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LANZAROTE CONVENTION

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

Replies to the thematic questionnaire

SERBIA

1st thematic monitoring round

“Sexual abuse of children in the circle of trust”

Replies registered by the Secretariat on 31 January 2014

DATA COLLECTION

Question 1: Data on sexual abuse in the circle of trust

Please indicate whether data are collected for the purpose of observing and evaluating the phenomenon of sexual abuse of children in the circle of trust. If so, please:

- specify what mechanisms have been established for data collection or whether focal points have been identified especially with regard to statistical data on victims and offenders within the circle of trust (**Article 10 (2) (b), Explanatory Report, paras. 83 and 84**);
- include any relevant data in an Appendix.

Ministry of Labour, Employment and Social Policy:

Under the Family Code of the Republic of Serbia and Rules on records and documents on persons victims of domestic violence, and on persons who are provided with a measure of protection from domestic violence, it is the Centres for social work, as a basic unit in social welfare system in the Republic of Serbia, that are responsible to maintain records on registered victims (including the victims of forced sexual activities), and on offenders against whom measure of protection is ordered. The data (the certificate provided on the basis of the record so maintained by centre of social work) on the registered offenders are issued on the request of: victims of violence; legal representative; other centre for social work (guardianship authority); judiciary authorities; Ministry of Interior; healthcare facilities and educational institutions. However, in centres for social work, as well as within social welfare system generally, there are no coordinators/focal points in place to statistically observe and evaluate sexual abuse of children.

Under the records maintained by centres for social work in the Republic of Serbia (in total there are 140 such centres across Serbia), of 3.787 children who have been victims of sexual abuse and neglect in 2012, 118 (24 boys and 94 girls) are victims of sexual violence. According to the data for 2011, in most cases of violence against children reoriented to the centre for social work, it occurred within natural/biological family (96%). There are cases of reported violence in foster families and in residential care institutions, however very few (0.4%). Of all the cases of violence reported to social welfare services, only 3.3 % are cases of violence that occurred in other types of environments. In Serbia, a number of children who were registered with CSW as victims of domestic violence in 2012 were 3017, i.e. for the first time their number has been over 3000. In 2011, there were 2.324 of such children. Nevertheless, a number of children victims of violence who in 2012 were removed from the family for purpose of safety (under the temporary conclusion on provision of placement for such children) almost doubled in a year – there were 640 of the children in 2012 in comparison to 359 in 2011.

Ministry of Health:

- **Under the Law on Healthcare Documents and Records which is currently undergoing the procedure of enactment and which is expected to become in effect by the end of 2013, the basic medical documents shall also contain the data on the patient, which in addition to other data include the following personal data: Name and surname, name and surname of one parent-guardian, gender, date and year of birth, marital status, city, municipality and country of residence and birth and citizen's individual identification number.**

- Also, under the same Law, the Registry Book is introduced to be utilized for identification of health conditions and diseases, including also in cases of children when reasonable doubts arise that there have been exposed to abuse and neglect.
- Under the same Law the preparation of individual and aggregate reports are mandatory on children in connection to whom there is reasonable doubt that they may have been exposed to any form of child abuse.

In 2013, Institute for Public Health of Serbia “*Dr. Milan Jovanovic Batut*”, identified a set of data and indicators for monitoring incidences of child abuse, neglect and exploitation, including sexual exploitation, created a database to collect and enter the data, and started developing the Register on children in connection to whom there is a doubt that they have been exposed to abuse and neglect. In 2014 all the staff in every relevant healthcare institutions will be trained and consequently start registering and reporting when they have doubts that a child may have been exposed to abuse and neglect.

NGO Astra answer:

Please see the answers to the questions 5b and 5c of the GOQ.

PREVENTION

Questions in this section aim specifically at collecting information on policies and strategies to prevent sexual abuse particularly in the child’s circle of trust. The questions thus concern awareness-raising of children themselves as well as of persons working in regular contact with them, thus forming a part of their circle of trust.

