defendant.**

g. Please also indicate what measures have been taken to ensure that contact between victims and perpetrators, within court and law enforcement agency premises, is avoided. Please specify under which conditions the competent authorities may authorise such contact in the best interests of the child or when the investigations or proceedings require such contact (**Article 31, para. 1, letter (g)**);

**Ministry of Justice:**

**Under Article 49 of the Criminal Procedure Code, a public prosecutor may dismiss charges:1) from the confirmation of the indictment until the conclusion of the trial;2) at a hearing before a second-instance court in accordance with Article 450 paragraph 5 of this Code. Where the public prosecutor dismisses charges in accordance with paragraph 1 of this Article, the injured party is entitled to assume criminal prosecution (Article 52). Under Article 50 thereof, The injured party is entitled to:1) submit a motion and evidence for realising a restitution claim and a motion for interim measures for securing it;2) present facts and propose evidence of importance for proving the claim;3) retain a proxy from amongst attorneys;4) examine the files and objects serving as evidence;5) be notified about the dismissal of a criminal complaint or abandonment of criminal prosecution by the public prosecutor;6) submit objections to the public prosecutor's decision not to conduct criminal prosecution or to abandon criminal prosecution;7) be advised about the possibility**

of assuming criminal prosecution and representing the prosecution;8) attend the preparatory hearing;9) attend the trial and participate in examining evidence;10) file an appeal against the decision on the costs of the criminal proceedings and the adjudicated restitution claim;11) be notified about the outcome of the proceedings and be served the final judgment;12) perform other actions where provided for by this Code. The injured party may be denied the right to examine the case files and objects until he is questioned as a witness. The public prosecutor and the court will inform the injured party of the rights referred to in paragraph 1 of this Article. Under Article 51 thereof, If in connection with a criminal offence prosecutable ex officio the public prosecutor dismisses a criminal complaint, discontinues the investigation or abandons criminal prosecution until the indictment is confirmed, he is required to notify the injured party thereof within eight days and to advise him that he is entitled to submit an objection to the immediately higher public prosecutor. The injured party is entitled to submit an objection within eight days of receiving the notification and advice referred to in paragraph 1 of this Article. If the injured party has not been notified, he is entitled to submit an objection within three months of the date when the public prosecutor dismissed the complaint, discontinued the investigation or abandoned criminal prosecution. An immediately higher public prosecutor will within 15 days of receiving the objection referred to in paragraph 2 of this Article, deny or uphold the objection by a ruling against which an appeal or objection is not allowed. By the ruling upholding the objection, the public prosecutor issues a compulsory instruction to the competent public prosecutor to conduct or resume criminal prosecution. Under Article 52 thereof, if after the indictment is confirmed the public prosecutor declares that he is dismissing charges, the court will ask the injured party whether he wishes to assume criminal prosecution and represent the prosecution. If the injured party is not present, the court will within eight days notify him that the public prosecutor dismissed the charges and advise him that he may declare if he wishes to assume criminal prosecution and represent the prosecution. The injured party is required immediately, or within eight days of receiving the notice and advice referred to in paragraph 1 of this Article, to declare whether he wishes to assume criminal prosecution and represent the prosecution, and if he/she has not been notified - within three months from the day when the public prosecutor has stated that he is dismissing the charges. If the injured party declares that he is assuming criminal prosecution, the court will resume the trial or schedule a trial. In case the injured party does not declare himself within the time limit referred to in paragraph 2 of this Article or declares that he does not wish to assume criminal prosecution, the court issues a ruling discontinuing the proceedings or a judgment dismissing the charges. If the injured party is not present at the preparatory hearing or the trial, and was duly summoned or could not be served a summons because of a failure to notify the court of a change of permanent or temporary residence, it will be presumed that he does not wish to assume prosecution and the court will issue a ruling discontinuing the proceedings or a judgment dismissing the charges. Under Article 53, a motion for prosecuting criminal offences which are prosecuted on the basis of a motion by an injured party is submitted to the competent public prosecutor. The motion for criminal prosecution is submitted within three months of the date when the injured party learnt about the criminal offence and the suspect. If the injured party submitted a criminal report or a motion for realising a restitution claim in criminal proceedings, it will be deemed that he thereby also submitted a motion for criminal prosecution. A timely private prosecution is

deemed a timely motion by the injured party if during the proceedings it is established that what is concerned is a criminal offence which is prosecuted based on a motion for criminal prosecution.

**NGO Astra:**

Although their participation is legally secured, the court and the prosecution are required that through specific actions, realize preconditions for adequate participation of a child in the court proceedings, whether he/she appears as a perpetrator of a crime, victim/witness or witness. This is primarily related to:

- 1. Urgent actions and decisions that enable physical, psychological, and social security of a child;**
- 2. Protection of a child from possible media (miss) use;**
- 3. Appropriate and timely informing of a child on all the relevant facts (the practical application of these guidelines would mean that the Judge - Prosecutor directly or through psychologists, educators, special educators, social workers, etc. that was assigned to the child by the judge or the public prosecutor should in the first contact with a child, in an appropriate way explain the reasons for interrogation, his status and rights, and the importance of his participation in the process. Also this means that the child should be informed about the way he/she can address the court, directly or a representative);**
- 4. Actions towards the empowerment of a child to express his own opinion and will (create an atmosphere of trust, interest and security);**
- 5. Treatment of the representative of the judicial system to a child that must be careful, with full respect for his personality, respect to his age and child's specific period of development, as well as his specific individual characteristics;**
- 6. The fact that the minor always must be questioned in the presence of a parent, adoptive parent or legal guardian, unless the court decides otherwise;**
- 7. The obligation of the legal counsel or defender counsel to represent the child's best interest (unless the court determines otherwise, they must take measures towards protecting the interests of a child);**
- 8. The necessity of including the experts (psychologists, educators, special educators, social workers, etc.) in the questioning when a child appears as particularly vulnerable witness or victim;**
- 9. Using special techniques, hearing through audio and video link (whenever a child is a victim, in accordance with the article 150 of Criminal Code or particularly vulnerable witness in accordance article 104 of the Criminal Code);**

