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**“Emerging issues of access to justice for vulnerable groups, in particular:
- migrants and asylum seekers;
- children, including children perpetrators of crime”**

**Report presented by the Minister of Justice
of Croatia**

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INTRODUCTION

The right of access to justice is one of the fundamental human rights. It does not only include the right of access to court, but may be seen in a wider context – through the procedure of rendering legally binding decisions within a reasonable time, whose effective implementation is a vital component of the legal system.

Migrant, asylees, asylum seekers and children are particularly vulnerable social groups, especially in the context of access to justice. The barriers they come up against, such as the length of court or administrative proceedings, the costs of proceedings, the right to legal representation, and the accessibility and lack of relevant information, and especially the realization of legal protection, make their already sensitive position even more difficult.

In this field the RoC has established a firm legal and institutional framework for protection of members of these especially vulnerable groups.

Above all, it is important to emphasize that the RoC is one of the circle of countries who do not differentiate between domestic and foreign citizens in issues of fundamental human rights, such as the right to access to justice. **The Constitution of the RoC** regulates that freedom, equal rights, national equality and gender equality, love of peace, social justice, respect of human rights, the inviolability of ownership, the preservation of nature and the environment, the rule of law and the democratic multi-party system are the *highest values of the constitutional order* of the Republic of Croatia. Furthermore, the constitutional provisions guarantee equality of all before the law. Everyone in the Republic of Croatia has rights and freedoms, regardless of race, skin colour, sex, language, religion, political or other convictions, national or social origins, property, birth, education, social position or other characteristics. The Constitution prescribes that all citizens of the Republic of Croatia and foreigners are equal before the courts and other state and other bodies vested with public authority, and that everyone has the right for an independent and impartial court established by law to adjudicate on his rights and obligations, fairly and within a reasonable time, as well as on suspicion or accusations of criminal offences. Article 33 of the Constitution prescribes that foreign citizens and stateless persons may receive asylum in the Republic of Croatia, unless they are being prosecuted for non-political crimes or activities contrary to the basic principles of international law. A foreigner, who is legally in the territory of the Republic of Croatia, may not be expelled or extradited to another state apart from for the execution of a prison sentence imposed by a final court decision or for the sake of the conduct of proceedings for a criminal offence.

The precondition for providing access to justice for the especially vulnerable groups which are the subject of this conference, is the existence of appropriate legislative framework. The RoC has ratified, and therefore is a party to, all relevant international instruments which regulate this area, such as the European Convention on Human Rights and the Protocols thereto; the European Convention on Prevention of Torture and Inhuman and Degrading Treatment or Punishment, the Convention on the Rights of Refugees, and it has signed the European Convention on Nationality etc.

In the light of the recommendations of the UN Committee for the Rights of the Child of 2004, on 22 March 2006 the Government of the RoC accepted the **National Plan for Activities for the Welfare, Rights and Interests of Children 2006-2012** into which these recommendations are built, defining the scope of activities in 14 areas: Up-bringing and Education, Health, Nutrition, the Role of the Family in Raising Children, Social Welfare, Children with Behaviour Disorders, Children as Members of National minorities, Children as Victims of Trafficking, Children with Special Needs, Abuse and Neglect of Children, Children Affected by War and the Consequences of the War, Children's Free Time and Culture, the Media, and Enhancing the Implementation of the International Commitments of the Republic of Croatia in the field of children's rights. The following needs are stressed in particular:

- Systematic strengthening of the awareness of the importance of protection of children from abuse and neglect
- Reduction of the number of cases of child abuse and neglect
- Improvement of the system of protection of children and enhancing professional awareness in the work of protecting children from abuse and neglect
- Strengthening prevention and prompt identification of cases of abuse and neglect of children and responsibility for taking quick, efficient measures for family-law and criminal law protection of children from this behaviour
- Prevention of and protection of children from all forms of abuse and neglect

For the implementation of this plan, specific measures are also planned, aimed at protecting children from abuse and neglect. RoC has adopted the National Strategy for Protection of Children from Abuse and Neglect, and a National Plan against Sexual Abuse of Children.

In order to protect children, and train and educate them, the Government of the RoC has adopted the **National Plan of Activities for the Welfare, Rights and Interests of Children from 2006 to 2012.**

MIGRATION AND ASYLUM

The issue of migration is an unprecedented challenge for all European states. The trend of economic development and technological growth of the EU means that the countries of the EU have become interesting for migrants from all around the world. As was pointed out at the Conference in Helsinki in 2002, the situation has changed. Europe, from where people were emigrating up to half a century ago, is now faced with the reverse situation – the inflow of millions of migrants from countries outside the EU.

