



**International Covenant
on Civil and
Political Rights**

Distr.
GENERAL

CCPR/C/SRB/2
28 August 2009

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Second periodic reports of States parties

SERBIA^{*}**

[30 April 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

** Annexes may be consulted in the files of the Secretariat.

List of Contents

Second Periodical Report on Implementation of the International Covenant on Civil and Political Rights	1
Introduction	1
General information	1
Article 1	
Right of self-determination	2
Article 2	
Legal remedies available to victims, whose rights or freedoms are recognized by International Covenant on Civil and Political Rights	3
Constitutional Appeal	4
Civic Defender/Ombudsman	5
Implementation of decisions of international bodies	9
Accountability for human rights violations	9
Article 3	
Status of Women	10
Implementation of Gender Equality	11
Statistical data on gender composition in connection with appointments in state administration and participation of women in courts	12
Domestic Violence	12
Article 4	
Restriction of human rights and derogation from human rights	14
Article 5	
The relationship between international and domestic law	14
Article 6	
Right to life	15
Health care	15
Statutory framework	15
Health status of the population in the Republic of Serbia	16
Environmental protection	17
Use of firearms	20
Police	20
Armed Forces	21
Co-operation with the International Criminal Tribunal for the Former Yugoslavia_	22
Organized crime	23

Article 7

Prohibition of cruel and inhuman treatment	24
Complaints related to torture and abuse	26
Treatment of prisoners	27
Medical and psychiatric care	28
Corrective measures in schools	30

Article 8

Prohibition of slavery	30
Prohibition of forced labour	30
Illegal crossing of state border and human trafficking	31
Human trafficking	32
Mechanisms for the fight against trafficking	34
International co-operation	36
Activities performed in combating human trafficking	36

Article 9

Depriving of liberty and detention	37
Compensation for the victims unlawfully detained and convicted without grounds	39
Mechanisms of supervision over activities of police members and employees in penal institutions	39

Article 10

Prisons and other detention institutions	42
Separating defendants from convicted persons and classification of the convicted persons	43
Status in prisons and penal-correctional facilities	43
Treatment of juveniles	45

Article 11

Fulfillment of a contractual obligation	49
---	----

Article 12

Status of a foreigner	49
Travel documents	49
Refugees and internally displaced persons	50
Asylum	51

Article 13

Obligation of a foreigner to leave the territory of the Republic of Serbia	52
Prohibition of expulsion of persons to countries where they can be exposed to torture	53

Article 14

Courts	54
Organization of the judiciary	54

Work of courts	54
Training of judges and public relations	55
Publicity of court proceedings	56
Legal assistance	56
Independence of the judiciary	57
Transfer of competences of military courts to the courts of general jurisdiction	58
Article 15	
Prohibition of retroactivity	59
Article 16	
Legal capacity	59
Article 17	
Right to privacy	60
Article 18	
Freedom of religion	61
Religious education	63
Funding of churches and religious communities	64
Conscientious objection	65
Article 19	
Freedom of thought and expression	66
Freedom of the media	67
Media in the Republic of Serbia	68
Right to information	68
Public Enterprise and Institutions Conducting Activities in the Field of Public Information	69
Accreditation of Foreign Journalists and Correspondent Offices	69
Insult and libel	70
Article 20	
Prohibition of the propagation of war	70
Prohibition on inciting racial, ethnic or religious hatred	71
Article 21	
Freedom of gathering and peaceful assembly	72
Article 22	
Freedom of association	72
Political organizations and associations of citizens	73
Trade unions	74
Article 23	
Family	75

Article 24

Protection of the rights of the child	76
Capacity of the child to exercise rights	76
Support to children without parental care	77
Adoption	77
Placement of children without parental care in foster families and social care institutions	78
Citizenship of the Republic of Serbia	78
Measures taken to prevent the involvement of children in armed conflicts	80

Article 25

Electoral system	81
------------------	----

Article 26

Prohibition of discrimination	83
Measures aimed at improving full and effective equality	85

Article 27

National minorities	87
Funding of national minorities	88
Improvement of co-operation between the Police and minority groups	90
The rights of Roma	91
Protection of Roma from discrimination	94

Annex 1

Annex 2 – Status of human rights in the AP of Kosovo and Metohija

Introduction

1. Republic of Serbia is the legal successor of the State Union of Serbia and Montenegro and the Federal Republic of Yugoslavia, and thus a party to international treaties ratified by the predecessor states.

2. Second Periodical Report on Implementation of the International Covenant on Civil and Political Rights has been prepared in accordance with paragraph 1 of Article 40 of the International Covenant on Civil and Political Rights. The Report includes Concluding Remarks of the Committee for Human Rights related to the Initial Report on Implementation of the International Covenant on Civil and Political Rights in FRY in the period 1992-2002 (CCPR/CO/81/SEMO) presented to the Committee for Human Rights on July 19-20, 2004.

3. Second Periodical Report on Implementation of the International Covenant on Civil and Political Rights consists of three sections. The first section includes information related to certain articles of the International Covenant on Civil and Political Rights; the second section includes statistical data on certain fields covered by the Covenant; while the third section includes the Report of the Ministry for Kosovo and Metohija relating to status of Serbs in the AP Kosovo and Metohija.

4. Second Periodical Report on Implementation of the Covenant on Civil and Political Rights has been prepared by the Agency for Human and Minority Rights of the Government of the Republic of Serbia. This Report has been developed with the assistance of the following Ministries: Ministry of Justice, Ministry of Interior, Ministry of Public Administration and Local Self-Government, Ministry of Labour and Social Policy, Ministry for Kosovo and Metohija, Ministry of Youth and Sports, Ministry of Culture, Ministry of Health, Ministry of Religion, Provincial Secretariat of Labour, Employment and Gender Equality, Provincial Secretariat for Regulations, Administration and National Minorities and Provincial Ombudsman. Draft Report was sent to relevant NGOs for consideration requesting comment.

General information

5. The whole Section Two of the Constitution of the Republic of Serbia¹, adopted by referendum in October 2006, relates to human and minority rights. Fundamental constitutional principles include direct implementation of guaranteed rights and regulate the purpose of constitutional guarantees; restriction of human and minority rights; prohibition of discrimination; and protection of human and minority rights and freedoms.

6. Constitution of the Republic of Serbia guarantees dignity and free development of individuals; right to life; inviolability of physical and mental integrity; prohibition of slavery, servitude and forced labour; right to freedom and security; human treatment of persons deprived of liberty; special rights in case of arrest and detention without decision of the court; detention only upon the decision of the court; right to a fair trial; special rights of persons charged with criminal offences; legal certainty in criminal law; right to rehabilitation and compensation; right to equal protection of rights and legal remedy; right to legal person; right to citizenship; freedom

¹ " Official Gazette of the Republic of Serbia", No. 83/2006

of movement; inviolability of home; confidentiality of letters and other means of communication; protection of personal data; freedom of thought, conscience, beliefs and religion; rights of churches and religious communities; conscientious objection; freedom of thought and expression; freedom of expressing national affiliation; promotion of respect for diversity; prohibition of inciting racial, ethnic and religious hatred; right to information; electoral right; right to participate in management of public affairs; freedom of assembly; freedom of association; right to petition; right to asylum; right to property; right to inheritance; right to work; right to strike; right to enter into marriage and equality of spouses; freedom to procreate; rights of the child; rights and duties of parents; special protection of the family, mother, single parent and child; right to legal assistance; health care; social protection; pension insurance; right to education; autonomy of university; freedom of scientific and artistic creativity; healthy environment; and a set of collective rights of persons belonging to national minorities.

7. According to Article 18 of the Constitution of the Republic of Serbia, human and minority rights guaranteed by the Constitution shall be implemented directly. The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws. The law may prescribe manner of exercising these rights only if explicitly stipulated in the Constitution or necessary to exercise a specific right owing to its nature, whereby the law may not under any circumstances influence the substance of the relevant guaranteed right.

Article 1

Right of self-determination

8. The Preamble of the Constitution of the Republic of Serbia emphasizes that the citizens of Serbia adopt the Constitution considering the state tradition of the Serbian people and equality of all citizens and ethnic communities in Serbia; considering also that the Province of Kosovo and Metohija is an integral part of the territory of Serbia, that it has the status of a substantial autonomy within the sovereign state of Serbia and that from such status of the Province of Kosovo and Metohija follow constitutional obligations of all state bodies to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations.

9. Article 1 of the Constitution of the Republic of Serbia stipulates that the Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values. In accordance with Article 2 of the Constitution of the Republic of Serbia sovereignty is vested in citizens who exercise it through referendum, people's initiative and freely elected representatives. No state body, political organization, group or individual may usurp the sovereignty from the citizens, nor establish government against freely expressed will of the citizens.

Article 2

Legal remedies available to victims, whose rights or freedoms are recognized by International Covenant on Civil and Political Rights

10. According to Article 22 of the Constitution of the Republic of Serbia everyone shall have the right to judicial protection when any of their human or minority rights guaranteed by the Constitution have been violated or denied, they shall also have the right to elimination of consequences arising from the violation. Article 35 of the Constitution of the Republic of Serbia stipulates that everyone shall have the right to compensation of material or non-material damage inflicted on him/her by unlawful or irregular work of a state body, entities exercising public powers, bodies of the autonomous province or local self-government. According to Article 36 of the Constitution of the Republic of Serbia equal protection of rights before courts and other state bodies, entities exercising public powers and bodies of the autonomous province or local self-government shall be guaranteed, and everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests.

11. Criminal legislation protects exercising of guaranteed rights and freedoms by determining as criminal offence actions which make impossible or restrict enjoying of guaranteed rights and freedoms.