Question 2: Education for children

The reply to question 8 of the GOQ will be examined by the Committee to assess the implementation of **Article 6** with respect to the theme of the monitoring round. While replying to this question, please therefore only add whether a special attention is drawn to children’s education concerning the risks of sexual abuse of children in the circle of trust, and how children should protect themselves and request help in this regard. If so, please provide details. (**Explanatory Report, paras.59-62**).

Ministry of Health:

- Under the Decree of the Government of the Republic of Serbia issued in 2009, the National Healthcare Programme for women, children, young persons and women during pregnancy, childbirth and maternity was established as one of the priorities of the national healthcare system. This strategy addresses the healthcare issues of vulnerable categories of population such as the poor, Roma, children with disability, children in risk of and with developmental disorders, abused and neglected children, children without parental care placed in institutions, mother and children in rural areas, children who left schooling (dropouts), children and adolescents living in the street, refugees and displaced persons, single parents and mothers exposed to violence, minor and other mothers who are not able to take care of themselves and their children. The National Programme is prepared on the basis of Technical and methodological guidelines for healthcare staff, as well as Special and General healthcare protocols for protecting children from abuse and neglect, clearly specifying preventive activities in work with the child and family, recognition of risks and protection of children from abuse and neglect.

- In 2008, the Government of the Republic of Serbia adopted the National Strategy on Young Persons, age cohort 15-30 with the aim to preserve and promote health of young persons, alleviate risks, reduce leading impairments of health and to develop youth-friendly healthcare. Its specific objectives are targeted to: protection of young persons from tobacco, alcohol and drug abuse; prevention of sexually transmitted diseases (STD) and HIV by active participation of the youth, provision of support to youth groups and citizens' associations in response to HIV/AIDS, extending access to healthcare services tailored to the needs of young people, promotion of voluntary and confidential testing and counselling and provision of enhanced support to the youth living with HIV/AIDS, as well as elimination of every form of discrimination. One of the pillars of implementation of this strategy are counselling centres for young persons located within primary healthcare facilities which through preventive individual and group work educate the youth on sexual and reproductive health, develop responsible behaviour and attitudes in young persons, and guide to provision of protection, etc.
- Under the Mental Health Development Strategy adopted in 2007, children belonging to age group 0-14 and young people falling within age cohort 15-24 have been recognized as a particularly vulnerable population. To maintain and promote mental health protection, professional teams and organisational units for children and young persons are set up within mental health services. Also, preventive and therapeutic potential of primary health care is increased. Furthermore, the existing units for mental health issues in children and young persons in secondary and tertiary healthcare facilities are reinforced in terms of staffing, organisation and space, and primary-level prevention of mental health conditions in children and young is enhanced.
- Mental Health Development Strategy (Official Gazette of RS, 8/07)
- Strategy of Development of Young Persons in the Republic of Serbia (Official Gazette of RS, 104/06)

NGO Astra answer:

Please see the answer to the question 8 of the GOQ.

Question 3: Recruitment and screening

The reply to question 9 of the GOQ will be examined by the Committee to assess the implementation of **Article 5, para. 3** with respect to the theme of the monitoring round, paying particular attention to the recruitment and screening of persons whose professions involve regular contacts with children.

Ministry of Labour, Employment and Social Policy:

The Rules on Forbidden Practices in Social Welfare by Staff, adopted in 2012 (Official Gazette of RS, RS 8/2012 of 3 February 2012) is intended to increase legal liability of the staff and to strengthen the children placed in residential care institutions of social welfare system and community-based services to protect their rights. The Rules forbids every form of physical, emotional and sexual abuse, exploitation, abuse of trust or power, neglect or any other form of behaviour and conduct that have impact on beneficiaries' health, dignity and development. This document provides for the particulars and details of the ban on corporal, emotional and sexual violence, and/or abuse, prohibition of exploitation, prohibition of neglect. Also, in connection to every form of violence referred to there are provisions under which it has been specifically proscribed how they are related to the child who is beneficiary

of services, whereof special position of the child is emphasized and the need for protection of the child when using services. In particular, the Rules impose obligation of reporting and checking up the safety of other beneficiaries in case that violence occur in residential care institutions or other service providers.