**10. Questioning of a child, especially a minor under the age of fourteen, in his natural environment whenever possible, or there whenever there is a need for that.**

**Article 104 of the Criminal Procedure Code states that: Questions to especially vulnerable witness can be asked only through the procedure who will refer to him with special care, trying to avoid the possible negative consequences of criminal proceedings may have on person, physical and mental condition of the witness. Questioning can be done with the help of a psychologist, social worker or other professional.**

**If the court decides that the particularly sensitive witness is questioned using technical means for transferring image and sound, the question is conducted without the presence of the parties and other participants in the procedure, in the room where the witness is located.**

**Particularly vulnerable witness may be questioned in his/her home or other premises, or in an authorized institution that is professionally qualified to question particularly vulnerable persons. In this case, the authority may determine that the measures stated in the paragraph 2 of this article.**

**Particularly vulnerable witness cannot be confronted with the accused, unless the accused himself insists, and a court allows taking into consideration the degree of sensitivity of witnesses and the rights of the defence.**

**Also, the Special protocol on the conduct of judicial authorities in protection of children from abuse and neglect provides recommendations for the treatment of minors in order to prevent aggravation of the trauma, as well as recommendations for conducting interviews with minors.**

**NGO Centre for Children Rights:**

**In internal law, there is no explicit provision by which authorities that act in the proceedings are bound to ensure that child victim and perpetrator should not encounter each other in the premises of the court or the police. This obligation may be derived indirectly from Article 152 of the Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles, under which all professionals participating in the proceedings shall seek to avoid possible adverse consequences of the trial to the child's personality and development, as well as from Article 155 under which the court, in the process of recognition of the defendant by the child, is bound to act with cautious and care in a manner as to fully disable the defendant to see the child's face. Avoidance of any contact between the victim and perpetrator in the premises of the court or police is ensured in practice mostly by summoning the victim and the defendant to court in different time whenever that is possible. However, either in the court or the police are there special premises adjusted to the child in which the child victim could wait until it is interrogated.**

- h. Please specify under which conditions child victims of the offences established according to the Convention have access to legal aid provided free of charge (**Article 31, para. 3**).

**Ministry of Justice:**

**Under Article 2 of the Court Guard Rules (Official Gazette of RS 91/05, 107/05 and 104/06), the court guard shall be an armed service wearing uniforms, which shall ensure safety of people and property, judiciary authority building, order and peace and seamless conduct of official activities in the building where a judiciary authority is located.**

**NGO Astra:**

**Law does not regulate the provision of free legal aid, so Serbia still does not have a law on free legal aid. Free legal assistance, as well as other forms of help to victims as solely provided by CSO.**

**Question 22: Investigations and criminal measures to protect the child victim**

- a. What protective approach towards victims has been adopted to ensure that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate? (**Article 30, para. 2, Explanatory Report, paras. 211-215**);

**Ministry of Justice:**

**Under Article 304 of the Criminal Procedure Code, If it is necessary in order to protect the interests of national security, public order and morality, interests of minors, privacy of participants in proceedings, or for other justified interests in a democratic society, the authority conducting proceedings which conducts an evidentiary action shall order persons he is questioning or examining or who are attending evidentiary actions or are examining the case-file to maintain confidentiality of certain facts or data learnt on the occasion, and warn them that disclosure of a secret represents a criminal offence under the law. The order referred to in paragraph 1 of this Article will be entered into transcript of the evidentiary action, or will be marked on the case-file documents which are being examined and accompanied by a signature of the person warned. Under Article 363 thereof, From the commencement of the hearing until the conclusion of the trial, the panel may ex officio or upon a motion by a party or the defence counsel, but always after they had stated their positions, exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting:1) the interests of national security;2) public order and morality;3) the interests of minors;4) private lives of the participants in the proceedings;5) other justified interests in a democratic society. Under Article 94, paragraph 2 thereof, Juveniles who are in view of their age and mental development not capable of understanding the significance of the right not to have to testify may not be questioned as witnesses, except if the defendant so demands. Every person capable of presenting his knowledge or impressions in connection with the subject-matter of the testimony has a capacity to give evidence (Article 92, paragraph 1 of the CPC).Under Article 103 of the CPC, the authority conducting proceedings may ex officio, at the request**

of parties or the witness himself, designate as an especially vulnerable witness a witness who is especially vulnerable in view of his age, experience, lifestyle, gender, state of health, nature, the manner or the consequences of the criminal offence committed, or other circumstances. The ruling determining a status of an especially vulnerable witness is issued by the public prosecutor, president of the panel or individual judge. If it deems it necessary for the purpose of protecting the interests of an especially vulnerable witness, the authority conducting proceedings referred to in paragraph 2 of this Article will issue a ruling appointing a proxy for the witness, and the public prosecutor or the president of the court will appoint a proxy according to the order on the roster of attorneys submitted to the court by the bar association competent for designating court appointed defence counsels (Article 76). No special appeal is allowed against a ruling approving or denying a request. Under Article 104 Rules on Examining an Especially Vulnerable Witness of the CPC, An especially vulnerable witness may be examined only through the authority conducting the proceedings, who will treat the witness with particular care, endeavouring to avoid possible detrimental consequences of the criminal proceedings to the personality, physical and mental state of the witness. Examination may be conducted with the assistance of a psychologist, social worker or other professional, which will be decided by the authority conducting proceedings. If the authority conducting proceedings decides to examine an especially vulnerable witness using technical devices for transmitting images and sound, the examination is conducted without the presence of the parties and other participants in the proceedings in the room where the witness is located. An especially vulnerable witness may also be examined in his dwelling or other premises or in an authorised institution professionally qualified for examining especially vulnerable persons. In such case the authority conducting proceedings may order application of the measures referred to in paragraph 2 of this Article. An especially vulnerable witness may not be confronted with the defendant, unless the defendant himself requests this and the authority conducting proceedings grants the request, taking into account the level of the witness's vulnerability and rights of defence. No special appeal is allowed against a ruling referred to in paragraphs 1 to 3 of this Article. Under Article 50 The injured party is entitled to: 1) submit a motion and evidence for realising a restitution claim and a motion for interim measures for securing it; 2) present facts and propose evidence of importance for proving the claim; 3) retain a proxy from amongst attorneys; 4) examine the files and objects serving as evidence; 5) be notified about the dismissal of a criminal complaint or abandonment of criminal prosecution by the public prosecutor; 6) submit objections to the public prosecutor's decision not to conduct criminal prosecution or to abandon criminal prosecution; 7) be advised about the possibility of assuming criminal prosecution and representing the prosecution; 8) attend the preparatory hearing; 9) attend the trial and participate in examining evidence; 10) file an appeal against the decision on the costs of the criminal proceedings and the adjudicated restitution claim; 11) be notified about the outcome of the proceedings and be served the final judgment; 12) perform other actions where provided for by this Code. The injured party may be denied the right to examine the case files and objects until he is questioned as a witness. The public prosecutor and the court will inform the injured party of the rights referred to in paragraph 1 of this Article. Under Article 58 of the CPC, An injured party as a subsidiary prosecutor is entitled to: 1) represent the prosecution in accordance with the provisions of this Code; 2) submit a motion and evidence for realising a restitution claim and a motion for interim measures to