12. Criminal Code², which came into force on 1 January 2006, by Chapter Fourteen with the title "Criminal Offences Against Freedoms and Rights of Man and Citizen" incriminates Violation of Equality (Article 128); Violation of the Right to Use a Language or Alphabet (Article 129); Violation of the Right to Expression of National or Ethnic Affiliation (Article 130); Violation of the Freedom of Religion and Performing Religious Service (Article 131); Unlawful Depriving of Liberty (Article 132); Violation of Freedom of Movement and Residence (Article 132); Abduction (Article 133); Coercion (Article 135); Extortion of Confession (Article 136); Ill-treatment and Torture (Article 137); Endangerment of Safety (Article 138); Infringement of Inviolability of Home (Article 139); Illegal Search (Article 140); Unauthorized Disclosure of Secret (Article 141); Violation of Privacy of Letter and other Mail (Article 142); Unauthorized Wiretapping and Recording (Article 143); Unauthorized Photographing (Article 144); Unauthorized Publication and Presentation of Another's Texts, Portraits and Recordings (Article 145); Unauthorized Collection of Personal Data (Article 146); Violation of the Right to Legal Remedy (Article 147); Violation of Freedom of Speech and Public Appearance (Article 148); Prevention of Printing and Distribution of Printed Material and Broadcasting (Article 149); Prevention of Publication of Retort and Correction (Article 150); Prevention of Public Assembly (Article 151); Prevention of Political, Trade Union or other Organizing and Activity (Article 152).

13. Chapter 33 of the Criminal Code under the title "Offences Against Official Duty" incriminates Abuse of Office (Article 359); Violation of Law by a Judge, Public Prosecutor or his Deputy (Article 360); Dereliction of Duty (Article 361); Unlawful Collection and Payment (Article 362); Fraud in Service (Article 363); Embezzlement (Article 364); Unauthorized Use (Article 365); Unlawful Mediation (Article 366); Soliciting and Accepting Bribes (Article 367); Bribery (Article 368); and Revealing of Official Secret (Article 369).

² "Official Gazette of the Republic of Serbia", Nos. 85/2005, 88/2005 and 107/2005.

14. Application of the new Criminal Procedure Code³ has been postponed till 31 December 2008, and in the meantime the applicable Criminal Procedure Code is implemented⁴. In accordance with Article 61 of the applicable code, and paragraph 1 of Article 60 of the new code, when the Public Prosecutor assesses that there is no grounds for undertaking prosecution for the criminal offence prosecuted *ex officio* or when he assesses that there is no case against any of the accomplices, he shall be obliged to inform the injured party of this within 8 days and to advise the injured party of his right to assume the prosecution on his own.

15. The new Criminal Procedure Code, however, includes a novelty in relation to the applicable Criminal Procedure Code regarding obligation of the Public Prosecutor to file an extraordinary legal remedy - motion for protection of legality. According to paragraphs 1, 4, 7 and 9 of Article 438, the Republic Public Prosecutor may submit a motion for the protection of legality to the Supreme Court if the law was violated by some final court decision. The defendant sentenced to unconditional prison sentence of one year imprisonment or more severe penalty, or juvenile detention, and the defense counsel of such defendant may, within one month from the date when the defendant received the final judgment, request from the Republic Public Prosecutor in a written and substantiated motion to file a motion for protection of legality against the final judgment if in their opinion such judgment violates the Criminal Code to the detriment of the defendant, or that in the criminal proceedings preceding rendering of the final decision the defendant's right to defense was violated thus affecting rendering of lawful and proper judgment. If the Republic Public Prosecutor dismisses the proposal for filing the motion for protection of legality by a ruling, the defendant and his defense counsel may file an appeal against the ruling to the Supreme Court of Serbia within eight days from the day of receiving the ruling. If the chamber of the Supreme Court of Serbia sustains the appeal, it shall proceed as if a motion for protection of legality has been filed and, in such cases, the Republic Public Prosecutor has the right and duty to take part in the proceedings as if he has filed the motion for protection of legality. According to the applicable Criminal Procedure Code, the Republic Public Prosecutor has a discretionary right in the aforementioned case to file a motion for protection of legality.

Constitutional Appeal

16. Constitutional appeal is a special legal remedy for protection of human rights. Article 170 of the Constitution of the Republic of Serbia stipulates that a constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organizations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.

17. Law on the Constitutional Court⁵ regulates procedures on constitutional appeals in Articles 82-92. According to Article 84 of the Law, constitutional appeal may be filed within 30 days of the date of being served an individual act or the date of the action whereby human rights

³ "Official Gazette of the Republic of Serbia", Nos. 46/2006 and 49/2007.

⁴ "Official Gazette of the FRY", Nos. 70/2001, 68/2002; and "Official Gazette of the Republic of Serbia", Nos. 58/2004, 85/2005, 11/2005 and 49/2007.

⁵ "Official Gazette of the Republic of Serbia", No. 109/2007

and freedoms guaranteed by the Constitution were violated or denied. The Constitutional Court will allow restitution to a person who on justified grounds failed to observe the time limit for submitting a constitutional appeal if such person, within 15 days from the cessation of the reasons that caused the failure, files a proposal for restitution and simultaneously submits a constitutional appeal. Restitution cannot be requested after the expiry of a period of three months from the date of failure to observe the time limit.

18. In accordance with paragraph 1 of Article 89, constitutional appeal is upheld or denied as unfounded by a decision of the Constitutional Court.

Civic Defender/Ombudsman

19. The Constitution of the Republic of Serbia specifies in its Article 138 that the Civic Defender is an independent state body who protects citizens' rights and monitors the work of public administration bodies, body in charge of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organizations, companies and institutions to which public powers have been delegated. The Civic Defender shall not be authorized to monitor the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts and Public Prosecutor's Offices. The Civic Defender shall be elected and dismissed by the National Assembly. The Civic Defender shall account for his/her work to the National Assembly and shall enjoy immunity as a deputy. The National Assembly shall decide on the immunity of the Civic Defender. The Law on the Civic Defender shall be enacted.

20. In the Republic of Serbia Civic Defender/Ombudsman has been established at the state level, in AP Vojvodina and at the local self-government level.

21. The Civic Defender has been introduced into the legal order of the Republic of Serbia by the Law on the Ombudsman of Serbia⁶. The Republic of Serbia has chosen the concept of the general type National Parliamentary Ombudsman. In accordance with paragraphs 1 and 2 of Article 6 of the Law on the Ombudsman of Serbia, the Ombudsman shall have four deputies to help the Ombudsman in performing the duties prescribed by the law. When delegating powers to his deputies, the Ombudsman especially takes into account providing of certain specializations in performing tasks from the competence of the Civic Defender, particularly regarding protection of rights of persons deprived of liberty, gender equality, rights of the child, rights of persons belonging to national minorities and rights of disabled persons

22. The Civic Defender was elected at the session of the National Assembly of the Republic of Serbia on 29 June 2007, and took office on 23 July 2007. Expert Service of the Ombudsman started to perform its tasks on 24 December 2007.

23. Budget of the Ombudsman for 2008 for performing all by law prescribed activities of the Ombudsman envisages total amount of 92,247,657.00 dinars, which corresponds to requirements from the Financial Plan 2008, submitted by the Ombudsman to the Ministry of Finance for adoption. From the total funds of the Budget of the Republic of Serbia allocated for the Ombudsman, there have not been any specifically identified funds for the activities of the

⁶ "Official Gazette of the Republic of Serbia", Nos. 79/2005 and 54/2007.

Ombudsman's deputies, although they are available depending of the planned and undertaken activities of the deputies.

24. The Vojvodina Provincial Ombudsman was established by Decision of the AP of Vojvodina with seat in Novi Sad and two district offices, in Pančevo and Subotica. Provincial Ombudsman has five deputies (for general issues, gender equality, protection of rights of the national minorities and protection of children), elected by the Assembly of AP Vojvodina every six years.

25. In the period from 2004 till today the Office of the Provincial Ombudsman processed a great many cases.

26. In the period January – December 2005, the Provincial Ombudsman opened 623 cases based on submitted applications. Out of this number, 473 (75.92%) were submitted in the Novi Sad Office, 110 (17.65%) in the Pančevo Office and 40 (6.42%) in the Subotica Office.

Complaints were filed against the following types of authorities:

Type of authority	Men		Women		Associations		Total	
Local self-government	58	17.06%	33	14.80%	25	41.67%	116	18.62%
Judicial authorities	44	12.94%	41	18.39%	3	5.00%	88	14.13%
Public services and enterprises - local	42	12.35%	31	13.90%	4	6.67%	77	12.36%
Republic administration	30	8.82%	18	8.07%	7	11.67%	55	8.83%
Pension and Disability Insurance Fund	28	8.24%	23	10.31%	0	0.00%	51	8.19%
Non-public entities	29	8.53%	13	5.83%	4	6.67%	46	7.38%
Miscellaneous	25	7.35%	13	5.83%	7	11.67%	45	7.22%
Provincial administration	25	7.35%	12	5.38%	5	8.33%	42	6.74%
Prisons	25	7.35%	1	0.45%	1	1.67%	27	4.33%
Public services and enterprises - Province	8	2.35%	10	4.48%	3	5.00%	21	3.37%
Centers for social work	7	2.06%	12	5.38%	0	0.00%	19	3.05%
Public services and enterprises - Republic	9	2.65%	6	2.69%	1	1.67%	16	2.57%
Authorities of other states	5	1.47%	5	2.24%	0	0.00%	10	1.61%

Serbia and Montenegro public administration	3	0.88%	3	1.35%	0	0.00%	6	0.96%
Institute for Health Insurance	1	0.29%	1	0.45%	0	0.00%	2	0.32%
Closed institutions	1	0.29%	0	0.00%	0	0.00%	1	0.16%
National Employment Service	0	0.00%	1	0.45%	0	0.00%	1	0.16%
Total	340	100.00%	223	100.00%	60	100.00%	623	100.00%

Table 1

27. In the period January – December 2006, the Provincial Ombudsman opened 457 cases based on submitted applications. Out of this number, 384 (84.03%) were submitted in the Novi Sad Office, 52 (11.38%) in the Pančevo Office and 21 (4.59%) in the Subotica Office.

28. In comparison with the previous year, number of cases in 2006 was smaller by one-quarter, i.e. by 26.65%. Number of cases significantly decreased in district offices in Subotica and Pančevo, by 50% in each office, while in Novi Sad the number of cases decreased by one fifth, i.e. by 18.82%.