NGO Astra answer:

Please see the answer to the question 9 of the GOQ.

Question 4: Raising awareness on sexual abuse in the circle of trust

Have policies or strategies been implemented for promoting or conducting awareness-raising campaigns where the focus is directed especially towards the risks and realities of sexual abuse of children in the circle of trust? If so, please specify for whom these campaigns were/are run (**Article 8, Explanatory Report, paras. 65-66**). Please include examples by providing links to what has been developed.

Ministry of Labour, Employment and Social Policy:

Late in 2011, the Ministry of Labour, Employment and Social Policy was involved in drafting of the Action plan on prevention and protection of child exploitation and child pornography 2010-2011. In addition to the representatives of Ministry of Labour, Employment and Social Policy, representatives of Ministry of Interior, Ministry of Justice, Ministry of Education and Science, Ministry of Culture, Information and Information Society were also involved in the drafting.

Ministry of Health:

A special working group of Ministry of Health for application of the Special healthcare system protocol for protection of children from abuse and neglect is actively involved in field-specific and public conferences, has regular contacts with the media outlets to raise public awareness on prevention, and in particular, on how to recognise and react to child abuse and neglect. Also it regularly calls on healthcare staff and healthcare system to enforce their legal obligations in an active, consistent and professional manner.

Ministry of Health has prepared and disseminated educational material (posters and leaflets) 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.

NVO Astra answer:

Incest trauma Centre campaign The me nobody knows.

<http://www.incestraucentar.org.rs/index.php/en/the-me-nobody-knows>

Question 5: Specialised training

Have legislative or other measures been taken to ensure that persons, units or services in charge of investigations are trained in dealing with cases where the alleged perpetrator of child sexual abuse is a member of the victim's immediate family or has otherwise been in a recognised position of trust, authority or influence over him or her? (**Article 34 (1), Explanatory Report, paras. 233-235 as well as para. 123**).

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.

NVO Astra answer:

Please see the answer to the question 8.a.2 of the GOQ.

Question 6: Participation of children, the private sector, the media and civil society

Replies to questions 4 and 11 of the GOQ will be examined by the Committee to assess the implementation of **Article 9** with respect to the theme of the monitoring round. Please therefore only add whether any specific steps have been taken to encourage participation by children, the private sector, the media and/or civil society in the development and implementation of policies, programmes or other initiatives specifically concerning sexual abuse of children in the circle of trust. If so, please specify which and explain how participation takes place. (**Explanatory Report, paras. 67-75**).

NVO Astra answer:

Please see the answers to the questions 4 and 11 of the GOQ.

Question 7: Preventive intervention programmes or measures

Which measures have been taken to ensure that persons, especially those forming a part of a child's circle of trust, who fear that they may commit offences of sexual abuse established in accordance with the Convention, have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? (**Article 7, Explanatory Report, para. 64**).

NGO Astra answer:

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.

PROTECTION

The questions in this section aim at identifying what specific legislative or other measures have been taken to protect in particular children victims of sexual abuse in the circle of trust.

Question 8: Reporting suspicion of sexual abuse

The reply to question 13 of the GOQ will be examined by the Committee to assess the implementation of **Article 12** with respect to the theme of the monitoring round. While replying to this question, please therefore only add whether specific legislative or other measures have been taken to encourage reporting of sexual abuse of children in the circle of trust to the competent authorities. (**Explanatory Report, para. 91**).

