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## **LANZAROTE CONVENTION**

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

**Replies to the general overview questionnaire**

**ASTRA SERBIA**

Replies registered by the Secretariat on 16 January 2014



## GENERAL FRAMEWORK

### Question 1: Definition of “child”

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

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

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

The Family Act uses the terms “minor” and „young adult“ not defining these terms. However, according to the article 11 of the Family Act, majority is obtained by reaching 18 years of age, so every person under that age can be considered a child. Full legal capacity is obtained by reaching the age of majority (article 11. of the Family Act). Full legal capacity can be obtained, before the age of majority, by concluding a marriage with court permission or through becoming a parent. In these cases majority is decided upon by the court when the sufficient requirements are met. (article 11. paragraphs 2. and 3. Family Act). In neither of these cases can the child be under 16 years of age. On the other hand, a person who has reached majority at the age of eighteen years retains the status as “a minor child” if he/she is unable to care for himself/herself and protect his/her rights and interests due to an illness or disturbances in mental and physical development. In this case, with the decision of the court, parental rights do not cease with age of 18.

- b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with **Article 11, para. 2**?
- c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

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

### Question 2: Non-discrimination

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

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

- The law on social protection (*"Official Gazette of RS"*, no. 24/2011)
- Law on the Foundations of the Education System (*"Official Gazette of RS"*, no. 72/2009, 52/2011 and 55/2013)
- The Law on Juvenile Offenders and Criminal Protection of Juveniles (*"Official Gazette of RS"*, no. 85/2005)
- General Protocol for the Prevention of Child Abuse and Neglect (Adopted by the Resolution of the Government on August 25<sup>th</sup> 2005, 05 no. 011-5196/2005)
- Special protocol on the procedure of judicial authorities to protect minors from abuse and neglect (no. 560-01-1/2009-01 from June 17<sup>th</sup> 2009.)

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

Please indicate (without entering into details):

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

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

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

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

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

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

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

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

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

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

#### **Question 4: Child participation**

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

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

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

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

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

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

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

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

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

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

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

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

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

In April 2013, Law on special measures for the prevention of crimes against sexual freedom against minors, known as "Marija's Law" was adopted. Article 14 of the proposed law stipulates that special records should be kept by the Directorate for Execution of Criminal Sanctions, and that the Ministry of Justice will regulate the record keeping in closer detail. The deadline for submission of data to the responsible person in the Directorate for Execution of Criminal Sanctions who keeps separate records is within three days. All state and other authorities, as well as legal entities or entrepreneurs are required to submit the obtained information on which special records are kept in this time period. It was proposed that the data in special records is kept permanently, as well as that it is not allowed to delete data from special records. This database has not yet been established.

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

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

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

A significant change in the National mechanism for the identification, assistance and protection of victims of human trafficking is the transformation of the Agency for Coordination of Protection of Trafficking Victims. After the adoption of the Regulation on the network of social protection<sup>1</sup>, the Government of the Republic of Serbia has founded the Center for the Protection of victims of trafficking<sup>2</sup> on April 13, 2012. The new center was established as an institution of social protection and is supposed to coordinate the activities of providing social protection to victims, cooperate with the social welfare centers, institutions that provide accommodation to victims, as well as with other institutions and non-governmental organizations. It was established as a separate organizational unit within the Ministry of Labour, Employment and Social Policy. It is financed from the budget of the Republic of Serbia and by international organizations through the project activities.

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

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

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

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

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

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<sup>1</sup> „Official Gazette of RS“ 16/2012 7.3.2012.

<sup>2</sup> *The decision to establish the Centre for the Protection of Victims of Human Trafficking* (“Official Gazette of RS”, no. 35/2012)



## PREVENTION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

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

a. Which legislative or other measures have been taken to:

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

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

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

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

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

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

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



the Judicial Academy conducted a total of 89 training relating to juveniles in Belgrade and in other cities across Serbia.

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

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

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

Professional training of professionals and staff in social care is envisaged in the articles 143-145 of the Law on Social Protection<sup>3</sup>, as well in the Regulation on the licensing of professionals in social care<sup>4</sup>, which entered into force on May 22, 2013. Law on Social Protection<sup>5</sup> adopted in 2011 gave the final comprehensive regulatory framework for the continuing professional development of employees in the social security system and in much detail regulated the process of accreditation of training programs. Article 165 of this Law stipulates that the Republic Institute for Social Protection performs professional and organizational activities in the accreditation of training programs, i.e. service programs that provide vocational training to skilled workers and support staff in social care and social care providers. The total number of accredited programs in the Institute for Social Security Registry is 116<sup>6</sup>. All programs are accredited in an effort by the Republic of Serbia to introduce and formalize the continuing professional education of employees in certain systems. By attending these programs, employees gather hours of professional development they need for renewal of the license to operate (although licenses still do not exist), i.e. to be able to continue to work, although we do not know what are the sanctions in

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<sup>3</sup> "Official Gazette of RS", no. 24/11

<sup>4</sup> "Official Gazette of RS", no. 42/2013 14.5.2013.