Complaints were filed against the following types of authorities:

Type of authority	Men		Women		Associations		Total	
Local self-government	69	26.74%	27	17.31%	18	41.86%	114	24.95%
Judicial authorities	48	18.60%	23	14.74%	4	9.30%	75	16.41%
Miscellaneous	18	6.98%	23	14.74%	11	25.58%	52	11.38%
Public services and enterprises - local	22	8.53%	20	12.82%	4	9.30%	46	10.07%
Republic administration	20	7.75%	17	10.90%	0	0.00%	37	8.10%
Centers for social work	11	4.26%	13	8.33%	2	4.65%	26	5.69%
Pension and Disability Insurance Fund	10	3.88%	8	5.13%	0	0.00%	18	3.94%
Non-public entities	10	3.88%	6	3.85%	2	4.65%	18	3.94%
Public services and enterprises - Republic	9	3.49%	7	4.49%	1	2.33%	17	3.72%
Provincial administration	8	3.10%	5	3.21%	1	2.33%	14	3.06%
Prisons	14	5.43%	0	0.00%	0	0.00%	14	3.06%
Public services and enterprises - Provincial	5	1.94%	4	2.56%	0	0.00%	9	1.97%

Institute for Health Insurance	5	1.94%	1	0.64%	0	0.00%	6	1.31%
Authorities of other states	4	1.55%	1	0.64%	0	0.00%	5	1.09%
National Employment Service	3	1.16%	1	0.64%	0	0.00%	4	0.88%
Closed institutions	2	0.78%	0	0.00%	0	0.00%	2	0.44%
Total	25		15	100.00		100.00		100.00
	8	100.00%	6	%	43	%	457	%

Table 2

29. In the period January – December 2007, the Provincial Ombudsman opened 605 cases based on submitted applications. Out of this number, 443 (73.22%) were submitted in the Novi Sad Office, 83 (13.72%) in the Pančevo Office and 79 (13.06%) in the Subotica Office.

30. In comparison with the previous year, in 2007 number of cases increased by one-third, i.e. by 32.38%. Such increase was noted in all offices of the Provincial Ombudsman. Significant increase was noted in the Subotica Office - almost four times more compared to the previous year, while in Pančevo number of cases increased by 59.61%, and in Novi Sad by 15%.

Complaints were filed against the following types of authorities:

Type of authorities	Men		Women		Associations		Total	
Centers for social work	12	3.63%	15	6.33%	0	0.00%	27	4.46%
Pension and Disability Insurance Fund	11	3.32%	16	6.75%	0	0.00%	27	4.46%
Closed institutions	5	1.51%	1	0.42%	2	5.41%	8	1.32%
Public services and enterprises - local	32	9.67%	27	11.39%	1	2.70%	60	9.92%
Public services and enterprises - Provincial	5	1.51%	5	2.11%	2	5.41%	12	1.98%
Public services and enterprises - Republic	5	1.51%	10	4.22%	2	5.41%	17	2.81%
Local self-government	82	24.77%	50	21.10%	21	56.76%	153	25.29%
National Employment Service	6	1.81%	9	3.80%	0	0.00%	15	2.48%
Non-public entities	25	7.55%	12	5.06%	0	0.00%	37	6.12%
Authorities of other states	7	2.11%	3	1.27%	0	0.00%	10	1.65%

Provincial administration	9	2.72%	7	2.95%	2	5.41%	18	2.98%
Judicial authorities	49	14.80%	34	14.35%	1	2.70%	84	13.88%
Miscellaneous	19	5.74%	21	8.86%	2	5.41%	42	6.94%
Republic administration	49	14.80%	22	9.28%	4	10.81%	75	12.40%
Prisons	12	3.63%	2	0.84%	0	0.00%	14	2.31%
Institute for Health Insurance	3	0.91%	3	1.27%	0	0.00%	6	0.99%
Total	331	100.00%	237	100.00%	37	100.00%	605	100.00%

Table 3

31. Civic Defender/Ombudsman at the local level is envisaged by the Law on Local Self-Government⁷. According to Article 97, a local self-government unit may appoint a Civil Defender (Ombudsman) to protect the rights and interests of citizens by overall control of the work of the administration and public services; to determine any occurrence of illegal and improper activities violating the rights and interests of the citizens by the administration and public services and shall give his/her recommendations and objections regarding that matter. Two or more local self-governments may adopt a decision on appointing a joint Ombudsman.

The competence, authority, manner of conducting his/her duties, appointment and removal from office of the Civil Defender shall be prescribed by the statute and another general act. Until now, Civic Defenders at the local level were appointed in 11 cities.

Implementation of decisions of international bodies

32. In accordance with item 6 paragraph 1 of Article 426 of the new Criminal Procedure Code, criminal proceeding terminated by a final judgment may be reopened only to the benefit of the defendant and only if by a decision of the European Court for Human Rights or other court established under a ratified international treaty, it is determined that human rights and fundamental freedoms were violated during the criminal proceedings and that the judgment is based on such violation, and that by reopening of the proceedings it is possible to redress the violation.

33. Moreover, according to Article 438, the Republic Public Prosecutor may submit a motion for the protection of legality against final court decisions and against judicial proceedings which preceded such final decisions, if the law was violated and if it was determined by a decision of the European Court for Human Rights or other court established based on ratified international treaty that human rights and fundamental freedoms were violated during the criminal proceedings, and the court decision was based on such violation, and that court of competent jurisdiction did not allow reopening of criminal proceedings, or if the violation made in court's decision may be rectified by setting aside the decision or by reversing it, without reopening the proceedings.

⁷ "Official Gazette of the Republic of Serbia", No. 6/2002

34. Similar concept is adopted in the Law on Civil Procedure⁸, item 10, Paragraph 1 of Article 422, which relates to extraordinary legal remedy- reopening of the proceedings.

Concluding Remarks and Recommendations - 9

Accountability for human rights violations

35. In the Republic of Serbia, in June 2003, Accountability for Human Rights Violation Act was adopted.⁹ Article 2 of this Law stipulates that accountability for human rights violations (hereinafter: lustration) designates the procedure of investigation and determination of human rights violations set out in this Law (the rights set out in the International Covenant on Civil and Political Rights), determination of individual accountability for human rights violations and pronouncing of measures in respect of determined human rights violations.

36. According to Article 4 of the Accountability for Human Rights Violation Act provisions of this Law shall apply to all human rights violations occurring after 23 March 1976, as the day of the coming into force of the International Covenant on Civil and Political Rights.

37. Article 10 of the Accountability for Human Rights Violation Act stipulates that the lustration proceedings are instituted against persons holding or are candidates for following office: deputies of the National and Province Assemblies; President of the Republic; Prime Minister and members of the Republic Government and Province Executive Council; mayor and municipal president and deputy president; president and members of the executive board of the council of a local self-government unit; secretary of the National and Province Assembly; head and managing officer of National and Province Assembly services; head and managing officer of services of the President of the Republic; deputy and assistant minister, managing official of Republic and/or Province bodies and organizations and other heads of bodies and organizations in Republic and/or Province bodies and organizations, appointed by the Republic government and/or Province Executive Council; secretary of municipal and city council; district administrator; President and Judge of the Constitutional Court of Serbia (hereinafter: Constitutional Court), president and judge of courts of general jurisdiction and special courts, member of the High Judicial Council, public prosecutors and their deputies, administrator of misdemeanor court and misdemeanor judges; director and managing board member of enterprises founded by the Republic, Province or local self-government; director and managing board member of public organizations founded by the Republic, Province or local self-government (president and members of University Council, president of university and dean of faculty; president or member of managing board or other relevant managing body, director, deputy director, editor-in-chief, deputy editor-in-chief and editor of section of public media or publishing organization; director, president and member of the management board of mandatory social insurance organization); governor and vice-governor of the National bank; director of bank with majority state capital; director of tax administration, deputy director of tax administration, assistant to the director – chief inspector of the tax police, head of regional tax administration, head of regional tax administration police, director of branch office tax police; official and sworn officer of the Security Information Agency and/or other similar service;

⁸ "Official Gazette of the Republic of Serbia", No. 125/2004

⁹ "Official Gazette of the Republic of Serbia", No. 58/03

director and managing officer of penal institution; head of diplomatic mission in a foreign country and international organization and/or consul; or chief of staff of the army and/or head of counter intelligence service.

38. Chapter V of the Accountability for Human Rights Violation Act prescribes measures against violations of human rights as follows: press release of the Commission for investigating accountability for human rights violations (autonomous and independent body conducting lustration proceedings, establishes violations of human rights and pronounces measures) and measures restricting appointment to office.

Article 3

Status of Women

39. Constitution of the Republic of Serbia stipulates in Article 15 that the State shall guarantee the equality of women and men and develop equal opportunities policy. According to paragraph 3 of Article 26 forced labour is prohibited, and sexual or financial exploitation of person in unfavourable position shall be deemed forced labour. Provisions of Articles 62, 63 and 66 of the Constitution stipulate the right to enter into marriage and equality of spouses; freedom to procreate; and special protection of mother, single parent and child.

40. Since the previous report series of laws have been adopted, which regulate certain aspects of the social status of women, such as: Family Law, Labour Law, Health Insurance Law, etc.

41. The Assembly of the AP Vojvodina adopted in August 2004 Declaration and Decision on Gender Equality. By its Declaration on Gender Equality, the Assembly of AP Vojvodina advocates the policy of equal opportunities for women and men in all fields, and particularly in the sphere of labour and employment, political and public life, health and social care, education, information, culture and sports. The Decision on Gender Equality defines the way how to exercise the rights related to implementation of gender equality in AP Vojvodina, and stipulates special measures for achieving equality of women and men in different fields.

Implementation of Gender Equality

42. Institutional mechanisms for gender equality in the Republic of Serbia have been established at different levels, such as: Committee for Gender Equality of the National Assembly of the Republic of Serbia; Council for Gender Equality of the Republic of Serbia; Civic Defender/Ombudsman; Committee for Gender Equality of the Assembly of the AP Vojvodina; Provincial Secretariat of Labour, Employment and Gender Equality of Vojvodina; Provincial Institute for Gender Equality; Provincial Ombudsman and local commissions for gender equality.