secure it; 3) retain a proxy from amongst attorneys; 4) request the appointment of a proxy; 5) perform other actions provided for by this Code. Besides the rights referred to in paragraph 1 of this Article, a subsidiary prosecutor also exercises the rights of the public prosecutor, except those that the public prosecutor has in his capacity as a public authority.

**NGO Astra:**

**Article 103 and 104 of the CPC (mentioned above) relate the status of especially vulnerable witnesses:**

**Article 103:** A witness who is according to the age, life experience, lifestyle, gender, health, nature, manner or the consequences of a committed crime, or other specific circumstances is considered to be particularly sensitive, organ of the proceedings can ex officio, or at the request of the parties or the witnesses himself be assigned the status of particularly vulnerable witnesses.

Also, the Special protocol on the conduct of judicial authorities in protection of children from abuse and neglect provides recommendations for the treatment of minors in order to prevent aggravation of the trauma, as well as recommendations for conducting interviews with minors.

**Centre for Children Rights:**

Under the Law on Juvenile Crime Offenders and Criminal Protection of Juveniles the following measures are proscribed ensuring the child victim to be questioning and to participate in the proceedings: When conducting proceeding for criminal offences committed against juveniles, the state prosecutor, investigative judge and judges of the bench shall treat the victim with care, having regard to his age, character, education and living circumstances, particularly endeavouring to avoid all possible prejudicial consequences of the proceeding on his character and development. Questioning of a child or juvenile shall be conducted with the assistance of psychologist, pedagogue or other qualified person. If a juvenile is questioned as witness who is victim of a criminal offence specified in Article 150 hereof, the questioning may be conducted at most twice, and exceptionally more if necessary to achieve the purpose of criminal proceeding. If the juvenile is questioned more than twice, the judge shall particularly have regard for the protection of personality and development of the juvenile. If, due to the nature of the criminal offence and the juvenile's character the judge considers it necessary, he shall order questioning of the juvenile with the aid of technical devices for transmitting of image and sound, and the questioning shall be conducted without presence of the parties and other participants in the proceeding in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogue, social worker or other qualified person. Juveniles may be questioned as witness victims in their apartment or other premises and/or authorised institution – organisation that is professionally qualified for questioning of minors. In questioning of the witness victim, the authorities referred to in paragraph 1 of this Article may order application of measures under paragraph 3 of this Article.

When a juvenile has been questioned in cases specified in paragraphs 2, 3 and 4 of this Article the record of his testimony shall always be read at the main hearing or a recording of the questioning heard. Article 153 if a juvenile is questioned as witness, who due to the nature of the criminal offence, consequences or other circumstances is particularly vulnerable or is in a particularly difficult mental state, confrontation between him and the defendant is prohibited. Article 154A juvenile who is a victim shall have a legal representative from the first questioning of the defendant. If the juvenile does not have a legal representative, he shall be appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles. The costs of representation shall be borne by the Court budget. Article 155 If recognition of the defendant is done by a juvenile who is a victim, the Court shall proceed with particular care and shall conduct such recognition in all phases of the proceeding in a manner that completely prevents the defendant from seeing the juvenile.

- b. Which legislative or other measures have been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement? (**Article 32, Explanatory Report, para. 230**);

**Ministry of Justice:**

**Criminal offences referred to in the reply to Question 3(a) are prosecuted ex officio by a competent public prosecutor's office.**

- c. Which legislative or other measures have been taken to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with **Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b**, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question? (**Article 33, Explanatory Report, paras. 231-232**);

**Ministry of Justice:**

**Under Article 103 of the Criminal Code, Article 103 Unless otherwise stipulated by this Code, criminal prosecution may not be instituted after elapse of: 1) twenty five years from the time of committing of a criminal offence punishable by law to imprisonment from thirty to forty years; 2) twenty years from the time of committing of a criminal offence punishable by law to imprisonment over fifteen years; 3) fifteen years from the time of committing of a criminal offence punishable by law to imprisonment of over ten years; 4) ten years from the time of committing of a criminal offence punishable by law to imprisonment of over five years; 5) five years from the time of committing of a criminal offence punishable by law to imprisonment of over three years; 6) three years from the time of committing of a criminal offence punishable by law to imprisonment of over one year; 7) two years from the time of committing of a criminal offence punishable by law to imprisonment of under one year or fine. Under Article 104 thereof, 1) Limitations on criminal prosecution shall commence as of the day of commission of the criminal offence. If the consequence of criminal offence occurs later, limitations on criminal prosecution shall**