The RoC, as a candidate country for full membership of the EU, recognizes the importance of the question of asylum and migration within the EU, but also at the level of the Council of Europe. Although this question has not yet been a serious problem for the RoC, the RoC is carefully monitoring events in this region. Croatian experts are actively participating in the work of expert groups of the CoE dealing with these questions.

Due to its geographical location, the RoC has always been seen as a transit country. However, having gained the status of candidate country for full membership of the EU, changes have been noticed in migration trends. According to the latest figures, the RoC, from being a transit country, is increasingly becoming a country of interest for migrants. For precisely this reason, migration and asylum are recognized as a joint European issue of extreme importance. Aware that without joint effort there will be no results, the RoC is giving full support to aligning asylum and migration policies at a European level.

In this context, the figures from the public prosecution service are interesting in the fight against illegal migration. That is to say, in 2006 a total of 272 were accused of the criminal offence of illegally transferring persons across state borders from Article 177 of the Penal Code, which is 4.21% more than in the previous year, in that 35 people were accused of the most serious form of this crime. A total of 189 persons were convicted, or 15.62% fewer than in 2005 (224), 11 people were acquitted. 22 prison sentences, 18 fines and 149 suspended sentences were imposed for this criminal offence.

Bearing in mind the international character and motives for committing these criminal offences, and the increasing organization of this form of crime, it is necessary, in Croatia too, by criminal repressive measures to break this section of the illegal transit route of foreign nationals from economically underdeveloped countries towards European Union countries, and to tighten up criminal policies in the sense of imposing prison sentences. Appropriate criminal law repression with the cooperation of all competent bodies in Croatia and institutions of the international community, through international police and judicial assistance, may result in reducing the smuggling of migrants and other criminal activities related to it. The joint fight against this serious form of international crime would result in a reduced need for protection of this vulnerable group.

It should be emphasized that Croatian experts are active in the work of the Council of Europe Committees dealing with this problem, primarily in CDMG (the European Committee on Migration) and CDCJ (the European Committee on Legal Cooperation). The Council of Europe has always shown a special interest in the question of refugees, asylum seekers and displaced persons in Europe. Therefore, over the years, European standards have been adopted as well as a series of recommendations to governments of member countries, relating to the question of refugees as one of the important questions faced by the national governments. The recommendations relate to alignment of national procedures for granting asylum, detention, or custody of asylees, the return of rejected asylum seekers and subsidiary and temporary protection, and they rely on the case law of the European Court of Human Rights, since the ECHR does not have specific provisions relating to protection of the rights of asylees.

One of the activities from the scope of work of the CDMG is the identification of challenges and priorities in the field of migration and integration to create unified policies in the region of southeast Europe. Experts from southeast Europe, SEE, including representatives of the RoC, are active in the work of CDMG. As well as taking part in conferences, they have a significant contribution to identifying the challenges and problems which each state or region is faced with.

The position and rights of asylees, asylum seekers and foreigners under temporary protection are regulated by the **Asylum Act** (OG 103/03). This Act is aligned with the provisions of the Convention on the Rights of Refugees from 1951 and the New York Protocol of 1967. The Asylum Act prescribes the principles, conditions and procedure for granting asylum and approving temporary protection, the status, rights and obligations of asylum seekers, asylees and foreigners under temporary protection and the conditions and procedure for removing the status of asylee and the termination of temporary protection. The application of the Asylum Act makes it possible to protect human rights globally, since it provides for the protection of persons whose human rights are not only at risk in the Republic of Croatia, but they are also being systematically violated and endangered in the countries from which they come. It is further necessary to point out that asylum seekers and asylees as well as members of their immediate families are guaranteed, with the other rights, the right of access to court and the right to legal aid. Everyone who expresses the intention of seeking asylum must be enabled to submit an application for asylum as soon as possible, and to be acquainted as soon as possible with the procedure for approval of asylum, their obligations and the possibility of receiving free legal aid from representatives of the UNHCR and other organizations who deal with protection of the rights of refugees/asylum seekers.

All groups of asylum seekers and asylees have the right of access to court and the right to legal aid on the basis of the provisions of the Asylum Act.

The state bodies responsible for conducting the procedure for approval of asylum have established cooperation with many relevant partners who deal with the question of asylum, such as the Red Cross, the UNHCR, HPC, the NGO office of the Government of the RoC and NGOs, the Centre for Human Rights, and the Croatian Helsinki Committee. The RoC, when it signed the Stabilization and Association Agreement in the process of accession to the EU, committed itself to building the principles and rules of the *acquis communautaire* into its national legislation, which also include regulations on asylum, as part of Chapter 24, "Justice, Freedom and Security".