43. Special measures for speedy progress towards gender equality in the field of political rights were introduced for the first time by the Law on Local Elections¹⁰, which stipulates that each nominator of electoral lists at local elections (elections for municipal and city assemblies) is obliged to include in the list certain number of women candidates, according to rules and criteria

¹⁰ "Official Gazette of the Republic of Serbia", No. 129/2007

specified in detail by the Law. At the national level, special measures were introduced in 2004 by amendments of the Law on the Election of People's Deputies¹¹, which stipulates that each nominator of electoral list must include in the list at least 30% of women candidates. By Decision on Election of Deputies in the Assembly of the Autonomous Province of Vojvodina, the same rule was introduced in 2004.

44. Electoral quotas of 30% women's share indicate that in the elections 2007 the number of women deputies increased to 20.4%. In municipal and city assemblies, after local elections 2004, women's participation in elections increased up to 21.3%.

45. Statutory framework for gender equality in the Armed Forces of Serbia includes the Law on the Armed Forces of Serbia, Law on Military Schools and Military Scientific and Research Institutions and Labour Law.

46. Provision of paragraph 1 of Article 8 of the Law on the Armed Forces of Serbia stipulates that professional members of the Armed Forces of Serbia are professional military personnel and civil personnel employed in the Armed Forces of Serbia; and provision under paragraph 1 of Article 9 of the same law stipulates that the professional military personnel are officers, non-commissioned officers and professional soldiers. In order to emphasize gender equality in the Armed Forces of Serbia, provision of Article 11 of the Law on the Armed Forces of Serbia stipulates that provisions of the Law on composition of Armed Forces relate equally to women and men. Such equality of women and men means the same rights when rules of engagement for professional military services are in question, as well as regulations on enrollment in military education institutions for military training purposes. Draft by-laws, prepared by the Ministry of Defence on the basis of authorizations pursuant to the Law, which regulate professional military jobs and status of professional military personnel, treat equally both genders when professional military employment and status are in question. Also, gender equality is implemented when employment of persons in the Armed Forces of Serbia as civil personnel is under consideration as well.

47. Comprehensive protection of women's rights is being persistently implemented in practice. Certain differences which cannot be considered to be gender discrimination are a result of certain natural differences in psycho-physical constitution of sexes, which causes traditional classification into men's and women's jobs, as well as special protection of the women's reproductive role in the society and maternity protection.

Statistical data on gender composition in connection with appointments in
state administration and participation of women in courts

48. Gender structure of the employees in the state administration authorities makes up between 44% and 88% in favour of women.

49. In the Ministry of Interior, the proportion of women employees increases year after year. Currently, the Ministry of Interior employs 8,757 women or 20.2% of the total number of employees. According to available data, since 2004 till today, the number of women in the total number of employees in the Ministry has increased by more than 2%. Namely, in the last three

¹¹ "Official Gazette of the Republic of Serbia", Nos. 35/2000 and 18/2004.

years more than 1,600 women have been employed. Although women are usually engaged in administrative services, since 2004 ever more women are found in uniforms in operational police forces of the Ministry (police of general competence, traffic police, border police, etc.); data demonstrate that in 2004 the mentioned jobs were performed by 5.4% of women, out of the total number of employees in the Ministry, and in 2007 by 6.6% of women. Moreover, number of women with college and higher education has increased, thus in the total number of employees with the aforementioned education, women make up 23.9%, which is almost by 5% more in comparison with 2004.

50. In the Police Academy, as higher education institution for training and specialization of senior police officers, in the school year 2003-2004 and 2005-2006, 385 students were enrolled, of whom 100 women or 26%, while 35 women graduated. In the Police College, from the school year 2003-2004 and 2005-2006, 1,529 students were enrolled, of whom 644 women or 42%, of whom graduated 336. A great number of women was employed upon graduation.

51. Police College and Police Academy were integrated into the Criminology and Police Academy – higher education institution, which is not within the Ministry of the Interior, although personnel shall be trained primarily for police purposes. In the school year 2006-2007, in the Police Academy 130 students were enrolled, of whom 32 women, and in the school year 2007-2008, 158 students were enrolled, of whom 38 women.

52. Out of the total number of employees in the Armed Forces of Serbia, women officers make up 0,23%, women non-commissioned officers 0,37%, women professional soldiers 2,99%, and women employed as civil personnel 50.85%, which makes up 18.07% of the total number of employees in the mentioned categories.

53. In the Military Academy in the school year 2007-2008, 168 students were enrolled, of whom 30 women or 17.9%, and in the school year 2008-2009, 169 students, of whom 33 women or 19.5%.

54. In judicial sector, women judges are dominant, approximately 64%. Among presidents in court appointments, women participate with a 40% share. Presidents of Supreme Court and Constitutional Court of Serbia are women.

Concluding Remarks and Recommendations - 17

Domestic Violence

55. Family Law¹² under paragraph 1 of Article 10 prohibits domestic violence. Provisions under paragraph 1 of Article 197 define domestic violence as behavior of a family member that harms the physical integrity, mental health or tranquility of another family member.

56. According to Article 198 of the Family Law, against family member who acts violently the following protection orders may be applied: issuance of an injunction for removing from the family house or apartment, regardless the right of owning or renting the property; issuance of an injunction for moving in the family house or apartment, regardless the right of owning or renting the property; prohibition of approaching family member at a certain distance; prohibition of

¹² "Official Gazette of the Republic of Serbia", No. 18/2005

access to the place of residence or workplace of a family member at a certain distance; prohibition of further disturbance of family member.

57. Since new legal measures within family legal protection are in question, special provisions under Articles 283 - 289 of the Family Law stipulate procedures for undertaking such measures. Thus, particularly urgent procedure is to be implemented as well as derogation from the disposition principle, while the appeal against the ruling on imprisonment shall not stay its execution.

58. Criminal Code of the Republic of Serbia stipulates criminal offence of domestic violence in Article 194. Provisions of this article incriminate any use of violence or serious threat of attack against life and limb, insolent or ruthless behaviour that endangers the tranquility, physical integrity or mental condition of a family member. The Criminal Code prescribes family violence protection not only for women, but also other family members, particularly children, who are also exposed to different forms of violence. In the period 2004-2007, 6,187 criminal offences related to domestic violence against women were recorded, which make up 84.4% of the total number of such criminal offences committed in the mentioned period (7,326). Notwithstanding criminal legal incrimination of domestic violence, it has been assessed that the "dark figure of crime" is still very high.

59. Criminal Code provides criminal-legal protection against "Neglecting and Abusing a Minor". Provisions of Article 193 of the Criminal Code stipulate that parent, adoptive parent, guardian or other person who by gross dereliction of their duty to provide for and bring up a minor neglect a minor they are obliged to take care of, shall be punished with imprisonment up to 3 years. A parent, adoptive parent, guardian or other person who abuses a minor or forces him to excessive labour or labour not commensurate with his age, or to mendacity, or for gain induces him to engage in other activities detrimental to his development, shall be punished with imprisonment from 3 months to 3 years.

60. In the last four years special activities have been performed in the Republic of Serbia for establishing of an overall system for protection of children from abuse and neglecting, as well as establishing of special civil legal instruments and instruments of criminal law for protection against domestic violence.

61. Aiming to reach for a unique system of protection against abuse and neglecting of minors in the Republic of Serbia, continuous training of experts in the systems of social protection, education, healthcare, judiciary, police and NGOs, is being organized for identifying and undertaking coordinated action for protection of children against abuse and neglecting. As result of increased sensitiveness of expert and other public regarding abuse and neglecting of minors, the Government of the Republic of Serbia and other state authorities have adopted the following documents of binding character: Initial Framework for the National Strategy Against Violence; Action Plan for Children; General Protocol for protection of children against abusing and neglecting; Special Protocol for protection of children in the social protection institutions against abusing and neglecting.

Article 4

Restriction of human rights and derogation from human rights

Concluding Remarks and Recommendations - 13

62. According to provisions of Article 20 of the Constitution of the Republic of Serbia human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. Attained level of human and minority rights may not be lowered. When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means.

63. According to Article 202 of the Constitution of the Republic of Serbia derogations from human and minority rights guaranteed by the Constitution shall be permitted only to the extent deemed necessary upon proclamation of the state of emergency or war. Measures providing for derogation shall not bring about differences based on race, sex, language, religion, national affiliation or social origin. Such measures shall cease to be effective upon ending of the state of emergency or war.

64. Measures providing for derogation shall by no means be permitted in terms of the: right to dignity and free development of individuals, right to life, right to inviolability of physical and mental integrity; prohibition of slavery, servitude and forced labour; right to humane treatment of persons deprived of liberty; right to a fair trial; right to legal certainty in criminal law; right to legal person; right to citizenship; freedom of thought, conscience and religion; right to conscientious objection; right to freedom of expressing national affiliation; prohibition of inciting racial, ethnic and religious hatred; right to enter into marriage and equality of spouses; freedom to procreate; rights of the child; prohibition of forced assimilation

Article 5

The relationship between international and domestic law

65. Under paragraph 2 of Article 16 of the Constitution of the Republic of Serbia it is stipulated that the generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly. Ratified international treaties must be in accordance with the Constitution. Similar provision is found in paragraph 4 of Article 194 of the Constitution. According to provisions of Article 18 human and minority rights guaranteed by the Constitution shall be implemented directly. The Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws. The law may prescribe manner of exercising these rights only if explicitly stipulated in the Constitution or necessary to exercise a specific right owing to its nature, whereby the law may not under any circumstances influence the substance of the relevant guaranteed right. Provisions on human and minority rights shall be interpreted to the benefit of promoting values of a

democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation.

Article 6 Right to life

66. According to provisions of Article 24 of the Constitution of the Republic of Serbia human life is inviolable. There is no death penalty in the Republic of Serbia. Cloning of human beings is prohibited.

Health care

- Statutory framework

67. Health care of population in the Republic of Serbia is guaranteed under paragraph 1 of Article 68 of the Constitution of the Republic of Serbia according to which everyone shall have the right to protection of their mental and physical health.