commence as of the day the consequence occurred. (2) Limitations shall not run during the period when by law prosecution may not commence or continue. (3) Limitations shall be suspended by each procedural action undertaken to uncover the perpetrator of the offence or to uncover and prosecute the perpetrator for commission of the offence. (4) Limitations shall be suspended also when during the limitations period the perpetrator commits another serious or more serious offence. (5) The limitations period shall restart from beginning after every interruption. (6) Limitations on criminal prosecution shall come into effect in any case after expiry of double the time period required by law for limitation of criminal prosecution. Under Article 105 thereof, (1) Unless otherwise provided herein, the pronounced penalty may not be enforced after expiry of: twenty-five years from conviction to imprisonment from thirty to forty years; twenty years from conviction to term of imprisonment over fifteen years; fifteen years from conviction to term of imprisonment over ten years; ten years from conviction to term of imprisonment over five years; five years from conviction to term of imprisonment over three years; three years from conviction to term of imprisonment over one year; two years from conviction to term of imprisonment up to one year, fine, community service or revocation of driver's license. Under Article 106 thereof, (1) Limitation on enforcement of fine and revocation of driver's license if ordered as secondary penalty shall come into effect after expiry of two years from the date the judgement ordering such penalties becomes final. (2) Limitation on enforcement of security measure of compulsory psychiatric treatment and confinement in medical institution, compulsory psychiatric treatment at liberty, compulsory treatment of drug addicts, compulsory treatment of alcoholics and confiscation of objects shall take effect after expiry of five years from the day the decision ordering such measures becomes final. (3) Limitation on enforcement of security measure of prohibition to practise a profession, business activity and duty, ban on driving a motor vehicle and expulsion of foreigner from the country shall take effect after expiry of the period for which these measures are ordered. Under Article 107 thereof, (1) Limitations on enforcement of penalty shall commence to run on the day the judgement pronouncing the penalty becomes final, and in case of revocation of suspended sentence – from the day the order on revocation becomes final. (2) If by an act of amnesty or pardon or disposition of the court pursuant to extraordinary legal remedy the pronounced sentence is reduced, the time for setting in of limitations shall be computed against the new penalty, but the course of limitations shall be computed from the previous final judgement. (3) Limitation shall not run during the period when enforcement of penalty may not be undertaken by law. (4) Limitation shall be suspended by every act of competent authority for the purpose of enforcement of penalty. (5) The limitations period shall restart from beginning after every interruption (6) Limitation on enforcement of penalty shall in any case set in by expiry of double the time required by law for limitation of enforcement of penalty. (7) In the event of limitation specified in paragraph 6 of this Article, the already commenced enforcement of penalty shall be discontinued. (8) Provisions of paragraphs 2 through 5 of this Article shall also apply accordingly to limitation of enforcement of security measures.

**NGO Centre for Children Rights:**

**In April 2013, the Law on Special Measures for the Prevention of Sexual Offences against Children was adopted.**

**The Law provides for special measures which are enforced against offenders of sexual acts against children (juveniles, minors), the offences being: rape, sexual intercourse with helpless person, intercourse with a child, sexual intercourse through abuse of a position, prohibited sexual acts, procurement of sexual services, mediation in prostitution, Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, Incitement of Minors to Attend Sexual Acts, Abuse of Computer Networks or other Technical Communication Means for Committing Sexual Criminal Offence against Juveniles) and for maintaining the special registry/records.**

**Under Article 5, paragraph 3 thereof, criminal prosecution and commission are not subject to prescription.**

- d. Please clarify whether your judicial authorities may appoint a special representative for the victim who may be party, where the holders of parental responsibility are precluded from representing the child in proceedings related to sexual exploitation or sexual abuse of children as a result of a conflict of interest between them and the victim. Please specify who may be appointed as a representative and what are his/her tasks (**Article 31, para. 4**). Please also describe under which conditions it is possible;

**NGO Astra:**

**The Article 265 of the Family Act: Collision Guardian and Temporary Representative of the Child states:**

- (1) If adverse interests exist between the child and the child's legal representative, the child is to be represented by a collision guardian.**
- (2) A child who has reached the age of ten and who is able to reason has the right to request from the guardianship authority, personally or through another person or institution, to appoint a collision guardian for him/her.**
- (3) A child who has reached the age of ten and who is able to reason has the right to request from the court, personally or through another person or institution, to appoint a temporary representative for him/her, due to the existence of adverse interests between him/her and his/her legal representative.**

**Also, the paragraph (2) of the Article 266 of the Family Act states: If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights a child as a party has not been adequately represented, the court is under the obligation to appoint a temporary representative to the child.**

**If court does not appoint the temporary representative to the child, the court is obliged to inform the Custodial Body about the need for a special representation of the child, which will consequently appoint a legal representative.**

### **NGO Centre for Children Rights:**

**In Serbia there is absence of special representative of the victim who would represent the child in the proceedings in an independent manner and who would institute all the necessary proceedings before criminal, civil, administrative and independent bodies to ensure adequate protection for the child.**

**In case there is conflict of interest between the parent and child, in internal law, the centre for social work (or guardianship authority) shall designate a ‘conflict’ guardian. However, either parents or ‘conflict’ guardian often do not have legal knowledge, and thus are not capable to represent the child’s interests in an adequate way in the proceedings or to institute all the proceedings required to protect the child.**

**It is particularly so in situations which require institution of more than one proceedings before court in different processing systems (e.g. criminal offence of domestic violence in which a child victim is in the criminal proceedings and where it has legal aid free of charge, alongside which simultaneously the procedure for pronouncing security measure against domestic violence should be instituted before civil courts, i.e. family council where the child is not provided under the law with legal aid free of charge nor independent legal representative/counsellor).**

- e. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to participate in legal proceedings (for example, as third parties) (**Article 31, para. 5**). Please specify under which conditions, if so required;