The provisions of the new Asylum Act (OG 79/07) which will come into force on 1 January 2008, are additionally aligned with the EU Directives prescribing minimal standards in the area of asylum and temporary protection and define in more detail the principles, conditions and procedures for granting asylum, approving subsidiary protection, approval of temporary protection, status, the rights and obligations of asylum seekers, asylees, foreigners under subsidiary protection, foreigners under temporary protection and the conditions and procedure for annulment and termination of asylum, and subsidiary and temporary protection. Some new features are what is known as "subsidiary protection" as a form of protection for foreigners who do not meet the criteria for approval of asylum, when the specific risk exists that on return to the country of origin they would be exposed to serious injustice, and for that reason they do not want or cannot be placed under the protection of that country, and what is termed the "single procedure" for consideration of requests for asylum and the existence of conditions for asylum.

By the provisions of the new act, the MoI of the RoC has jurisdiction for deciding on requests for asylum, and an appeal against their decision is permitted to an independent body – the Asylum Commission. It is also prescribed that an administrative dispute may be instituted against a decision by the Asylum Commission before the Administrative Court of the Republic of Croatia, by which court protection of asylum seekers is provided. All groups of asylum seekers and asylees, regardless whether they belong to vulnerable groups or not, have the right of access to court and the right to legal aid.

Further, asylum seekers, as well as asylees and foreigners under subsidiary protection have in line with the **Parliamentary Assembly of the Council of Europe Recommendation 1645 (2004)**, “Access to assistance and protection for asylum-seekers at European seaports and coastal areas”, the right to free legal aid, which is a move forward in relation to the currently valid Asylum Act. Asylum seekers have the right to free legal assistance, which includes general information on the rights and obligations of asylum seekers, assistance in writing an appeal and representation before the Asylum Commission.

Free legal assistance for asylees and foreigners under subsidiary protection covers: general information on the rights and obligations arising from approval of asylum and subsidiary protection, and assistance in drawing up an appeal and representation before the Commission in cases of termination or annulment of asylum or subsidiary protection.

The costs of the assistance given pursuant to the Asylum Act are paid from the budget funds of the RoC.

If the asylum seeker does not understand the language in which the proceedings are being conducted, he will be provided with an interpreter for the language which he is justifiably assumed to understand and in which he is able to communicate.

As a party to the UN Convention on the Rights of the Child of 1989, the RoC pays particular attention to the protection of child asylees, as an exceptionally vulnerable group. Vulnerable groups of people who are asylum seekers or asylees have a larger scope of rights in relation to other asylum seekers or asylees – for example child asylum seekers have full health care, as Croatian citizens, whilst other people realize that right on the basis of regulations on health care for foreigners. Vulnerable groups of asylum seekers need to be housed in appropriate shelters, provided with medical and psychological care and as needed suitable rehabilitation therapy. Within the group of asylees and asylum seekers, the vulnerable groups are considered to be persons without disposing capacity, minors, unaccompanied minors, older and infirm, the seriously ill, the disabled, pregnant women, single parents and victims of rape, torture or other forms of violence.

The most common category in the vulnerable groups of asylum seekers or asylees are unaccompanied minors. They are appointed guardians who participate throughout the entire procedure for granting asylum, and in this case the procedure is conducted in the shortest possible time, according to an assessment of the psycho-physical development of the minor, in line with the Council of Europe Recommendation no. 1645 (2004), which emphasizes that unaccompanied children and minors must be provided with a guardian as soon as their presence comes to the attention of the authorities of a member state.

The Children’s Ombudsman is very active in the protection of child asylees. Child asylees who come to the RoC unaccompanied or accompanied by parents, since they are an especially vulnerable group of asylees, are accommodated in appropriate and well-equipped reception centres for asylum seekers, which meet international standards, whether separately or together with the persons with whom they arrived in the RoC. For children, full health and psychological and social care is provided, along with schooling, courses in Croatian language and interpreters. This form of special care offered by the competent bodies to children, as a vulnerable group, is extremely important, when children are in the position of asylum seekers, or when asylum has already been granted.

When forming the content and system of support for vulnerable groups, we should never overlook the victims of trafficking in human beings. That is to say, trafficking in human beings as a form of illegal migration is undoubtedly one of the most cruel forms of violation of human rights. As was pointed out before, according to the latest figures, the RoC is increasingly changing from a transit country to a destination for migrants – both legal and illegal. Therefore it was necessary to align the national legislation of the RoC with the *acquis* of the EU and establish institutional capacities, which has been done.