68. Within legislative activities in 2004, Law on Drugs and Medical Devices¹³ was adopted as well as the Law on Protection of the Population Against Contagious Diseases¹⁴, and in 2005 the Law on Substances Used in Illicit Production of Narcotics and Psychotropic Substances¹⁵, as well as the systemic laws: Law on Health Care¹⁶, Health Insurance Law¹⁷, Law on Chambers of Medical Workers¹⁸. In compliance with the adopted laws corresponding by-laws were adopted as well.

69. The health protection system in the Republic of Serbia belongs formally and essentially to the so called Bismarck model of the obligatory health insurance. This system is based on the generally accepted principles: solidarity and reciprocity, transparency with the right to information, protection of rights of insured persons and protection of public interest, continuous improvement of quality and cost effectiveness as well as efficiency of obligatory health insurance.

70. In the reporting period the following strategies were developed and adopted: 2005 - National Strategy for the Fight against HIV/AIDS in the period 2005 - 2010; 2006 - Strategy for Youth Development and Health; 2007 - Strategy for the Development of Mental Health; 2007 - Tobacco Control Strategy.

¹³ "Official Gazette of the Republic of Serbia", No. 84/04

¹⁴ "Official Gazette of the Republic of Serbia", No. 125/04

¹⁵ "Official Gazette of the Republic of Serbia", No. 107/05

¹⁶ "Official Gazette of the Republic of Serbia", No. 107/05

¹⁷ "Official Gazette of the Republic of Serbia", No. 107/05

¹⁸ "Official Gazette of the Republic of Serbia", No. 107/05

71. Furthermore, Draft Narcotics Control Strategy and Draft Public Health Strategy have been developed. Also, Strategy for Continuous Improvement of Health Care Quality in the Republic of Serbia is being prepared.

72. Expert Commissions on perinatal health care; protection of population against contagious diseases, and hematopoietic cell transplantation in children, have been established.

- Health status of the population in the Republic of Serbia

73. Basic characteristics of the population of the Republic of Serbia relate to changes which have led to the threshold of demographic old age as result of different tendencies in the dynamics of vital events. Each year in the Republic of Serbia decrease in the number of alive newborns is reported, and the negative population growth recorded.

74. In the period 2004 - 2006 in the Republic of Serbia the following was recorded:

- Population growth rate per 1000 inhabitants dropped from -3,5 in 2004 to -4,3 in 2006;
- Declining birth rate in Serbia: the number of the alive newborns decreased (from 78,186 to 70,997), i.e. declining birth rate per 1000 inhabitants from 10,5 in 2004 to 9.6 promilles in 2006¹⁹;
- Vital index, number of alive newborns per 100 dead newborns decreased constantly, from 74,9 in 2004 to 69,0 in 2006;
- Life expectancy at birth slightly increased from 72.07 in 2004 to 72.7 in 2006, and by gender, number of male newborns increased from 69.69 in 2004 to 70.6 in 2005, and number of female newborns from 74.75 in 2004 to 75.9 in 2006.
- Infant mortality rate is a significant and sensitive indicator of the population health status and health care, as well as socioeconomic status and status in other spheres of society. Infant mortality rate in Serbia showed continued long-term decrease. In the monitoring period, this rate dropped from 8.1 in 2004 to 7.4 in 2006. The most frequent cause of infant mortality was status in the pregnancy period with 67.11% dead infants.
- The results show that in the monitoring period 104,320 deaths occurred in 2004 and 102,844 deaths in 2006, which proves that the mortality rate dropped from 14 in 2004 to 13.9 in 2006.
- The most frequent cause of death according to ICD-10 in 2006 were registered as: diseases of the circulatory system 57.27% (men 51.96%, women 62.77%); cancers 19.97% (men 22.33%, women 17.52%); symptoms, signs and abnormal clinical and laboratory findings 4.78% (men 4.88%, women 4.67%); diseases of the respiratory

¹⁹ Source of all data: Statistical Yearbooks of the Institute of Public Health of Serbia "Dr Milan Jovanovic Batut" 2004, 2005 and 2006

system 3.66% (men 4.48%, women 2.80%); injury, poisoning and certain other consequences of external causes 3.76% (men 5.30%, women 2.17%).

Environmental protection

75. Constitution of the Republic of Serbia guarantees by its Article 74 healthy environment. According to provisions of this article everyone shall have the right to healthy environment and the right to timely and full information about the state of environment. Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment, and everyone shall be obliged to preserve and improve the environment.

76. Legal norms which regulate environmental protection and improvement in the Republic of Serbia are included by numerous ratified international treaties, laws and other regulations. It relates particularly to regulations on planning and construction, mining, geological research, waters, land, forests, plants and animals, national parks, fisheries, hunting, waste management, protection against ionic radiation and nuclear safety.

77. New statutory framework for environmental protection was introduced in the Republic of Serbia in 2004 by the Law on Environmental Protection²⁰, Law on Strategic Environmental Assessment²¹, Law on Environmental Impact Assessment²² and Law on Integrated Pollution Prevention and Control²³, which were harmonized with the relevant EU regulations. These laws determine competences of the Republic, Autonomous Province and local self-government units; rights and obligations of business and other entities in the field of environmental protection. Main issues regulated by the Law on Environmental Protection are as follows: fundamental principles of environmental protection; management and protection of natural resources; measures and requirements for environmental protection; monitoring of environmental status; informing and participation of public; economic instruments; responsibility for environmental pollution; surveillance and penalties.

78. Fundamental principles of environmental protection, such as "principal of full information and public participation" as well as "principle of protection of the right to healthy environment and access to legislation", are applied in the following way: (a) by implementation of provisions of the set of the mentioned laws that relate to providing access to information, public participation in the procedure of strategic environmental assessment, environmental impact assessment and issuance of integrated permits as well as legal protection in procedures before competent authorities, i.e. courts; (b) by reporting on the environmental status at the level of the Republic, Autonomous Province and the local self-government units.

79. The Law on Environmental Protection introduces a series of economic instruments, such as fees for use of natural resources, pollution fees and economic incentives. Operationalization of these instruments ensures implementation of the "Polluter Pays" Principle and the "User Pays"

²⁰ "Official Gazette of the Republic of Serbia", No. 135/04 (old Law on Environmental Protection, "Official Gazette of the Republic of Serbia", No. 66/91 - other provision related to nature protection, air protection and protection against noise are in force

²¹ "Official Gazette of the Republic of Serbia", No. 135/04

²² "Official Gazette of the Republic of Serbia", No. 135/04

²³ "Official Gazette of the Republic of Serbia", No. 135/04

Principle in accordance with the requirements of the EU. Obligation of polluters to pay the pollution fee entered into force on 1 January 2006. These fees are classified according to types of pollution from certain resources (for example, air pollution emissions, waste production and disposal, substances which damage the ozone layer and motor vehicles). In order to provide funds to enhance environmental protection and improvement in the Republic, Environmental Protection Fund was established. Fund is a legal entity and its seat is in Belgrade. Fund's sources of income, beside the sources prescribed by the law, include fees paid by the polluters, i.e. users of natural resources. The Fund performs tasks related to financing preparation of implementation and development of programmes, projects and other activities in the sphere of the environmental conservation, sustainable use, protection and improvement, as well as in the field of energetic efficiency and use of renewable energy sources.

80. Civil legal responsibility of polluters for the damage caused to environment is regulated by the Law on Environmental Protection in a special Chapter "Responsibility for Environmental Pollution". For issues related to responsibility for damage caused to environment that are not specifically regulated with this law, general rules of the Law of Contract and Torts²⁴ are applied. Legal or natural persons causing damage to environment by illegal or inappropriate actions are responsible for such caused damage, including winding-up/bankruptcy for legal persons.

81. Activities of the enterprises or other legal entities that may be incriminated as economic offence, i.e. misdemeanor, as well as fines, are prescribed by all laws in the sphere of environmental protection in compliance with the Law on Economic Offences²⁵ and the Misdemeanors Act²⁶. Enterprises and other legal entities cannot be held responsible for criminal offence and cannot be subject to any criminal proceeding whatsoever. Value of penalties for committed economic offence, i.e. misdemeanor, depends on the fact whether the economic offence, i.e. misdemeanor, has been committed by a legal entity, responsible person in legal entity, entrepreneur, i.e. other person. For misdemeanors, imprisonment up to 30 days is prescribed, and exceptionally for misdemeanors that endanger health and life of people imprisonment even up to 60 days is prescribed.

82. Environmental protection is ensured by criminal-legal protection as well. Criminal offences are explicitly prescribed by law. Criminal Code includes a special Chapter: "Criminal Offences Against the Environment" with 18 criminal offences against environment: Environmental Pollution (Article 260); Failure to Undertake Environmental Protection Measures (Article 261); Illegal Construction and Operation of Facilities and Installations Polluting the Environment (Article 262); Damaging Environmental Protection Facilities and Installations (Article 263); Damaging the Environment (Article 264); Destroying, Damaging and Taking Abroad a Protected Natural Asset (Article 265); Bringing Dangerous Substances into Serbia and Unlawful Processing, Depositing and Stockpiling of Dangerous Substances (Article 266); Illegal Construction of Nuclear Plants (Article 267); Violation of the Right to be Informed on the State of the Environment (Article 268); Killing and Wanton Cruelty to Animals (Article 269); Transmitting of Contagious Animal and Plant Diseases (Article 270); Malpractice in Veterinary

²⁴ "Official Gazette of the SFRY", Nos. 29/78, 39/85, 45/89 - Decision of the CCY and 57/89, "Official Gazette of the SFRY", No. 31/93 and "Official Gazette of Serbia and Montenegro", No. 1/03 - Constitutional Charter)

²⁵ "Official Gazette of the SFRY", Nos. 4/77, 36/77 - correct., 14/85, 10/86 (consolidated text), 74/87, 57/89 and 3/90 and "Official Gazette of the FR Y", Nos. 27/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 64/2001) and "Official Gazette of the Republic of Serbia", No. 101/2005 - other law

²⁶ "Official Gazette of the Republic of Serbia", No. 101/05)

Services (Article 271); Producing Harmful Products for Treating Animals (Article 272); Pollution of Livestock Fodder and Water (Article 273); Devastation of Forests (Article 274); Forrest Theft (Article 275); Poaching Game (Article 276); Poaching Fish (Article 277). For these offences penalties from 10,000 to 1,000,000 dinars are prescribed or imprisonment up to 10 years, while criminal offences with particularly serious consequences are punished up to 12 years. Other specific laws with criminal provisions are not codified with the Criminal Code (for example, Law on Genetically Modified Organisms, Law on the Production of and Trade in Dangerous Substances and Law on Waters).