### **Ministry of Justice:**

**Under the Association Law (Official Gazette of RS, 51/09 and 99/11- st. law), associations with the objective of any type of child protection may be established, and therefore in this field as well. The statute of an association shall regulate the objectives, activities which may be carried out to indicate to problems in connection to protection of children from sexual exploitation and sexual abuse. Also, such associations may draw attention of competent authorities to problems in the relevant field and to protection of children from sexual exploitation and sexual abuse.**

### **NGO Astra:**

**When it comes to criminal proceedings, the competent body is the Prosecutor office. Human trafficking victims are allowed to have their own representative in criminal as well as in civil proceedings for compensation of damage, that is, in the later; they themselves choose to start the proceeding as a plaintiff. Organizations may be the one to hire legal representative for the victim. Also, according to the assessment of the court, representatives of CSO’s may be allowed to be present at the proceedings and in such way provide support to the victims during the questioning, as well as to follow the course of the**

trial as an expert body. Exclusion of the CSO's may occur in situations when the party in the process is a child. Also, members of the CSO's were called as a witness in several cases.

- f. Please describe under which circumstances the use of covert operations is allowed in relation to the investigation of the offences established in accordance with the Convention (**Article 30, para. 5**);

**Ministry of Justice:**

Under Article 161 of the Criminal Procedure Code, Special evidentiary actions may be ordered against a person for whom there are grounds for suspicion that he has committed a criminal offence referred to in Article 162 of this Code, and evidence for criminal prosecution cannot be acquired in another manner, or their gathering would be significantly hampered. Special evidentiary actions may also exceptionally be ordered against a person for whom there are grounds for suspicion that he is preparing one of the criminal offences referred to in paragraph 1 of this Article, and the circumstances of the case indicate that the criminal offence could not be detected, prevented or proved in another way, or that it would cause disproportionate difficulties or a substantial danger. In deciding on ordering and the duration of special evidentiary actions, the authority conducting proceedings will especially consider whether the same result could be achieved in a manner less restrictive to citizens' rights.

Under Article 162 thereof Under the conditions referred to in Article 161 of this Code, special evidentiary actions may be ordered for the following criminal offences:1) those which according to separate statute fall within the competence of a prosecutor's office of special jurisdiction; showing, procurement and possession of pornographic materials and exploiting juveniles for pornography (Article 185 paragraphs 2 and 3 of the Criminal Code), human trafficking (Article 388 of the Criminal Code), 3) obstruction of justice (Article 336 paragraph 1 of the Criminal Code), if committed in connection with the criminal offence referred to in items 1) and 2) of this Article. A special evidentiary action referred to in Article 183 of this Code may be ordered only in connection with a criminal offence referred to in paragraph 1 item 1). Under the conditions referred to in Article 161 of this Code the special evidentiary action referred to in Article 166 of this Code shall include: covert interception of communications, covert surveillance and audio and video recording, simulated [business] deals, computer search of data, controlled delivery, undercover investigator.

- g. Please also describe what techniques have been developed for examining material containing pornographic images of children (**Article 30, para. 5**).

**Ministry of Justice:**

Under Article 178 of the Criminal Procedure Code, If the conditions referred to in Article 161 paragraphs 1 and 2 of this Code are fulfilled, acting on a reasoned motion by the public prosecutor the court may order computer searches of already processed personal data and other data and their comparison with data relating to the suspect and the criminal offence. Under Article 179 thereof the special evidentiary action referred to in Article 178 of this Code is ordered by the judge for preliminary proceedings by a reasoned order. The order

referred to in paragraph 1 of this Article contains data on the suspect, the statutory title of the criminal offence, description of the data it is necessary to search and process by computer, designation of the public authority which is required to conduct the search of the requested data, scope and duration of the special evidentiary action. A computer search of data may last a maximum of three months, and if it is necessary in order to continue collecting evidence it may be extended two more times at most by three months, respectively. The conduct of a computer search of data is discontinued as soon as the reasons for its application cease to exist. Under Article 180 thereof The order referred to in Article 179 paragraph 1 of this Code is executed by the police, Security Information Agency, Military Security Agency, customs service, tax administration or other services or other public authority, or a legal person vested with public authority on the basis of the law. On concluding a computer search of data the public authority, or the legal person referred to in paragraph 1 of this Article delivers to the judge for preliminary proceedings a report containing: data on the time of commencing and terminating a computer search of data, data searched and processed, data on the official who conducted the special evidentiary action, description of the technical means employed, data on the persons encompassed and results of the implemented computer search of data. The judge for preliminary proceedings will deliver the report referred to in paragraph 2 of this Article to the public prosecutor.

**Note:** the Law on Organisation and Competencies of Government Authorities Combating Cyber Crime regulates the formation, organization, competencies and powers of special organizational units of government authorities for the purposes of detection, prosecution and trying of criminal offences specified in the present Law. Cybercrime for the purposes of this law shall mean committing criminal offences where computers, computer systems, computer data and products thereof in hard or electronic form appear as the objects or the means of committing a criminal offence. Products in electronic form shall particularly include computer programmes and authors' works, which may be used in electronic form. The Law on Organisation and Competencies of Government Authorities Combating Cyber Crime is enforced for the purpose of detection, criminal prosecution and trials for: 1) criminal offences against the security of computer data set forth in the Criminal Code; 2) criminal offences against intellectual property, property, economy and legal instruments, where computers, computer systems, computer data and products thereof in hard or electronic form appear as the objects or the means of committing a criminal offence, if the number of copies of authors' works exceeds 2000 or the resulting material damage exceeds the amount of RSD 1,000,000; 3) criminal offences against freedoms and rights of man and citizen, sexual freedoms, public order and constitutional order, and security of the Republic of Serbia, which, due to the manner in which they are committed or means used, may be considered cybercrime offences, in accordance with Article 2, paragraph 1 of the present Law.