The provisions of the **Aliens Act (OG- 109-03)** currently in force regulate the conditions of entry, movement and stay and work of foreigners in the RoC. This Act, along with the Instruction on how to Regulate the residency of Victims of Trafficking in Human Beings of 2004, regulates the residency of victims of trafficking in human beings, by which temporary residence may be granted for humanitarian reasons. A request for approval of this form of permit is submitted by the victims themselves, with the involvement of a representative of the legal entity who offered them assistance and protection (e.g. the IOM), or the Ministry of Health and Social Welfare, if the victim is a child or a minor. When a minor or a child is involved in the procedure, it is considered to be urgent.

The new Aliens Act (OG 79/07) which comes into force on 01.01.08, regulates more precisely temporary residence permits for humanitarian reasons for victims of trafficking in human beings. This Act is aligned with the EU Directives, especially the Council Directive 2004/81/EC of 29.04.04 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. The newly adopted Act contains provisions which improve the form and scope of protection of victims of trafficking in human beings. Victims who are granted temporary residence permits have the right to safe accommodation, health care, monetary assistance, education and work.

In order to successfully combat this form of violation of human rights, the RoC adopted the Operational Plan to Suppress Trafficking in Human Beings for 2007, which prescribes measures and activities, and is an improvement of the entire system, amongst other things, through cooperation with NGOs, and it is therefore important to point out that in the field of asylum and migration, the Mol of the RoC works together with the NGO, the Croatian Law Centre, which offers free legal assistance in the asylum process, the UNHCR office in the RoC, and the IOM mission.

Apart from the Council of Europe Convention on Prevention of Trafficking in Human Beings, the adoption of which was ratified by the adoption of the Act on ratification of that convention, the RoC has also ratified the UN Convention against Transnational Organized Crime of 15 November 2000, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the UN Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime - 15 November 2000 (OG International Agreements, no. 14/2002, ratified by the Croatian Parliament 07/11/2002, in force in relation to the RoC as of 29/09/2003).

Legal aid to victims of trafficking in human beings in the RoC will be provided by the application of the Free Legal Aid Act, which is undergoing parliamentary procedure.

CHILDREN, INCLUDING CHILD PERPETRATORS OF CRIMINAL OFFENCES

The basis for treatment of children is given by the Convention on the Rights of the Child (UN General Assembly, 20 November 1989, New York), which the Republic of Croatia adopted on 8 November 1990. According to the definition from Article 1 of the Convention, which is also applied in the RoC, a child is every human being below the age of 18 years.

In our treatment of children, it is said, we show our true nature. This is true for adults, but also for society and countries. There has been no time when children have not been abused and exploited although this form of behaviour is an especially serious form of violation of human rights. The member countries, which the RoC is to join, are taking all the necessary measures to provide protection for children against all forms of discrimination or punishment founded on their status, activities, opinions expressed or the convictions of their parents, legal guardians or members of the child's family.

In the protection and promotion of the rights of the child in the RoC several positive changes have been achieved, for example the appropriate legal regulation of most areas and better public awareness of the needs and rights of children. However there is still room for raising the level of protection of children's rights.

As a party to the UN Convention on the Rights of the Child, the RoC is one of the advanced countries who have taken on the obligation of providing protection of human rights and fundamental freedoms. Respect for, promotion of and protection of human rights is a task which arises from the Croatian Constitution. Children are born with fundamental freedoms and rights which belong to all human beings, but in view of their psychological and physical immaturity it is vital to constantly emphasize the particular right of children to protection.

The RoC has built into the foundations of its legal system the basic general principles of the UN Convention on the Rights of the Child, and respecting the principle of no discrimination, by the application of the provisions of the Constitutional Act on the Rights of National Minorities, the Republic of Croatia provides for the realization of special rights and freedoms of members of national minorities. For children, of particular importance are: the right to upbringing and education in the language and script they use, the use of their own language and script, privately and publicly and in official use, the use of their own marks and symbols, cultural autonomy, the right to expression of their religion and to found religious communities, access to the public media and performing the work of public broadcasting in the language and script they use, and especially protection from any activity which threatens or may threaten their survival or the realization of their rights and freedoms.

In relation to the rights of children with development difficulties, the Croatian Register has united the system of monitoring and registration of data on children with difficulties in development, with the aim of obtaining real and authentic data which make it possible to evaluate and monitor the progress made, and difficulties which hinder the realization of the rights of children with developmental difficulties. The Office of the Children's Ombudsman, as part of its authority, monitors legal regulations and the Convention on the Rights of the Child in the Republic of Croatia in relation to the promotion and protection of the rights of children with developmental difficulties.