83. In the period from 1 January 2005 to 30 June 2008, 218,936 inspection controls were performed in the sphere of environmental protection, use of natural resources, fisheries, protection against pollution, border control, on the basis of which requests for commencement of misdemeanor proceedings, economic offence reports and criminal offence reports were filed.

Table of requests for commencement of misdemeanor proceedings; economic offence reports; and criminal offence reports in the sphere of environmental protection in the period 01.01.2005 - 30.06.2008

Year	No. of inspection controls			No. of issued decision	No. of requests for commencement of misdemeanor procedure	No. of economic offence reports	No. of criminal offence reports
	Nature, natural resources, fisheries	Pollution (industry)	Border inspection				
2005	2 230	4 737	152 439	1 426	677	150	10
2006	2 482	7 250	19 525	1 513	405	112	30
2007	4 234	7 068	10 271	1 417	742	112	42
2008	2 211	3 827	2 662	782	340	56	16
Total	11 157	22 882	184 897	5 138	2 164	430	98

Table 4. Source: Ministry of Environmental Protection and Spatial Planning

84. Ministry of Environmental Protection and Spatial Planning is responsible for performing tasks related to the protection system and sustainable use of natural resources (air, water, land, mineral raw materials, forests, fish, wild flora and fauna), environmental protection and improvement system. Within the Ministry in 2004 Serbian Environmental Protection Agency was established; it performs tasks that particularly relate to development, harmonization and management of the National Environmental Information System; gathering and consolidating environmental data, their processing and drafting reports on the environmental status and implementation of the environmental protection policy.

85. In AP Vojvodina Provincial Secretariat for Environmental Protection and Sustainable Development is responsible for environmental protection. Municipalities/cities are responsible in the sphere of urban planning and environmental protection and improvement as well as public utility services. At the local self-government level, authorities and services responsible for performing tasks of environmental protection have limited responsibility regarding environmental issues that include air protection, noise protection, communal waste management, urban planning, construction permits for small facilities as well as strategic assessment of plans and programs, assessment of the project environmental impact and issuance of integrated permits under their competences.

86. The following strategic documents are being drafted: Strategy of Sustainable Use of Natural Resources and Properties; National Programme for Environmental Protection; Biodiversity Conservation Strategy in Serbia with Action Plan; Strategy of Introducing Cleaner Production; Local Ecological Action Plan (adopted by 34 municipalities, while approximately 31 is being prepared), etc. The objectives of the reform measures and strengthening of institutions in the sphere of environmental protection included by the Sustainable Development Strategy, which was adopted by the Government of the Republic of Serbia on 9 May 2008, are as follows: more realistic end efficient programme policy; stronger and more stable status of the Ministry responsible for environmental protection compared to other ministries; strengthening capacities in all ministries with the aim to integrate issues in the environmental protection field into sectoral policies; better implementation of the EU regulations and domestic laws and regulations.

Use of firearms

- Police

87. Use of firearms by authorized official persons discharging official duty is regulated by the Police Law²⁷ and other regulations.

88. Pursuant to Article 100 of the Police Law, an authorized official person discharging official duty is allowed to use firearms only if by using other coercive means he/she cannot perform his/her official duties and when it is absolutely necessary and solely in the following circumstances: protection of human lives; preventing the escape of a person found while committing a criminal offence; preventing the escape of a person who has been lawfully deprived of his/her freedom, or a person for whom such order has been issued; counter direct aggression against the authorized police officer; counter aggression against a facility or person the authorized police officer protects.

89. By provisions under paragraph 2 of Article 107 of the Police Law it is stipulated that use of firearms is not allowed against minors, except if it is the only way to counter direct aggression or danger against himself/herself.

90. Police Law regulates use of firearms while pursuing a fleeing vessel, and use of firearms against animals.

²⁷ "Official Gazette of the Republic of Serbia", No. 101/05

91. Pursuant to Article 108 of the Police Law, when it is necessary to stop a fleeing vessel pursued on an inland navigation route, the police may use firearms against this vessel to prevent it from fleeing, stop it and escort it to the competent authority, only if the police cannot perform the aforementioned by use of other currently available means (verbal warning and shots fired above the vessel for intimidation, under condition that lives of other persons are not endangered). When as extreme measure shots are fired at the vessel, the police use firearms in such a manner to protect lives of persons on the vessel and in the line of fire. Firearms shall not be used if lives of other persons are endangered or if it is not necessary to guard or protect somebody's life.

92. Pursuant to Article 109 of the Police Law, firearms against animals may be used if it is not possible in any other way to counter direct aggression against lives of people or eliminate the danger to health of people. Firearms may be used against a sick or seriously injured animal when a veterinarian or other person cannot undertake any adequate measures, with the consent of the animal owner and the veterinarian or only with the consent of the veterinarian if it is not possible to obtain consent of the animal owner or if the animal has no owner. Firearms against an animal which is somebody's property may be used if the treatment of the sick animal would be long, painful and with doubtful result or if the animal could because of the contagious disease or irritation caused by pain, endanger lives or health of people or if the animal is dangerous for the environment because of the non-curable disease.

93. Rulebook on conditions and method of use of coercive means²⁸ stipulates when is the authorized official person of the Ministry of Interior entitled to use by law determined coercive means. An authorized official person is obliged when using coercive means, whenever it is possible, to protect lives of persons and to perform his/her official duty leaving as little as possible damaging consequences for the person or persons against whom coercive means are being used and only while there is a reason for such action.

94. Pursuant to provisions of Article 35 of the Rulebook, the authorized official person shall promptly inform the immediate superior on each usage of coercive means, through the on-duty service, and submit a written report on this event to the immediate superior at the latest 24 hours upon use of the coercive means. Upon use of the coercive means because of which death or body injury, material damage or disturbing of the citizens occurred, the responsible Public Prosecutor and Investigative Judge are promptly informed of the event, and they shall initiate an investigation, gather data and provide material evidence on the accident scene. Immediate superiors in the police perform internal control whether the coercive means had been used with a justified reason.

95. When applying police authorizations, police officers of the Ministry of Interior in the period 2004 – 2008 acted in compliance with the Police Law and other regulations observing standards stipulated by the European Convention for the Protection of Human Rights and Fundamental Freedoms; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; The European Code of Police Ethics, and other international regulations related to police.

²⁸ "Official Gazette of the Republic of Serbia", No. 133/04

96. In the period from 2004 till the end of 2007, police officers exceeded their legal authorizations when using firearms only in one case in 2004 in Niš during escape of a person found while committing a criminal offence, without any consequences.

- Armed Forces

97. Use of firearms by members of the Armed Forces of Serbia is regulated by the Law on the Armed Forces of Serbia.

98. According to Article 47 of the Law on the Armed Forces of Serbia, military personnel are entitled in compliance with the service rules to carry and use firearms. While performing military tasks, military personnel use firearms and other arms according to rules on military actions.

99. According to service rules, military personnel while performing guard and patrol duties, on-duty service and other similar services, at military exercises and while performing other official tasks, carry formation firearms, i.e. weapons specified for certain service or performing of concrete tasks. An officer in the rank of Brigade Commander (Regiment) or higher ranking officer may order carrying of firearms on other occasions as well. Armed Forces personnel may purchase, keep and carry firearms while off-duty for their own needs according to regulations applied for other citizens. Military personnel while on-duty shall use the firearms if they cannot protect in any other way lives of people they are guarding; to counter attack or eliminate immanent threat of attack on the facility they are securing; to counter attack which is immanent threat to their lives. Military personnel who perform service under immediate supervision use firearms only to the order of the superior. The warning is given according to special duties while performing a concrete task, in compliance with this rule and other acts of the competent superior. Military personnel member must immediately inform his/her superior on use of firearms.

100. Use of firearms by a member of Military Security Service is regulated by the Law on the Security Services of the FRY²⁹.

101. According to Article 36 of the Law on the Security Services of the FRY, member of the Military Security Service (VBA) is entitled to keep and carry weapons and other coercive means, indicated in the official ID card. Member of VBA may use firearms in legitimate self-defense and extreme necessity as well as while depriving of liberty a person found while committing a criminal offence from the VBA competence and offering armed resistance.

102. While applying the aforementioned authorization, in the period from consideration of the initial report till now there were no violations of the Law on the Security Services of the FRY and other regulations, and no deaths occurred because of application of legal authorizations of the members of the Military Security Service (VBA). Moreover, there were no violations of procedure in exercising authorities of the VBA members; thus, there were no investigations with the purpose of establishing responsibility and punishing of responsible persons.

Co-operation with the International Criminal Tribunal for the Former Yugoslavia

²⁹ "Official Gazette of the FRY", No. 37/2002 and "Official Gazette of Serbia and Montenegro", No. 17/2004

103. Co-operation with the International Criminal Tribunal for the Former Yugoslavia is performed through the National Council for Co-operation with the International Criminal Tribunal for the Former Yugoslavia.

104. Out of 46 persons indicted for war crimes wanted by the Hague Tribunal, there are still two more fugitives, and the responsible authorities search continuously for war crime suspects in order to find and extradite them to the Tribunal.

105. In 2004 voluntarily surrendered to the International Criminal Tribunal for the Former Yugoslavia two persons (Ljubiša Beara and Dragomir Milošević), and in 2005 12 persons (Vujadin Popović, Ljubomir Borovčanin, Milan Gvero, Radivoj Miletić, Drago Nikolić, Sreten Lukić, Nebojša Pavković, Vladimir Lazarević, Vinko Pandurević, Momčilo Perišić, Mićo Stanišić, Gojko Janković)

106. In the period 2005 - 2007, the following persons were imprisoned and extradited to International Criminal Tribunal for the Former Yugoslavia: Milan Lukić in Argentina, Dragan Zelenović in Russia, Zdravko Tolimir in Bosnia and Herzegovina and Vlastimir Djordjević in Montenegro. In 2008, indicted Stojan Župljanin and Radovan Karadžić were imprisoned in the Republic of Serbia and extradited to the Tribunal.