<sup>5</sup> "Official Gazette of RS", no. 24/11

<sup>6</sup> Catalogue of accredited programmes for training in social protection:  
<http://www.zavodsz.gov.rs/PDF/Katalog%20akreditovanih%20programa%20obuke.pdf> (19.12.2013.)

the event that a person does not have a sufficient number of hours of professional development. A major problem is funding of training. Trainings for employees in the social security system should be funded by their home institution, and for those employed in education by the local government. However, neither of them have sufficient funds for this purpose and the implementation of quality training is relatively expensive. All ASTRA's previous trainings were free for participants, but the result is that the implementation of the training depends on the availability of funds and the willingness of donors to support this activity, which does not allow for systematic planning.

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

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

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

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

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

In the area of education, ASTRA has been implementing since 2008 an accredited program "Human (Child) Trafficking - Prevention and Education" which has so far been attended by about 200 teachers, experts, school pedagogues and psychologists. The programme is accredited by the Institute for the Improvement of Education as an optional programme of continuous professional development of education employees. Implementation of this program is part of ASTRA's efforts to get educational institutions to systematically deal with the prevention of human trafficking throughout the whole educational cycle.

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

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

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

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

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

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

In order to prevent and sanction child pornography, the Criminal Code in Article 185 introduces the crime of "Display, acquisition and possession of pornographic material and exploitation of a minor for pornography" and in Article 185b "Utilization of a computer network, or other means of communication to commit offences against sexual freedom of a minor." The following behaviours are declared as prohibited: Display, acquisition and possession of pornographic material and exploitation of a minor in pornography (Article 185), taking advantage of computer network, or other means of communication to commit offences of sexual abuse of a minor (Article 185b).

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

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

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

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

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

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

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

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.

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

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

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

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

Request for review of the need for further implementation of special measures may be filed also by the person to whom these measures apply.

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

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

What steps have been taken to encourage:

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

In May 2012, the company Vip mobile (Vip mobile d.o.o.<sup>7</sup>) supported ASTRA in the process of introducing the European hotline for missing children through a 2 million RSD donation. The donation was partly used for the purchase of the modern phone switchboard needed for the parallel functioning of two telephone lines – European hotline for missing children and the SOS hotline for supporting the victims of human trafficking. Alpha bank<sup>8</sup> also supported the work of this hotline.

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

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

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

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<sup>7</sup> <http://www.vipmobile.rs/home.8.html>

<sup>8</sup> <http://www.alphabankserbia.com/welcome.gereoo.html>



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



budget line for covering these expenses. In the process of introduction of SOS line for missing children, ASTRA was supported by the company Vip<sup>9</sup> and Alpha bank<sup>10</sup>. Two years ago ASTRA initiated signing of Memorandum of understanding with the Ministry of interior, but so far this document has not been signed, even though it would significantly increase the efficiency in solving the cases of missing children.

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

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

- a. Please indicate which types of assistance described in **Article 14** are provided to victims of sexual exploitation and sexual abuse of children. (**Explanatory Report paras. 93-100**) Please specify:
- how the assistance is adapted to the victims' age and maturity;
  - how due account is taken of the child's views, needs and concerns;
  - if the assistance (in particular emergency psychological care) is also provided to the victims' close relatives and persons responsible for their care.

Social Welfare Centres that are responsible for children who are victims of trafficking are yet to develop services specifically tailored to children victims of trafficking. In the context of providing for the basic needs of children victims of trafficking, civil society organizations are still those that have the necessary resources, knowledge, skills, budget (secured through international donor assistance) and mechanisms to react and respond to these needs. CSOs provide long-term psychological, medical and legal assistance, as well as accommodation services. Special shelters for children victims of trafficking in Serbia do not exist. Children are placed in shelters (reception centres), homes for children without parental care, returned to the primary family or placed in foster care. Children victims of trafficking, if they are unaccompanied by a parent/guardian or if the parent is deprived of custody temporarily or permanently, are placed in institutions for children and youth, along with other groups of children. They are treated as all the other children, without formulation of special reintegration programmes. Due to the lack of accommodation capacities in the country, children are placed in the safe house of NGO ATINA together with adults.

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

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

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

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<sup>9</sup> <http://www.vipmobile.rs/home.8.html#>

<sup>10</sup> <http://www.alphabankserbia.com/welcome.gereoo.html>

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

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

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

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

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

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

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

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

### Question 16: Criminal law offences

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

Article number 3 of Law on special measures for the prevention of crimes against sexual freedom against minors is applicable on offenders who performed the following crimes on minors:

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

**Sexual Abuse (Article 18)**

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

**Child Prostitution (Article 19)**

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

**Child Pornography (Article 20)**

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

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

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

**Corruption of Children (Article 22)**

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

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

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

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

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

**Question 17: Corporate liability**

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

**Question 18: Sanctions and measures**

- a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (**Article 27, Explanatory Report, paras. 182-193**);
- b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (**Article 29, Explanatory Report, paras. 203-208**).