In the RoC the **Family Act** regulates the rights of children in line with the UN Convention on the Rights of the Child, in that the child is an active subject in legal relations with parents and has legal protection in cases of violation of his rights. The regulation of family relations is founded on the principle of protection of the welfare and rights of children and the responsibility of parents to raise and guide their children, as well as appropriate guardianship for children without parental care. Children have the right to seek protection of their rights before the competent bodies who are obliged to inform the centre for social welfare of this; they have the right to a special guardian in cases prescribed by law. The Act defines the obligation of the social welfare centre to appoint a special guardian for the child when another body is deciding on a violation of rights, and the obligation of the court to appoint a guardian is prescribed when the decision making on the child's rights is in the jurisdiction of the centre for social welfare. The right to express one's own opinion is a basic right of children. In proceedings where a decision is being made on a child's rights or interests, the child has the right to know about the important circumstances of the case, in an appropriate manner, obtain advice and express his opinion and to be informed about the possible consequences of expressing his opinion. The child's opinion is taken into account according to his age and level of maturity. If the child is at least twelve years old and able to understand the meaning of adoption, his consent is needed for adoption.

For the RoC the European Convention on the Exercise of Children's Rights and the European Convention on Contact Concerning Children are particularly important. The RoC has signed them but they have not been ratified. At the same time, the RoC is actively involved in work on the new **European Convention on Adoption of Children**, which should replace the European Convention on Adoption of 1967. The new convention is based on the best interests of the child, it has been modernized by equalization of criteria for children born in marriage and out of marriage, the participation of the child who is to be adopted in the adoption process is more expressed, and some solutions are offered in terms of the right of the child to know about his origins.

For psychological and social reasons, the earlier beginning of sexual relations, early pregnancies, the risks and dangers for children have increased, such as death of the baby and mother at birth, risks from infectious diseases such as AIDS (HIV), complications of pregnancy and birth, permanent changes in health, and these are all valid reasons for prohibition of marriage of minors and extra-marital communities. It is prohibited to marry a minor in the RoC. In exceptional cases it is possible to marry a minor, older than 16 years, providing the conditions prescribed in the Family Act are met. The marriage licence is issued by the court at the request of the minor and the court determines whether the conditions are met for the marriage. The provisions of criminal law prohibit living with a minor, as a criminal offence. An adult who lives in an extra-marital relationship with a minor is criminally liable, as are the parents or guardians of the minor who permitted this (imprisonment of six months to three years, and in the case of a sale or exploitation, a prison sentence of 3 months to 5 years is prescribed).

Since there is no comprehensive system of free legal aid, from 2006 minors have been provided with **free legal aid** by attorneys who are members of the Croatian Bar Association, regardless of the material circumstances of the child. At the request of parents, as legal representatives of the child in all independent proceedings relating to maintenance, free legal aid will always be provided for a child. This decision by the Croatian Bar Association has met with an extremely good reception in the professional and the wider public, and especially from those who need this kind of service. This shows the existence of awareness in society of the need to make possible and offer protection for children as a vulnerable group in the exercise of their rights and facilitating access to court and justice.

The judicial and legal protection of the rights of children regulate the specific legal position of children when they are victims of criminal offences, perpetrators of criminal offences, or when they need to exercise rights in the field of family relations. These rights include the right to protection from sexual exploitation and abuse, the right to protection from kidnapping, sale and trafficking, the right to protection from other forms of exploitation, the right to protection from torture, cruel, inhuman and degrading treatment or sanctions against children, the right to protection from imposition of the death penalty or life imprisonment, the right to immediate legal and other assistance if arrested, the right to dignity in criminal proceedings, the right to minimum guarantees where the child is suspected or accused and the right of children as injured parties. In order to realize these rights of the child, measures are prescribed aimed at protecting children from abuse and neglect, such as the adoption of the National Strategy to Protect Children from Abuse and Neglect, and the work on the National Plan against the Sexual Exploitation of Children.

One of the activities aimed at improving the position and rights of children is the **National Strategy of Protection from Domestic Violence for the period from 2005 to 2007** which was adopted by the Government of the Republic of Croatia on 9 December 2004 (OG no. 182/04). This strategy defines the basic goals: suppression of domestic violence in all its forms, easing the consequences of domestic violence that has already taken place, improving work on the development of a multi-disciplinary approach to victims of domestic violence, improving cooperation and aligning the work of the competent bodies, training and sensitization of professionals and the wider public to the problem of domestic violence, providing a system, organization and a sufficient number of professionals in the competent state bodies of the RoC to deal with the problem of domestic violence and contribute to the realization of gender equality policies.