107. Out of the total number of 1,700 requests for assistance submitted by the ICTY Office of the Prosecutor to the Republic of Serbia by the first half of May 2008, which related to submission of documentation and freeing witnesses from the obligation of keeping secrets, it has been responded to the full extent to more than 95% of requests, while to the rest of requests partial responses have been provided.

108. According to conditions defined in the Agreement regarding access to intelligence archives in Serbia, from March 2006 till today, 20 visits of representatives of the ICTY Office of the Prosecutor to the archives of the Republic of Serbia have been performed, including the archives of the Ministry of Defence, Security Information Agency (BIA) and the Ministry of Interior.

109. All witnesses for whom the ICTY Office of the Prosecutor requested to be freed from the obligation of keeping secrets in order to appear as witnesses before the Tribunal, (more than 400 persons) were freed from this obligation.

110. The Republic of Serbia acted according to all requests of the International Criminal Tribunal for the Former Yugoslavia and delivered all witness summons and other letters to persons in the territory of the Republic of Serbia.

Concluding Remarks and Recommendations - 10 and 12

Organized crime

111. Proceedings for criminal offences of organized crime and war crimes are conducted within a Special Division of the District Court in Belgrade.

112. There were 1,004 initiated criminal proceedings in the Organized Crime Special Prosecutor's Office in the period 2004 - 2008, out of which 248 criminal proceedings were completed.

Criminal proceedings for the organized crime criminal offences

	initiated criminal proceedings	completed criminal proceedings
2004	55	44
2005	96	82
2006	413	70
2007	346	52
2008	94	

Table 5

113. Responsibility of the Office of the War Crimes Prosecutor was completed by adoption of the Law on Amendments and Supplement to the Law on Organization and Competence of Government Authorities in War Crimes Proceedings³⁰; thus, the activities of the Prosecutor's Office shall include prosecution of persons who support hiding of war crime suspects (until now supporters were tried only before the Municipal Courts). Within the Ministry of Interior War Crimes Investigation Service was established. Furthermore, co-operation between the Offices of the War Crimes Prosecutors in the region has been established, and there are agreements on co-operation signed with Croatia³¹, Bosnia and Herzegovina³² and Montenegro³³.

114. On the basis of requests for conducting investigation by the Office of the War Crimes Prosecutor, investigations were initiated against 69 persons. Against 60 persons principal process is underway on the basis of indictments raised by the Prosecutor of the War Crimes.

115. Sentences at the courts of first instance were pronounced in four cases, out of which in the stage of appellate proceedings before the Supreme Court of Serbia are two cases against 6 persons (Scorpion case - Trnovo and the Sinan Morina case - the Orahovac Group). Two cases against 17 persons in the appellate proceedings were annulled and returned in retrial (cases Ovčara 1 and Ovčara 3).

116. In two cases decrees absolute were pronounced. Milan Bulić (Ovčara case 2) was sentenced to 2 years of prison for criminal offence of war crime against prisoners of war pursuant to Article 144 of the Criminal Code of SFRY. Anton Lekaj (Djakovica case) was

³⁰ "Official Gazette of the Republic of Serbia", No 101/07

³¹ Agreement Memorandum on Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes signed on 5 February 2005, and Agreement on Co-operation in Prosecuting Perpetrators of War Crimes, Crimes against Humanity and Genocide of 13 October 2006

³² Agreement Memorandum on Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes signed on 1 July 2005

³³ Agreement on Co-operation in Criminal Prosecution of Perpetrators of Acts of Crime Against Humanity and Other Rights Protected by International Law of 31 October 2007

sentenced to 13 years of prison for criminal offence of war crime against civil population under paragraph 1 of Article 142 of the Basic Criminal Code (OKZ).

117. Upon exhumation of bodies from the mass grave in Batajnica, and determining identity and cause of death of buried persons, the Office of the War Crimes Prosecutor used these data in cases where criminal proceedings were initiated against known persons.

118. Regarding other deceased persons, important activities are underway in the stage of pre-criminal proceedings, in order to determine facts related to circumstances on which depends initiating of criminal proceedings (if and against who) for criminal offences related to war crimes or other criminal offences prosecuted by official duty.

119. In proceedings underway, in spite of prescribed statutory framework and efficient work of adequate services responsible while implementing the law to take care of the families of the injured parties or witnesses of Albanian nationality, it must be established that this segment of work is under influence of the current political situation, which greatly reflects in efficiency of proceedings in the competence of the Office of the War Crimes Prosecutor.

Article 7

Prohibition of cruel and inhuman treatment

120. Constitution of the Republic of Serbia determines in Article 25 that physical and mental integrity is inviolable, and that nobody may be subjected to torture, inhuman or degrading treatment or punishment nor subjected to medical and other experiments without their free consent. In accordance with provisions of Article 28 of the Constitution of the Republic of Serbia, persons deprived of liberty must be treated humanely and with respect to dignity of their person. Any violence towards persons deprived of liberty shall be prohibited. Under provisions of paragraph 4 of Article 202 of the Constitution of the Republic of Serbia, measures providing for derogation shall by no means be permitted in terms of abolishing or restricting prohibition of torture even in the state of emergency and war.

121. Laws in the field of penal legislation that regulate prohibition of cruel and inhuman treatment are as follows: Criminal Code, The Criminal Procedure Code and Law on Enforcement of Penal Sanctions³⁴.

122. Criminal Code includes Chapter 14 - "Criminal Offences Against Freedom and Rights of Man and Citizen". Within this chapter the following is incriminated: Unlawful Depriving of Liberty (Article 132), Extortion of Confession (Article 136). Novelty in the Criminal Code is the new criminal offence of ill-treatment and torture specified in Article 137³⁵ :

³⁴ "Official Gazette of the Republic of Serbia", No. 85/2005

³⁵ In the previous Criminal Code of the Republic of Serbia (Article 66), criminal offence of abuse in discharge of duty was prescribed, and in the Basic Criminal Code (Article 191) criminal offence of abuse of office. These criminal offences include actions of officials in discharge of duty, which in the first case related to abuse, insult or generally procedure, which offends human dignity, and in the second case, beside the mentioned, to cause physical or mental pain, intimidation and insult. In both cases imprisonment from three months to three years was prescribed.

Article 137

(1) Whoever ill-treats another person or treats such person in humiliating and degrading manner,

shall be punished with imprisonment up to one year.

(2) Whoever causes great pain or anguish by force, threat or other unlawful manner to another person with the aim to obtain from him/her or a third party confession, testimony or other information or to intimidate him/her or a third party or to exert pressure on such persons, or if done from motives based on any form of discrimination,

shall be punished with imprisonment from six months to five years.

(3) If the offence specified under paragraphs 1 and 2 of this Article is committed by an official in discharge of duty,

the offender shall be punished for the offence under paragraph 1 by imprisonment from three months to three years, and for the offence under paragraph 2 of this Article by imprisonment from one to eight years."

123. Article 252 of Criminal Code incriminates illegal conducting of medical or similar experiments on humans and prescribes imprisonment from three months to five years. This punishment shall be imposed also on whoever clones human beings or conducts experiments to that purpose. Moreover, whoever contrary to regulations conducts clinical testing of a drug, shall be punished by imprisonment from three months to three years.

124. One of the basic principles of the new Criminal Procedure Code is the prohibition of violence and extortion of confession or any other statement from the defendant or any other person participating in the proceedings. According to Article 9 of this Code, it shall be forbidden and punishable to employ any kind of violence on a person who is deprived of liberty or whose liberty is restricted, as well as violence against defendant or any other person participating in the criminal proceedings, i.e. to extort a confession or any other statement from the defendant or any other person participating in the proceedings.

125. Article 15 of the new Criminal Procedure Code stipulates that court decisions may not be based on evidence which per se, or by method of collection are contrary to the provisions of the present Code, any other law, or have been collected or presented by virtue of violating human rights and fundamental freedoms envisaged by the Constitution or the ratified international treaties.

126. According to paragraph 5 of Article 143 of the new Criminal Procedure Code, no medical interventions may be carried out or substances given to a suspect, defendant or witness that might affect their conscience and will during their testimonies.

127. Law on Enforcement of Penal Sanctions in Article 6 stipulates that sanctions shall be enforced in a manner ensuring respect for the dignity of prisoners; that any treatment subjecting a prisoner to any form of torture, abuse, and degrading or experimental treatment is forbidden and punishable. Use of disproportionate force against a prisoner is punishable.

128. According to Article 7 of the Law on Enforcement of Penal Sanctions, a prisoner shall

not be discriminated on grounds of race, colour, sex, language, religion, political or other convictions, ethnic or social origin, financial status, education, social or other personal status.

129. In cases when there is well-founded suspicion that against a convicted person disproportionate force has been used or any form of torture, abuse or humiliation, disciplinary proceeding against the personnel of the penal institution shall be initiated, and if there is well-founded suspicion that actions of the personnel have characteristics of a criminal offence, a criminal offence report is filed to the competent public prosecutor.

130. Instructions on Police Ethics and Policing³⁶ stipulate that no one in the Ministry of Interior is allowed to order, execute, provoke or tolerate torture or any other cruel or inhuman treatment that humiliates dignity of a person, nor any other action that endangers right to life, freedom, personal safety, respect for private and family life, freedom of assembly and association or any other right or freedom guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. If police member of the Ministry of Interior witnesses a prohibited act, he/she must report such case to his/her immediate superior, Inspector General and authorities of external supervision over the activities of the Ministry. It is particularly important that these instructions are included by curricula for pupils and students of the police schooling, and are constituent part of expert training of the Ministry personnel.