Ministry of Labour, Employment and Social Policy:

Under the General Protocol for Protection of Children from Abuse and Neglect, adopted by the Government of the Republic of Serbia in 2005 children are protected from violence in all situations, including: in family (natural, foster, adoptive); outside family, where they stay temporarily or reside permanently (school, pre-school facilities, residential care, summer holiday facilities and camps, day care, homes for children). Consequently, protection of children victims of abuse and neglect is a complex process in which institutions, organisations and individuals from different systems (social welfare, education, healthcare, police, justice, etc.) take part, and efficient intervention cannot be undertaken without a coordinated action of all the actors. To facilitate the process of developing a consistent and coherent framework of protection of children from abuse and neglect by professionals from different sectors, the Manual for Implementing the General Protocol has been published, intended for professional use in all relevant services and state authorities, which contains clarifications of used terms and description of difficulties the professionals regularly encounter in defining the terms of child abuse and neglect. Also, special protocols are developed, including: for protection of children from abuse and neglect residential care (Special protocol for protection of children from abuse and neglect in residential care, 2006); for the police (Special protocol on follow-up by police officers when providing protection to minors from abuse and neglect, 2006); education (Special protocol for protection of students from violence, abuse and neglect in educational institutions, 2007); healthcare (Special protocol in healthcare system for protection of children from abuse and neglect, 2009); and justice (Special protocol on follow-up of the justice system in provision of protection to minors from abuse and neglect, 2009). Abuse (including sexual) may be reported to a centre for social work: orally (to a telephone number) or in written form.

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/charts for urgent and easy use, providing every healthcare officer and healthcare associate and collaborator 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, 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 and collaborator 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 85%) 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, 200 healthcare staff and healthcare associates have been trained from over 30 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.**

Special training courses on protection of children from abuse and neglect have also been delivered by 75 healthcare female mediators/assistants who act as a link between the Roma community and the national healthcare system.

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.

NVO Astra answer:

Please see the answer to the question 13 of the GOQ.

Question 9: Assistance to and special protection for victims

- a. If, and to what extent, does internal law provide for the possibility of removing the victim from his or her family environment when parents or persons who have care of the child are involved in his or her sexual abuse? If internal law so provides:
- are the conditions and duration of such removal to be determined in accordance with the best interests of the child? (**Article 14 (3), Explanatory Report, para. 99**);

Ministry of Labour, Employment and Social Policy:

Under the Family Code of the Republic of Serbia, protection measure from domestic violence is envisaged on the basis of which the court shall issue an injunction ordering the offender (perpetrator of violence) to be evicted from the family apartment, or house, regardless of the ownership title over the immovable property, or real estate lease. Pronouncement of this measure is purposeful if the individual – member of family – has committed violence (sexual abuse), while it is believed that other members of the family may protect the child, i.e. may provide assistance and support to the child to overcome the consequences. Under the Family Code of the Republic of Serbia: a child, legal representative – other parent, public prosecutor or centre for social work – guardianship authority, may press charges seeking protection from violence/domestic violence/abuse. Also, a child, other parent and centre for social work – guardianship authority, in order to protect the right of the child, may press charges seeking the violator to become deprived of parental responsibility. In both cases, the court proceedings are deemed highly urgent. If several members of family (by acting or omission) are involved in child abuse, centre for social work is bound to immediately (within 24 hours), separates the child from the family and place it under temporary guardianship protection. A team/individual tasked with assessment is bound to urgently assess the risk to which the child is exposed (in particular if the abuse has been committed within the family), and to decide whether it is necessary to immediately undertake all urgent measures of intervention to protect the child. The measures for which centre for social work is responsible to undertake include: placement of a child to a kinship or foster family, placement in a residential care facility and placement under immediate guardianship of the centre for social work – guardianship authority. All the measures under the family law are undertaken taking into account the best interest of the child. Measures of protection from domestic violence may be extended as long as there are reasons on account of which the measure has been ordered in the first place.

- have legislative or other measures been taken to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care? (**Article 14 (4), Explanatory Report, para. 100**).
- b. Does internal law provide that sanctions for offences of child sexual abuse within the circle of trust include denying the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed? (**Article 27 (3) (b), Explanatory Report, para. 187**).

Ministry of Justice:

Under Article 1 of the Law on Special Measures for the Prevention of Sexual Offences Against Minors special measures are proscribed to be undertaken against offenders committing sexual offences against minors and a special register on persons committing such offences

shall be maintained. 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 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 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.

NVO Astra answer:

Please see the answers to the questions 15b and 15c of the GOQ.