In the light of the provisions of the strategy, the **Protocol on Proceeding in Cases of Domestic Violence** was adopted, which defines obligations and procedures for all competent bodies and other actors involved in discovering and suppressing violence, and offering help and protection to people exposed to domestic violence.

Proceedings in family law protection, on the basis of the provisions of the Family Act of 1 January 2006, are within the jurisdiction of the regular courts. The urgency of proceedings is prescribed in these cases, with the existence of a 24-hour duty service in the courts. The 24 hour work or duty service has not been organized yet, except in some courts. Therefore it is vital to set up a duty service in all competent courts outside regular working hours, during the weekends, non-working days and state holidays.

The Croatian legislative framework and practice reflect elements of the **Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice**, giving emphases on the juvenile system that may be efficient in tackling youth crime only as a component of a wider community based strategy that takes account of the wider family, school, neighborhood and peer group context within which offending occurs.

In the RoC the position **of children and minors as perpetrators of criminal offences** is regulated by separate legislation, the provisions of the Juvenile Courts Act (*lex specialis*) and the Criminal Procedure Act (*lex generalis*). Proceedings are instituted for all criminal offences only at the request of the public prosecutor.

The current legal order of the RoC differentiates the categories **of young perpetrators of criminal offences** – minors (persons who have reached the age of 14 but not 18 years of age) and young adults (persons who have reached the age of 18 but not 21 years of age). Within the category of minor there is a differentiation between young minors who, at the time of perpetrating the criminal offence, had reached the age of 14, but not yet 16 years of age, and older minors are those who had reached the age of 16 but not yet 18. In criminal proceedings against young minors, the provisions of the Criminal Procedure Act are applied, but if during the time of the trial the perpetrator has not reached the age of twenty-three years, the provisions of the Juvenile Courts Act are applied as appropriate.

Children – minors who had not reached the age of 14 at the time the criminal offence was committed are not criminally liable. Therefore, criminal proceedings may not be conducted against a child who participated in the commission of a criminal offence, nor may criminal law sanctions be imposed on him. The police do not make criminal reports against children up to 14 years of age, but they inform the public prosecutor of the crime committed, as well as the competent centre for social welfare, which is responsible for applying measures of family and social law protection. However, insofar as during the proceedings it is established that the person had not reached the age of 14 years at the time the crime was committed, the criminal proceedings will be terminated and information on the crime and the perpetrator sent to the centre for social welfare.

When there is a well founded suspicion that a minor has committed a criminal offence, on the basis of the provisions of the Criminal Procedure Act, the police write a crime report for the minor to which are added official notes on the personal and family circumstances of the minor and his earlier life. The report is submitted to the competent public prosecutor's office for minors.

For criminally non-liable children who have participated in a criminal offence, the public prosecutor for minors is sent a special general report for his information.

In the attempt to adapt procedures with juvenile delinquents as far as possible to the needs of this vulnerable group, and to facilitate their access to justice or courts, the Juvenile Courts Act prescribes that the public prosecutor may condition a decision not to institute criminal proceedings by the readiness of the juvenile perpetrator or young adult to fulfil specific obligations prescribed by law. A minor may be required to repair or compensate for damage caused by the criminal offence, according to his ability, or to take part in the work of a humanitarian organization or work of community or ecological importance, to undergo

treatment for drug or other addictions, or to become involved in individual or group work in counselling centres for young people.

In order to implement these provisions, on 10 May 2001 the Public Prosecution Service of the RoC adopted the "Instructions on Implementation of the Project by the Ministry of Labour and Social Welfare, the Public Prosecution Service of the RoC and the UNICEF Croatian Office, on Implementation of Special Obligation – Out of Court Settlements, on the basis of Article 64 of the Juvenile Courts Act in the Municipal Public Prosecutor's Offices in Osijek, Split and Zagreb". The service for out of court settlements, which is involved in the implementation of these legal provisions, was registered in Zagreb on 22 October 2003, although it had already begun its work before that under the auspices of the Ministry of Labour and Social Welfare of the RoC. In its work over three years (2003-2006) the service resolved more than 200 cases using the mediation method, thereby introducing the concept of restorative justice into the justice system of the RoC.

The RoC has made a long-term effort to provide increased protection for children in criminal proceedings. Increased protection of children and minors, provided by application of the procedural provisions on testifying, is aimed at avoiding or at least reducing the secondary traumatization of children in court proceedings. Through the participation of an expert during the questioning of a child who is a victim of a criminal offence, an attempt is made to partially protect the child in what is for him a stressful and unpleasant situation, and offer him support, but at the same time obtain a valid statement which will serve as evidence in court.