### **Question 23: Child friendly interviewing and proceedings**

- a. Please describe how interviews (**Article 35**) with child victims are carried out, indicating in particular whether:
  - they take place without unjustified delay after the facts have been reported to the competent authorities;

## **Ministry of Justice:**

**Under Article 14 of the Criminal Procedure code courts are required to conduct criminal proceedings without delays and to prevent all abuses of law aimed at delaying proceedings. Criminal proceedings against a defendant who is in detention are urgent.**

**Note: Under Article 32, paragraph 1 of the Constitution of the Republic of Serbia, Everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgement on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them.**

- they take place, where necessary, in premises designed or adapted for this purpose;

## **Ministry of Justice:**

**Under Article 86, paragraph 1 of the Court Rules of Procedure, the president shall determine the layout of premises at the courthouse so as to determine the courtrooms, rooms for the reception of parties and their stay at the building, premises for the president, court administration, judges, lay judges, judicial departments and panels, court clerk's office and other rooms for other services at the court. Under paragraph 5 of the same Article, at courts with a higher caseload, a room for defence attorneys shall be designated. Under Article 88 thereof, rooms at the court, except those which parties are to use and stay in, are locked up when judges and judicial staff are not in them. The president designates the rooms which the parties, lawyers and other persons are not allowed to enter (court clerk's office, archives, accounting department, computer centre, etc.). Upon the end of working hours, case files, official and office material and other valuable objects shall be locked. Stamps and seals shall be locked in separate compartments. Working premises, hallways, waiting rooms for parties and lawyers must be in order, clean and equipped with hygiene products and prescribed fire-fighting devices. Under Article 89 thereof, house rules regulate the way for using work and other premises at the courthouse, time of stay at the building, measures needed for room safety and other measures needed for keeping means for work and other objects that are kept at the court. House rules determine the obligations of persons who use court premises or stay there occasionally. Judges and judicial staff are informed about the house rules and an excerpt from the house rules which refers to citizens is placed at a visible place at the court and presented in another suitable way. Under Article 90 thereof, house rules are prescribed by the president. If several judicial or state bodies are situated at the same building, the house rules shall be prescribed by the president of the superior court and if the courts of the same rank are situated at the building, the court presidents reach an agreement on house rules. Under Article 91 thereof, judges, lay judges and judicial staff and court guards have the obligation to treat the parties and persons who are at the courthouse or who are in attendance during the execution of some activities during the court procedure in such a way as to respect their dignity. Parties and persons who stay at the courthouse have the obligation to respect the house rules and not to interfere with the work of the court. If the parties or other persons at the courthouse violate the house rules, the court guards may apply the measures regulated under the law and act on the court guards.**

- they are carried out by professionals trained for this purpose;

#### **Ministry of Justice:**

**Judges, public prosecutors and other experts on the right of the child and/or juvenile take part in the proceedings conducted with the participation of children.**

**Under Article 44 of the Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles, A Juvenile judge and juvenile bench judges must be persons who have acquired special qualifications in the field of the rights of the child and juvenile delinquency. Lay judges are elected from the ranks of teachers, professors, educators and other qualified persons experienced in work with children and youth. Under Article 49 thereof, a juvenile shall have defence counsel during the first questioning and throughout the proceedings. If the juvenile, his legal representative or relatives fail to retain counsel, such counsel shall be appointed ex officio by the Juvenile judge. Counsel for the juvenile may be only an attorney with special qualification in the field of the rights of the child and juvenile delinquency.**

- the same persons are, if possible and where appropriate, conducting all interviews with the child;
- the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of proceedings;

#### **Ministry of Justice:**

**Under Article 14, paragraph 1, of the Criminal Procedure Law courts are required to conduct criminal proceedings without delays and to prevent all abuses of law aimed at delaying proceedings.**

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

#### **Ministry of Justice:**

**Under Article 49 Criminal Procedure Code, A juvenile shall have defence counsel during the first questioning and throughout the proceedings. If the juvenile, his legal representative or relatives fail to retain counsel, such counsel shall be appointed ex officio by the Juvenile judge. Counsel for the juvenile may be only an attorney with special qualification in the field of the rights of the child and juvenile delinquency. Under Article 193, paragraph 3 of the Criminal Procedure Code, when a juvenile under the age of 16 is being summoned in the capacity of a witness, the summoning is performed through his parents or legal representatives, unless this is not possible due to a need for expediency or other justifiable reasons. Also, under Article 56 thereof, if the injured party is a minor or a person declared completely incompetent, his legal representative is authorised to make all statements and perform all actions to which the injured party is entitled under this Code. The legal representative may exercise his rights through a proxy.**

## **Ministry of Interior:**

**Under the Criminal Procedure Code, the police is authorised to undertake measures in the pre-trial proceedings on the order of public prosecutor who is in charge of pre-trial proceedings. Thus, the police are authorised, in case of victims of criminal offence to interview them and collect information and to make an official statement/note on information obtained from a citizen. Therefore, the questioning of the witness (injured party/victim) does not fall under the competence of the police.**

**An interview with a minor who is a party injured by a criminal offence is conducted by a police officer (certified) who has acquired special skills and knowledge in the field of the right of the child and criminal law protection of juveniles (1862 police officers – after the training courses conducted by the Judiciary Academy, become certified to follow –up in cases including juveniles), mandatory in presence of a parent or guardian. When the parent, adoptive parent or guardian cannot be present at the interview (not accessible or there are justifiable doubts that they have committed a criminal offence detrimental to the child) or when it is in the best interest of the child, collection of information and date will be conducted in presence of a guardianship authority or residential care for juveniles, i.e. person of trust selected by the juvenile, in consultation with a representative of the guardianship authority.**

**Collection of information is conducted on the police premises. There are specially equipped premises for work with juveniles located in the Police Administration of the City of Belgrade and Police Administrations of Nis, Novi Sad and Kragujevac.**

**Regarding limitations to interviews, under the Criminal Procedure Code, Article 288 “The citizen may be summoned again for the purpose of collecting information about the circumstances of another criminal offence or perpetrator, but with respect to the same criminal offence he may not be brought forcibly again for the purpose of collecting information about it.”**