### Question 19: Jurisdiction

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

### Question 20: Aggravating Circumstances

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

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

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

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

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

Article 266, paragraph 3 of the same Act states:

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

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

- 1) Vulnerability of minors from abuse and neglect are recognized and the procedural rules are adapted in order to respect child's special needs, including their special needs as witnesses;
- 2) Child is informed of his/her rights and role, the time schedule and the process of reviewing their cases;
- 3) it allows in the proceedings in which child's best interest is jeopardized, present and discuss the position, needs and concerns of minors, in a manner consistent with the procedural rules of national procedural law; Also, to provide appropriate support by services to minors throughout the trial;

- 4) It protects, in appropriate way, the privacy and identity of a child and take actions in accordance with the law in order to avoid the dissemination of information that could lead to child's identification;
- 5) avoids unnecessary postponement of cases and execution of commands or decrees granting compensation to minors.

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

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

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

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

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

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

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

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

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

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



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

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

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

- (1) The court may prohibit the offender to come close to a victim, to prohibit access to the place of residence or work of the victim, or to a nearby place and prohibit further harassment, or further communication with the victim, if there is a reason to believe that continuance of such actions may be dangerous for the victim.
- (2) The court determines that the duration of the measures referred to in paragraph 1 of this Article shall not be less than six months nor more than three years from the date of the final decision, provided that the time spent in prison or in a medical facility where the security measures were performed is not included in the duration of the measure.
- (3) Measures referred to in paragraph 1 of this article may be terminated prior to the expiration date set, if the reasons for which it was set stop.

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

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

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

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

1. Urgent actions and decisions that enable physical, psychological, and social security of a child;
2. Protection of a child from possible media (mis)use;
3. Appropriate and timely informing of a child on all the relevant facts (the practical application of these guidelines would mean that the Judge - Prosecutor directly or through psychologists, educators, special educators, social workers, etc. that was assigned to the child by the judge or the public prosecutor should in the first contact with a child, in an



- appropriate way explain the reasons for interrogation, his status and rights, and the importance of his participation in the process. Also this means that the child should be informed about the way he/she can address the court, directly or a representative);
4. Actions towards the empowerment of a child to express his own opinion and will (create an atmosphere of trust, interest and security);
  5. Treatment of the representative of the judicial system to a child that must be careful, with full respect for his personality, respect to his age and child's specific period of development, as well as his specific individual characteristics;
  6. The fact that the minor always must be questioned in the presence of a parent, adoptive parent or legal guardian, unless the court decides otherwise;
  7. The obligation of the legal counsel or defender counsel to represent the child's best interest (unless the court determines otherwise, they must take measures towards protecting the interests of a child);
  8. The necessity of including the experts (psychologists, educators, special educators, social workers, etc.) in the questioning when a child appears as particularly vulnerable witness or victim;
  9. Using special techniques, hearing through audio and video link (whenever a child is a victim, in accordance with the article 150 of Criminal Code or particularly vulnerable witness in accordance article 104 of the Criminal Code);
  10. Questioning of a child, especially a minor under the age of fourteen, in his natural environment whenever possible, or there whenever there is a need for that.

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

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

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

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

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

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

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

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

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

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

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

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

- b. Which legislative or other measures have been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement? (**Article 32, Explanatory Report, para. 230**);
- c. Which legislative or other measures have been taken to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with **Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b**, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question? (**Article 33, Explanatory Report, paras. 231-232**);

In April 2013, Law on special measures for the prevention of crimes against sexual freedom against minors was adopted, and the Article 5 of this Law is against of the statute of limitation for proceedings of the crimes committed on children.

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

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

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

Also, the paragraph (2) of the Article 266 of the Family Act states:

If the court finds that, in a dispute over the protection of a child's rights or in a dispute over the exercise or deprivation of parental rights a child as a party has not been adequately represented, the court is under the obligation to appoint a temporary representative to the child.

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

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

When it comes to criminal proceedings, the competent body is the Prosecutor office. Human trafficking victims are allowed to have their own representative in criminal as well as in civil proceedings for compensation of damage, that is, in the later, they themselves choose to start the proceeding as a plaintiff. Organizations may be the one to hire legal representative for the victim. Also, according to the assessment of the court, representatives of CSOs may be allowed to be present at the proceedings and in such way provide support to the victims during the questioning, as well as to follow the course of the trial as an expert body. Exclusion of the CSOs may occur in situations when the party in the process is a child. Also, members of the CSOs were called as a witness in several cases.

- f. Please describe under which circumstances the use of covert operations is allowed in relation to the investigation of the offences established in accordance with the Convention (**Article 30, para. 5**);
- g. Please also describe what techniques have been developed for examining material containing pornographic images of children (**Article 30, para. 5**).

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

- a. Please describe how interviews (**Article 35**) with child victims are carried out, indicating in particular whether:
- they take place without unjustified delay after the facts have been reported to the competent authorities;
  - they take place, where necessary, in premises designed or adapted for this purpose;
  - they are carried out by professionals trained for this purpose;
  - the same persons are, if possible and where appropriate, conducting all interviews with the child;
  - the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of proceedings;
  - the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

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

1. Urgent actions and decisions that enable physical, psychological, and social security of a child;
2. Protection of a child from possible media (mis)use;

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

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

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

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

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

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

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

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

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