On the basis of the provisions of the Juvenile Courts Act, the investigating judge, when conducting procedural actions, will be especially attentive in his treatment of a child or minor who is the victim of a criminal offence, bearing in mind his age, his character, education and the circumstances in which he lives, in order to avoid possible harmful consequences for his up-bringing and development. Questioning a child or minor is conducted with the support of an educational specialist, psychologist or another expert. A child or minor, who is the victim of a criminal offence, may be questioned on no more than two occasions. With respect for the circumstances of the case and especially the age and status of the child witness, the investigating judge will order the questioning of the witness to be recorded using video and sound recording equipment. In this case the questioning will be conducted without the presence of the judge and parties, in a room where the witness is located, and the parties may ask questions through the investigating judge, the psychologist, educationalist or other persons. Moreover, it is possible to question as witnesses children and young minors who are victims of criminal offences not in the court, but in their home or another location where they are staying or in the centre for social welfare. At the trial the record will always be read of the statement by a child or minor who was questioned as a witness, or the recording of the questioning will be played back. Information gathered by technical video or sound recording equipment is destroyed after a period of five (5) years from the legally effectiveness of the judgment.

When comparing these legal solutions, which improve the position of children in court proceedings, with the provisions of the new legal instrument "*Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*", there is no doubt that the standards of Croatian legislation, especially the Juvenile Courts Act, may be seen to be up to date and mainly aligned with the *acquis communautaire* and standards of proceeding.

The latest amendments to the **Criminal Code** tightened sanctions for criminal offences committed against children and the initiative was accepted in relation to the expiration of the statute of limitations on criminal prosecution prescribed for criminal offences perpetrated against children and minors, that the period of limitations should not begin to run until they reach the age of majority. This is extremely important since, in this way, children who have been the victims of a criminal offence, are given the possibility when they come of age, independently from their parents and legal guardians, to institute criminal prosecution of the perpetrators when they overcome fear, embarrassment, lack of confidence, denial of problems and all the other consequences of this form of crime. These provisions are aligned with provision 14.4.1 from the recommendation of the Parliamentary Assembly of the Council of Europe of 23 January 2007, no. 1530 (2007).

The amendments to the Criminal Code of 2006 (OG no. 71/06) which came into force on 1 October 2006, alongside a series of provisions protecting children and minors, also include new features aimed at strengthening protection of children and minors in the institution of criminal proceedings for a criminal offence. For example, for the criminal offence of causing bodily harm to a member of the family (or child or minor), proceedings are instituted *ex officio*, and not by a private complaint as before. This makes access to court or justice easier for children but also for a parent who wishes to protect a child from domestic violence. For the criminal offence of exposing personal or family circumstances, where a child is concerned, the responsibility of officials or other persons is incriminated separately for committing this crime in the conduct of their professional duties. The right to privacy and the protection of that right, is very important where children are concerned to provide for a stimulating environment for the growth and development of children. Another new feature in criminal law is that exposure of a child or minor to peril by risky behaviour or in another way, is considered to be the commission of the criminal offence of neglect and abuse of a child or minor.

In criminal offences against sexual freedom and sexual morality, the penalties have been increased for: sexual intercourse by abuse of position – in qualified forms of this criminal offence, for sexual intercourse with a child, for satisfying lust before a child or minor, for pandering (“whoever panders a child or minor..”), exploitation of a child or minor for pornography, acquainting a child with pornography and for child pornography on a computer system or network. In comparison with 2005, a rise was recorded of 28.3% for the criminal offence of sexual intercourse with a child, attempted rape, pandering and child pornography on a computer system. The rise in the number of those reported for this criminal offence may be explained by the increased efforts by the police in discovering this form of crime, and the increased involvement of public institutions offering protection to children and minors (polyclinics, centres for social welfare) whereby access is opened or made easier for children to court and justice in a wider sense.

The RoC is a signatory to the Convention on Cybercrime, and will sign the new Council of Europe Convention on the Protection of Children against Sexual Exploitation and Child Abuse, which will complement the existing system of protection of children in the RoC, since the standards set are recognized as a quality contribution to the improvement of the care of children in general.

Police powers, in cases involving minors, young adults and in cases of the criminal law protection of children and minors, are regulated by the Police Act, which emphasizes police powers which are applied by police officers especially trained for work suppressing juvenile delinquency. Specialized police officers for juvenile delinquents act in the following areas of work: criminal offences committed by minors and criminal offences in the field of the criminal law protection of children and minors; misdemeanours by minors; domestic violence; violence in schools; removal and flight by minors from parental homes and educational establishments; the failure of parental care in the prohibition of harmful association and prohibition of nocturnal outings by persons under the age of 16 years; running prevention programs in the field of juvenile delinquency, development of cooperation with other bodies, institutions and services responsible for the care, up-bringing and education of minors.