## **NGO Atina:**

**The Law on Criminal Procedure of the Republic of Serbia does not predict institute of the “person of trust”, although all the research and practice itself speak in favour of its introduction.**

**Person of trust (“person of confidence”, “trusted person”) is a person who follows the victim in the proceedings before state bodies, particularly during the testimony/informing, which is not her attorney (and cannot actively participate in the process), but makes the victim feel safer. This is usually an employee of a non-governmental organization who provides assistance to the victim, and with whom she already built a relationship of trust, with whom she feels safe. Some countries have institutionalized the Institute of person of trust (e.g. Germany, Switzerland, United Kingdom).**



**The legal framework for protection of children in investigative phase of court proceedings is in place, but in practice the shields of friendly space are rarely used, social workers and appointed child defenders are just passive participants in the proceeding, very often the child is not prepared for upcoming interview and her/his right by the law, and the number of interviews is not limited.**

**Example:**

**Girl – 16 years old – in the pre-investigation phase, in the process of giving statement to the police, the child was not prepared, she refused to identify the trafficker when she saw him, even though she was cooperative before that moment. She did not expect to see him, because she was not informed properly about the procedure. The police officer told her that, from that moment on "she switched off the light at the end of the tunnel" and that she will go to the juvenile prison because she is not telling the truth. It was a clear manipulation. After that, investigation judge was showing clear ignorance while girl was giving statement, the doors were opened, his friend that had no connection with the case came to the office and stayed there, she was upset about talking of her experience in front of an unknown person. And, while she was giving statement, psychologist and social worker were talking about private things between themselves. Some of the questions Investigation judge asked questions – why did you not go to pick apples and instead chose to work in massage saloon.**

**NGO Astra:**

**As mentioned earlier, the court and the prosecution are required that through specific actions, realize preconditions for adequate participation of a child in the court proceedings, whether he/she appears as a perpetrator of a crime, victim/witness or witness. This is primarily related to:**

- 1. Urgent actions and decisions that enable physical, psychological, and social security of a child;**
- 2. Protection of a child from possible media (mis) use;**
- 3. Appropriate and timely informing of a child on all the relevant facts (the practical application of these guidelines would mean that the Judge - Prosecutor directly or through psychologists, educators, special educators, social workers, etc. that was assigned to the child by the judge or the public prosecutor should in the first contact with a child, in an appropriate way explain the reasons for interrogation, his status and rights, and the importance of his participation in the process. Also this means that the child should be informed about the way he/she can address the court, directly or a representative);**
- 4. Actions towards the empowerment of a child to express his own opinion and will (create an atmosphere of trust, interest and security);**
- 5. Treatment of the representative of the judicial system to a child that must be careful, with full respect for his personality, respect to his age and child's specific period of development, as well as his specific individual characteristics;**
- 6. The fact that the minor always must be questioned in the presence of a parent, adoptive parent or legal guardian, unless the court decides otherwise;**

7. The obligation of the legal counsel or defender counsel to represent the child's best interest (unless the court determines otherwise, they must take measures towards protecting the interests of a child);
8. The necessity of including the experts (psychologists, educators, special educators, social workers, etc.) in the questioning when a child appears as particularly vulnerable witness or victim;
9. Using special techniques, hearing through audio and video link (whenever a child is a victim, in accordance with the article 150 of Criminal Code or particularly vulnerable witness in accordance article 104 of the Criminal Code);
10. Questioning of a child, especially a minor under the age of fourteen, in his natural environment whenever possible, or there whenever there is a need for that.

Also, Criminal Procedure Code regulates the treatment of particularly sensitive witness, which is already mentioned and can be found in the articles 103 and 104, as well as in the Family Act.

#### **NGO Centre for Children Rights:**

Under the Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles - in criminal law protection of juveniles, the child victim shall be interrogated with the aid of a psychologist, pedagogue and other professional. Also, under the Law, all the professionals taking part in the proceedings (public prosecutor, investigation judge, panel judges) are bound to treat the victim so as to take into account its age, characteristics of his personality, circumstances in which the child lives, in particular seeking to avoid any adverse consequences that the trial may have to the child's personality and development.

Although there are good and sound legal solutions aimed at prevention of secondary victimisation and traumatising of the child, they are not enforced in practice, which is a major issue. In particular, several problems that impede the proceedings to be conducted in such a manner as to avoid possible adverse consequences for the child's personality and development pertain to the fact that often delays of questioning, shortage of capacities of the professionals to follow up in such proceedings, absence of child-friendly judiciary, in particular, absence of the child-friendly premises, few court rooms equipped with devices for transmission of picture and sound. Also, in course of the proceedings different professionals interview the child, and very often the child is questioned more than twice.

- b. Please also specify whether all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and whether these videotaped interviews may be accepted as evidence during the court proceedings;

#### **Ministry of Justice:**

Under Article 236 of the Criminal Procedure Code, The authority conducting proceedings may order that the undertaking of an evidentiary or other action be recorded by a device for audio or video recording. Audio recording of the interrogation of a defendant and examination of a witness and expert witness in the proceedings in connection with criminal offences referred to in Article 162 paragraph 1 item 1) of this Code is mandatory. The

authority conducting proceedings will notify the person participating in the action referred to in paragraph 1 of this Article in advance that it will be recorded. Audio or video recording may be performed at a trial only when it is authorised for a particular trial by the president of the panel. If recording at a trial has been authorised, the trial panel may for justifiable reasons decide that certain parts of the trial are not recorded. Audio recording of a trial at which offences referred to in Article 162 paragraph 1 item 1) of this Code are being discussed is mandatory. The recording referred to in paragraph 1 of this Article must contain the data referred to in Article 233 paragraph 1 of this Code, data required for the identification of persons whose statements are being recorded and data on the capacity in which they are being questioned or examined, as well as data on the duration of the recording. When statements made by several persons are being recorded, it must be ensured that it can be discerned easily from the recording who made which statement. At the request of the person questioned or examined, the recording will be played back immediately, and that person's corrections and explanations will be recorded. It will be entered in the record of an evidentiary or other action or the trial that a recording was made, who performed the recording, whether the person questioned or examined had been informed in advance about the recording, whether the recording was played back and where the recording is kept, unless it is attached to the case file. The public prosecutor or the court may order a recording transcribed in full or in part. In that case he will examine the transcript, certify it and attach it to the record of an evidentiary or other action. The recording is kept in the public prosecution or the court for as long as the crime documentation is kept. The public prosecutor or the court may allow participants in proceedings with a justifiable interest to use audio or video recording devices to record the undertaking of an evidentiary or other action or the trial. Besides the needs of the proceedings, the recording referred to in paragraphs 1 to 9 of this Article in proceedings which have been ended with final decisions may also be shown publicly for professional and scientific purposes. In that case the identities of the parties and participants of the recorded action must be concealed.