PROSECUTION

The questions in this section focus on those provisions that deal with criminalising and sanctioning intentional conduct which amounts to sexual abuse within the child's circle of trust as well as some theme-specific issues relating to whether the investigative, prosecutorial and court stages of proceedings take adequate account of the special nature of cases that have a circle of trust component.

Question 10: The offence of sexual abuse

The reply to question 16 of the GOQ will be examined by the Committee to assess the implementation of **Article 18** with respect to the theme of the monitoring round. The reply to question 1 of the GOQ will also be considered while assessing the situation in the Party with respect to **Article 18**. While replying to this questionnaire, please therefore only add:

- a. what is understood by "intentional conduct" in internal law? (**Explanatory Report, para. 117**);

Ministry of Justice:

Criminal offences are committed with intent where the perpetrators were aware of their act and wanted to commit it, or where perpetrators were aware of their capacity to commit the act and consented to that commission.

State Prosecutor:

Under Article 25 of the Criminal Code, criminal offences are committed with intent where the perpetrators were aware of their act and wanted to commit it, or where perpetrators were aware of their capacity to commit the act and consented to that commission.

b. what is understood by “sexual activities” in internal law? (**Explanatory Report, para. 127**).

State Prosecutor:

There is no definition of sexual activity provided for in internal law. However, with view to the provisions of the Criminal Code falling within the group of sexual offences against sexual liberty, sexual activity and equivalent actions/acts are regarded of as sexual activity.

NVO Astra answer:

The Article 25 of the Criminal Code states: A criminal offence is premeditated if the perpetrator was aware of his act and wanted it committed or when the perpetrator was aware that he could commit the act and consented to its commission. The law does not specially prescribe sexual activities.

Question 11: Corporate liability

The reply to question 17 of the GOQ will be examined by the Committee to assess the implementation of **Article 26** of the Convention with respect to the theme of the monitoring round. If, in addition, any other measures are foreseen, please specify.

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 who, 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 of the Criminal Code. 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.

NVO Astra answer:

Please see the answer to the question 17 of the GOQ.

Question 12: Aggravating circumstances

Does internal law ensure that if an offence of sexual abuse, established in accordance with the Convention, is committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority or any other person in the child's circle of trust, that such circumstances may be considered an aggravating factor in the determination of sanctions, in so far as they do not form a part of the constituent elements of the offence? If so, does internal law provide different sanctions depending on whether the relationship of the perpetrator to the child is within the context of family relations or of a professional or voluntary activity (e.g. care providers in institutions, teachers, doctors, etc.)? (Article 28 (c) and (d), Explanatory Report, paras. 198-199).

Ministry of Justice:

Criminal Code proscribes both extenuating and aggravating circumstances the court takes into account when sentencing. If a criminal offence is committed from hate or on grounds of race, religion, nationality or ethnic association, sex, sexual orientation or gender identity of other person, such circumstance shall be taken into account by the court, unless it is proscribed as a characteristic of a criminal offence. Under the Criminal Code, a set of security measures is proscribed that may be pronounced in addition to penalty to the offender. Therefore, Criminal Code proscribes prohibition of practicing 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. Also, 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 1 of the 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, paragraph 1, 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 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.

State prosecutor:

Article 181 of the Criminal Code regulates criminal offence of Sexual Intercourse through Abuse of Position. The perpetrator of such a criminal offence is a person who by abuse of position induces to sexual intercourse or an equal act a person who is in a subordinate or dependant position. The sentence for such a criminal offence is imprisonment of three months to three years.

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.

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.

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.

If the offence referred to in paragraph 3 of this Article results in the death of the child, the offender shall be punished with imprisonment of a minimum of ten years.

Consequently, the referred to circumstances are elements of criminal offence under Article 183 Of the Criminal Code. If the offence was committed to detriment of a juvenile or a child, then it is a "qualified" ('classified) criminal offence, which was duly taken into account by the legislator in determining the punishment under the law.