If there is a well founded suspicion that a minor has committed punishable act for which proceedings are instituted *ex officio* within the police service, the procedure of a police investigation (crime investigation) is instituted, which is undertaken in two parallel directions: to shed light on the circumstances of the commission of the punishable behaviour and gathering evidence to support the well founded suspicion that the minor committed the punishable act for which he has been reported, or for which indications exist, and gathering information on the character and earlier life of the minor under suspicion.

The Act and subordinate regulations prescribe that the police shall obtain information on the minor in the presence of a parent, guardian or legal representative. The presence of a parent or legal representative in proceedings with the police has the purpose of: ensuring that they are informed of the reasons and actions being undertaken with the minor; to ensure they are able to undertake the necessary measures to protect their child; to ensure that the parents have the opportunity to seek the professional help of a defence counsel for their child; to achieve an educational and special preventive effect through a prompt reaction towards their child; the possibility of breaking the minor's negative developmental process; obtaining information and gathering facts about the character and earlier life of the minor, the environment in which

he lives and the society in which he moves; removal of mainly unfounded accusations and insinuations regarding the use of force against minors, forced statements, abuse, and a prompt reaction in such situations.

The **Children's Ombudsman** plays a very important role in the RoC, as an independent and autonomous body, whose task is to protect, monitor and promote children's rights on the basis of the Constitution of the RoC, the Convention on the Rights of the Child and other international agreements and laws. The scope of work is established by the Act on the Children's Ombudsman and the National plan with is founded on the **Recommendations of the UN Committee for the Rights of the Child** so the Office of the Ombudsman is one of the bodies jointly responsible for activities for planning measures, which does not of course reduce the autonomy of the Office of the Children's Ombudsman as a *sui generis* body, with the task of autonomously monitoring the implementation of the basic documents of the Republic of Croatia and international documents and regulations taken on which relate to the protection and rights of children. The work of the Children's Ombudsman is carried out on four levels: consideration of individual cases of threat to or violation of a child's rights, direct or telephone counselling in relation to the protection of the rights and interests of children, work on a general level where the Office mainly works proactively, preventively and in education on the basis of its own initiative and that of others, to promote children's rights in public and represent the institution of the Children's Ombudsman.

The proposed **Free Legal Aid Act** is in parliamentary procedure, and according to this Act all especially vulnerable groups will be entitled to legal aid. Amongst other things, the Act is planned to be applied in proceedings to protect children and young minors with behavioural disorders, and in proceedings being conducted before courts on the basis of international conventions to which the RoC is a party, and which relate to the rights and welfare of children, and trafficking in human beings. However, this Act does not change the provisions of separate acts which regulate individual existing forms of legal aid.

The provisions of this Act prescribe types of proceedings and individual legal matters in which the use of legal aid may be approved, especially taking into account that legal aid is provided to the most at-risk categories of citizens, to resolve issues of vital importance for their position, social rights and other rights related to their basic existential issues.

Legal aid is also provided in cases when this obligation arises for the Republic of Croatia from ratified international documents, for example on the basis of the Convention on Action Against Trafficking in Human Beings and the Convention on the Compensation of Damages to Victims of Criminal Offences, which prescribe the obligation of the state to provide legal aid to victims of trafficking in human beings and other criminal offences.

Bearing in mind that the provision of protection to vulnerable groups, and especially children and young people, is an imperative for maintaining human society as a whole and a pledge for its future, all efforts invested in improving measures and instruments for the realization of this protection are of immeasurable importance. This is especially true since the forms of crime committed against children and young people are increasingly refined and widespread. Transnational pornography chains, international trafficking in children and their organs, internet paedophile websites, are only some forms of criminal behaviour which demand the joint commitment and action of the competent services of different states in their suppression. In addition, the inequality of living situations and standards in various parts of the world and the desire for a better life, cause many to migrate in search of a better future. For this reason the geographical position of the Republic of Croatia has an important role in the fight for the interests and welfare of migrants, asylees and children. The existing legal provisions, which are to a very large extent aligned with the legal standards of the international and above all the European community, confirm that Croatia is part of a civilized and caring Europe, ready for and capable of judicial cooperation on an international level in order to protect the interests and rights of these vulnerable groups, what will also be expressed by signing of the new Council of Europe Convention on the Protection of Children against Sexual Exploitation and Child Abuse.