**NGO Atina:**

Every court should have special room for witnesses, especially for minor victims where they could be before and during the court proceeding and from which he/she could give testimony through audio and video link (It is not an expensive technique, they could even use Skype), which is not the practice of the majority of courts today in Serbia.

**NGO Astra:**

As earlier mentioned, law allows this possibility, but unfortunately it is not always carried out in the practice. One of the reasons is the lack of technical equipment while the other is the lack of will and sensibility of the body in question that are obliged to take the necessary measures in this direction.

## **NGO Centre for Children Rights:**

**In internal law there is proscribed option to use technical devices for transmission of picture and sound only when interrogating the victim child i.e. witness child in the court, whereas the recordings may be played only at main hearing.**

- c. Please describe under which conditions the judge may order the hearing to take place without the presence of the public and the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies? **(Article 36).**

## **Ministry of Justice:**

**Under Article 363 of the Criminal Procedure Code, From the commencement of the hearing until the conclusion of the trial, the panel may ex officio or upon a motion by a party or the defence counsel, but always after they had stated their positions, exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting: 1) the interests of national security; 2) public order and morality; 3) the interests of minors; 4) private lives of the participants in the proceedings; 5) other justified interests in a democratic society. Also, under Article 236 of the Criminal Procedure Code, The authority conducting proceedings may order that the undertaking of an evidentiary or other action be recorded by a device for audio or video recording. Audio recording of the interrogation of a defendant and examination of a witness and expert witness in the proceedings in connection with criminal offences referred to in Article 162 paragraph 1 item 1) of this Code is mandatory. The authority conducting proceedings will notify the person participating in the action referred to in paragraph 1 of this Article in advance that it will be recorded. Audio or video recording may be performed at a trial only when it is authorised for a particular trial by the president of the panel. If recording at a trial has been authorised, the trial panel may for justifiable reasons decide that certain parts of the trial are not recorded. Audio recording of a trial at which offences referred to in Article 162 paragraph 1 item 1) of this Code are being discussed is mandatory. The recording referred to in paragraph 1 of this Article must contain the data referred to in Article 233 paragraph 1 of this Code, data required for the identification of persons whose statements are being recorded and data on the capacity in which they are being questioned or examined, as well as data on the duration of the recording. When statements made by several persons are being recorded, it must be ensured that it can be discerned easily from the recording who made which statement. At the request of the person questioned or examined, the recording will be played back immediately, and that person's corrections and explanations will be recorded. It will be entered in the record of an evidentiary or other action or the trial that a recording was made, who performed the recording, whether the person questioned or examined had been informed in advance about the recording, whether the recording was played back and where the recording is kept, unless it is attached to the case file. The public prosecutor or the court may order a recording**

transcribed in full or in part. In that case he will examine the transcript, certify it and attach it to the record of an evidentiary or other action. The recording is kept in the public prosecution or the court for as long as the crime documentation is kept. The public prosecutor or the court may allow participants in proceedings with a justifiable interest to use audio or video recording devices to record the undertaking of an evidentiary or other action or the trial. Besides the needs of the proceedings, the recording referred to in paragraphs 1 to 9 of this Article in proceedings which have been ended with final decisions may also be shown publicly for professional and scientific purposes. In that case the identities of the parties and participants of the recorded action must be concealed.

**NGO Atina:**

In Serbia, a victim may realize compensation in criminal and civil proceedings. In practice, compensation in criminal proceedings is almost never achieved, as criminal judges refer the impaired to exercise their rights in a civil proceeding. On the other hand, a civil proceeding is expensive, lasts for a number of years, and involves the expertise of the victim and re-facing the abuser, which are all reasons that are not stimulating for the victim. To this day, not even one victim of human trafficking in Serbia (minor or adult) has compensated in practice.

**NGO Astra:**

The answers to this question are previously mentioned. The Articles 103 and 104 of Criminal Procedure code regulates the treatment of particularly sensitive witness, the status that can be assigned to a child. Also, the paragraph 1 in the Article 206 of Family Act states that in the proceedings regarding family relations the public is excluded, which is also applicable in the situations involving a child.

Exclusion of the public does not apply to the parties, their legal representatives, and attorneys. In addition, the court may allow on the hearing at which the public is excluded, the presence of certain officials and experts, if it is of interest to their service, or scientific or public activity. At the request of the, no more than two persons the party names may be present.

According to articles in the hearing is open to the public (Article 291, Paragraph 1. CPC), but the council in order to protect the interests of a child (from the beginning to the end of the trial), ex officio or at the request of the parties exclude the public from the main hearing or from a part of it (Article 292 CPC).

However, in practice there are cases when a minor is a victim/witness in the trials that are open for the public in the court, that are not for minors. In such cases the child is exposed to direct contact with accused and their family and friends.

**Centre for Children Rights:**

Article 152, paragraph 3 of the Law on Juvenile Crime Offenders and Criminal Law Protection of Juveniles, if, due to the nature of the criminal offence and the juvenile's character the judge considers it necessary, he shall order questioning of the juvenile with

**the aid of technical devices for transmitting of image and sound. And the questioning shall be conducted without presence of the parties and other participants in the proceeding in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogue, social worker or other qualified person.**