Question 13: Best interest of the child

- a. Please specify whether in situations where the alleged perpetrator is a member of the victim's family or has otherwise been in a recognised position of trust or authority towards him or her, legislative or other measures have been taken to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child victim of sexual abuse. (**Article 30, para. 1, Explanatory Report, para. 215**);

Ministry of Justice:

Criminal Code proscribes provisions on protection of the right of the injured party, as well as on representing the injured party by the legal representatives with the powers.

State Prosecutor:

The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles proscribes special rules of criminal procedure in which minors/juveniles appear as injured parties. Primarily, state authorities that conduct/are involved in the procedure that is conducted for committed criminal offences against juveniles must have special knowledge in the field of the right of the child and criminal law protection of juveniles. 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 against sexual freedoms, 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.

When a juvenile has been questioned in the referred to manner, the record of his testimony shall always be read at the main hearing or a recording of the questioning heard.

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.

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, the President of the Court shall appoint him 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.

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.

Criminal proceeding for offences specified in Article 150 hereof is summary.

Under the Family Code of the Republic of Serbia, a court may order one or more protective measures against domestic violence pertaining to a family member who acts violently, temporarily prohibiting or limiting the maintenance of his/her personal relations with another family member. Domestic violence is the behaviour by which one family member endangers the physical integrity, mental health or tranquillity of another family member, and in particular forcing to sexual intercourse or abetting to sexual intercourse or sexual intercourse with a person who has not reached fourteen years of age or a helpless person.

Protective measures against domestic violence are:

- 1. 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**
- 2. the issuance of a warrant for moving into a family apartment or house, regardless of a right to property or a lease to immovable property**
- 3. prohibition of getting closer to a family member than a certain distance**
- 4. prohibition of access to the vicinity of the place of residence or workplace of a family member**
- 5. prohibition of further molestation of a family member.**

A protective measure against domestic violence may not last longer than one year, and it may be prolonged until the reasons for which it had been ordered cease to exist.

NVO Astra answer:

Article 266 of the Family Act states:

(1) In a dispute over the protection of a child's rights and in a dispute over the exercise or deprivation of parental rights the court is always under the obligation to act in the best interest of the child.

(2) 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.

- b. The reply to question 22(d) of the GOQ will be examined by the Committee to assess the implementation of **Article 31, para. 4** of the Convention with respect to the theme of the monitoring round;
- c. Please also indicate whether internal law provides that sanctions, as a result of offences committed by a person considered to be in the victim's circle of trust, include withdrawal of parental rights or monitoring or supervision of convicted persons (**Article 27, para. 4, Explanatory Report, para. 191**).

Ministry of Justice:

Provisions of the Criminal Procedure Law and Criminal Code are applicable.

State Prosecutor:

Under Article 81 of the Family Code, a parent who abuses his/her rights or grossly neglects duties that comprise a part of his/her parental rights may be fully deprived of parental rights. A parent abuses rights that comprise a part of parental rights if he/she physically, sexually or emotionally abuses the child.

Under the Law on Special Measures for the Prevention of Criminal Offences Against Sexual Freedoms of Minors, after the perpetrator of such an offence has served the sentence of imprisonment, the following special measures shall be taken:

Mandatory reporting to a competent police authority and Authority for the Enforcement of Criminal Sanctions

2) Prohibition of going to places where minors assemble (kindergartens, schools, etc.)

3) Mandatory attendance at professional counselling centres and institutions

4) mandatory notification on new place of residence or job 5) Mandatory notification on a travel abroad

The measures are in effect for maximum 20 years from the served prison sentence.

After the expiry of every four years from the initial application of the special measure, the court that issued first-degree judgement shall decide ex officio on a need for further application of such measures.

The person these measures are applied to may submit request for review of the need for further application of special measures. Also, the request may be submitted after expiry of every two years from the initial application of special measures.

In the procedure in which it is decided on a need for further application of special measures, the court shall obtain reports of authorities and organisations competent for enforcement of such measures.

NVO Astra answer:

If a person considered to be in the victim's circle of trust committed the criminal act, sanctions are provided in a form of termination of parental rights or through monitoring and supervision of convicted persons. Social Welfare centres play an important role in this process, as during the proceedings they deliver the opinion about necessary measures of

precaution, and after the verdict, continue with the long term monitoring of the family in order to protect the best interest of a child.

Question 14: Child-friendly justice

- a. Please specify whether in situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her, a 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 and Explanatory Report, paras. 211-215**);

Ministry of Justice:

Please, see answer to question 12.

State Prosecutor:

As already answered to question 13 a, 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.

A juvenile who is a victim shall have a legal representative from the first questioning of the defendant.

NVO Astra answer:

The Criminal Procedure Code, Article 102 stipulates that the questioning of a minor, especially if it is affected by a criminal offense, should be done carefully so the questioning does not have an adverse effect on the mental condition of the child. If necessary, the questioning of the minor should be done with the help of teachers or other professional. According to our knowledge this code has been selectively conducted. NGO ASTRA had a chance to witness situations when a child was questioned several times during the process, and the treatment of the victim depended on individual sensitivity of a judge.

- b. Which legislative or other measures been taken to ensure that investigations or prosecution 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, especially in cases where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (**Article 32, Explanatory Report, para. 230**);

Ministry of Justice:

Persecution of the perpetrators of criminal offences fall under the competence of the public prosecutor's office in compliance with the Law on Public Prosecutor's Office, Criminal Proceedings Code, and other relevant legislation.

State Prosecutor:

Under Article 6 of the Criminal Procedure Code, the public prosecutor is required to conduct criminal prosecution where there are grounds for suspicion that a criminal offence has been committed or that a certain person has committed a criminal offence prosecutable ex officio.

Given that criminal offence is prosecuted ex officio, the conduct of procedure is not conditioned by the submission of criminal complaint by the victim or is his withdrawal of the complaint or statement relevant for conducting the procedure.

NVO Astra answer:

According to Article 223 Paragraph 1 of the Criminal Procedure Code: If there are in the acts or omissions that endangered the life or health of the child, elements of the offense that is prosecuted ex officio, anyone who has any knowledge about it, whether they are citizens, expert in the institution or other organization.

- c. Have legislative or other measures been taken to ensure that a judge, in a criminal trial regarding an offence which can be considered to involve sexual abuse of a child within the circle of trust, may order the hearing to take place without the presence of the public or that the victim may be heard in the courtroom without being present? (**Article 36, para. 2 and Explanatory Report, para. 242**).

Ministry of Justice:

Under Article 94, paragraph 2 of the Criminal Proceedings Law 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 and impressions in connection with the subject matter of the testimony has capacity to give evidence (Art. 92. Paragraph 1 Criminal Proceedings Code).

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 public prosecutor, president of the committee or individual judge issues the ruling determining a status of an especially vulnerable witness. 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 may issue a ruling appointing a proxy for the witness, and the public prosecutor of 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 of the CPC rules on examining an especially vulnerable witness are proscribed. Thus, an especially vulnerable witness may be examined only through the authority conducting the proceedings, which 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 shall 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 shall be 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 a 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 of the CPC the injured party is entitled to: 1) submit a motion and evidence for execution of a restitution claim and a motion for interim measures for securing it; 2) present facts and propose evidence of importance for providing 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 complaint or abandonment of criminal prosecution by the public prosecutor; 6) submit objections to the public prosecutor's decision not to conduct 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 judgement; 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 shall inform the injured party of the rights referred to in paragraph 1 thereof. Under Article 58 of the Criminal Proceedings Code 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 execution of 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. Also, under the Criminal Proceedings Code, protecting the interests of a juvenile, the court may exclude the public from the proceedings partially or in full.

State Prosecutor:

As already replied to question 13a, 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.

When a juvenile has been questioned in the referred to manner, the record of his testimony shall always be read at the main hearing or a recording of the questioning heard.

Under 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.**

NVO Astra answer:

In criminal proceedings for offenses that are considered to involve the sexual abuse of a child within the circle of trust, the judge may decide that the trial is closed to the public. This practice is regulated in the Criminal Procedure Code Article 109v and in the Family Act Article 206, paragraph 1.