Complaints related to torture and abuse

	2004	2005	2006
Reports			
<i>Criminal offence:</i>			
Extortion of confession	15	11	30
Abuse of office	170	149	171
Indictments			
<i>Criminal offence:</i>			
Extortion of confession	17	13	10
Abuse of office	84	79	28
Convictions			
<i>Criminal offence:</i>			
Extortion of confession	7	5	2
Abuse of office	36	28	36

Table 6

131. In the period from 1 January 2004 to 31 December 2007, police members of the Ministry of Interior intervened in more than 7,792 cases and applied their legal authorizations, and only in 38 cases, which makes up 0,48%, exceeded their powers and acted in an unlawful and improper manner.

³⁶ "Official Gazette of the Republic of Serbia", No. 41/03

132. Because of the unlawful use of coercive means, disciplinary proceedings were initiated against 26 police officers for 21 serious violations of duty and 5 minor violations of duty; against 13 police officers criminal offence reports were filed; while six police officers were suspended from duty by decision until legal proceedings are completed.

133. In the period from 1 January to 31 December 2006, 62 complaints were filed to the Supreme Court for legal protection envisaged by Law on Enforcement of Penal Sanctions. In 2007, 73 complaints were filed; in the period from 1 January to 31 July 2008, 74 complaints were filed, and all requests were processed in the legal 15-day time limit.

Treatment of prisoners

134. Coercion against a person deprived of liberty may be applied pursuant to provisions of the Law on Enforcement of Penal Sanctions, which regulates the use of coercive measures. Under paragraph 2 of Article 129 of the Law, in using coercive measures only such measure shall be applied which least endangers the life and health of the person against whom it is directed and which successfully overcomes resistance and is proportionate to the threat. Pursuant to paragraph 3 of Article 130 of the Law, a medical examination of the prisoner is mandatory after use of coercive measure against him. A further medical examination is carried out twice more in further 24 hours, in equal time intervals.

135. Rulebook on measures for maintaining order and safety in penal institutions regulates in detail conditions and method of applying of measures against convicted persons for maintaining order and safety in penal institutions.

136. Administration for the Enforcement of Penal Sanctions of the Ministry of Justice organizes education of prison staff in the Training Personnel Centre, established in 2004 in Niš, within exercising and protecting the rights of persons deprived of liberty and implementing domestic and international regulations in this field.

- Time limits to be observed by the prison authorities in applying special security measures or isolating a prisoner in special security cells

137. Pursuant to provisions of Article 136 of the Law on Enforcement of Penal Sanctions, when there is a present danger of escape, violent behaviour, self-inflicting of injury or disturbing of other form of order and discipline in respect of a prisoner, special measures may be undertaken as an exception, and among them removal to specially secured room without dangerous implements, and isolation.

138. Pursuant to paragraph 1 of Article 138 of the Law on Enforcement of Penal Sanctions, removal to specially secured room without dangerous implements may last at most 48 hours continuously. The measure requires prior opinion of the doctor.

139. Pursuant to paragraph 1 of Article 140 of the Law on Enforcement of Penal Sanctions, the measure of isolation may be pronounced by decision to a prisoner who consistently disturbs order, threatens security and represents a serious threat for other inmates, of continuous duration

of maximum three months. This measure may be instituted at most twice during one calendar year.

140. Provisions of Articles 150-155 of the Law on Enforcement of Penal Sanctions regulate enforcement of disciplinary measure of solitary confinement. This measure is imposed in exceptional cases and only for a serious disciplinary offence, and it may not exceed fifteen days. Solitary confinement of up to 30 days may be imposed for a joinder of disciplinary offences.

141. The disciplinary measure of solitary confinement means the exclusion of a prisoner from activities done together with other prisoners during leisure time or day and night. There is a mandatory medical examination before the enforcement of this measure.

142. The cell where solitary confinement is enforced shall have minimum 4 square meters and 10 cubic metres of space. It has to be ventilated, with enough daylight and artificial lighting, heating adequate for climatic conditions, a bed and linen, table and chair. A prisoner must have access to drinking water and toilet at any time. During solitary confinement a prisoner is allowed to read and write and stay outside of closed premises for at least one hour a day.

143. The duration of solitary confinement may not exceed six months in total, during a calendar year.

- Communication among prisoners and measures adopted in order to ensure the rights of prisoners to receive visits and maintain contacts with the outside world

144. Rights of convicted persons to receive visits and maintain contacts with the outside world are regulated in Article 78 of the Law on Enforcement of Penal Sanctions. Every prisoner is entitled to receive visits of the spouse, children, adopted children, parents, adoptive parents and other lineal relatives or lateral relatives to fourth degree of consanguinity: once a week in an open penal institution or open section of penal institution; twice a month in a semi-open penal institution or semi-open section of penal institution; once a month in a closed or special security penal institution. The prison governor may allow a prisoner to be visited by other persons also.

145. Pursuant to Article 79 of the Law on Enforcement of Penal Sanctions, a prisoner is entitled to be visited by his attorney or an authorized person representing him, or whom he called to give a power of attorney for representation; and pursuant to Article 82 of the Law, once in three months, a prisoner is entitled to spend at least three hours in special premises of the institution with the spouse, children or other close person.

146. Pursuant to Article 75 of the Law on Enforcement of Penal Sanctions, every prisoner is entitled to unlimited correspondence, which may be denied only on grounds of security, and the prisoner shall be accordingly informed of it. The prisoner is entitled to appeal the decision of the prison governor to the Director of the Administration for the Enforcement of Penal Sanctions and may file a complaint for legal protection.

147. Pursuant to provisions of Articles 109 and 113 of the Law on Enforcement of Penal Sanctions, prisoners are entitled to read daily and periodical papers in their own language and

have access to other media; as well as the right to practice religious rituals, read religious literature and receive visits of religious representative. Pursuant to provisions of Article 115 of the Law, special rights may be granted to prisoners who are well-behaved and diligent at work.

Medical and psychiatric care

148. Law on Extrajudicial Proceedings³⁷ stipulates under Article 45 procedures for accommodation and detaining of a mentally ill person in an adequate healthcare organization, when it is necessary due to nature of illness to restrict freedom of movement and communication with the outside world. In such cases urgent mandatory procedure is applied.

149. Pursuant to Article 46 of the Law on Extrajudicial Proceedings, when a healthcare organization receives for medical treatment a person without his/her consent or court ruling, the healthcare organization must report this within three days to the court within whose territorial jurisdiction it is found. Healthcare organization must act in the aforementioned way also in the case when the person received voluntarily in the healthcare organization revokes his/her consent, while the authorized person or authority of this healthcare organization believes that further detention of this person is necessary.

150. Pursuant to Article 50 of the Law on Extrajudicial Proceedings, the court must make within 15 days, i.e. within a maximum 30-day time limit from the date of the report, i.e. from the date when detention has been brought to the court's knowledge, a decision on further detention of this person or his/her release. Pursuant to Article 51 of the same law, when the court decides on further detention of the received person in the healthcare organization, the court shall determine period of detention, which cannot be longer than one year. Healthcare organization must submit to the court periodical reports on health status of the detainee.

151. Pursuant to Article 53 of the Law on Extrajudicial Proceedings, if a healthcare organization assesses that a detainee should stay for further treatment upon expiry of the time limit specified in the court's decision, the healthcare organization is obliged to propose to the court extension of the detention period 30 days before the expiry of the detention period.

152. Pursuant to paragraphs 1, 2 and 3 of Article 80 of the Criminal Code, where grounds under this Code exist, the court may impose one or more security measures on an offender. Compulsory psychiatric treatment and confinement in a medical institution and compulsory psychiatric treatment at liberty shall be imposed as an individual sanction on a mentally incompetent criminal offender. In addition to these measures, ban on practising certain profession, activity or duty, ban on driving a motor vehicle and confiscation of objects may also be ordered. These measures may be ordered to an offender whose mental capacity is substantially impaired, if under pronouncement of a penalty or suspended sentence.

153. Pursuant to paragraph 1 of Article 81 of the Criminal Code, the court shall order compulsory psychiatric treatment and confinement in a medical institution to an offender who committed a criminal offence in a state of substantially impaired mental capacity if, due to the committed offence and the state of mental disturbance, it determines that there is a risk that the

³⁷ "Official Gazette of the Republic of Serbia", Nos. 25/82 and 48/88.

offender may commit a more serious criminal offence and that in order to eliminate this risk they require medical treatment in such institution.

154. The new Criminal Procedure Code envisages possible accommodation of the defendant in a healthcare institution. Pursuant to paragraphs 1 and 2 of Article 142, in case of suspicion that the mental competence of the defendant has been lost or diminished, the expert analysis of the defendant's mental state shall be ordered. If the expert witness believes that longer observation is necessary, the defendant shall be sent to an appropriate health care institution for observation. The relevant decision is made by the Investigative Judge, Individual Judge or the Trial Chamber. The observation may be extended and last for more than two months only upon a substantiated proposal of the manager of the health care institution, after the receipt of the expert witness's opinion, but it may not last longer than six months under any circumstances.

Corrective measures in schools

155. Since 2005, "Schools Without Violence" Programme is being implemented, and its stakeholders are Ministry of Education, Ministry of Health, Ministry of Labour and Social Policy, Ministry of Interior, Children's Right Council, Institute for Improvement of Education and the UNICEF Office in Belgrade. The Programme is implemented in more than 100 schools with the aim to reduce violence against children and among children, and to create safe and encouraging education and work environment.

156. Programme basis for work of expert associates in elementary schools and high schools envisage planning and performing of corrective activities with pupils, through specially structured individual and group activities. In solving problems of children and adolescents expert associates turn to development counseling offices within healthcare centres and other reference institutions in order to find the most adequate forms of corrective help. Central role in these activities have children's needs and interests.

157. Ministry of Education adopted in 2007 a special Protocol for protection of children and pupils against violence, abuse and neglecting in educational institutions, which is binding for the personnel of these institutions.

Article 8

Prohibition of slavery

158. Pursuant to Article 26 of the Constitution of the Republic of Serbia, no person may be kept in slavery or servitude. All forms of human trafficking are prohibited. Forced labour is prohibited. Sexual or financial exploitation of person in unfavourable position shall be deemed forced labour. Labour or service of persons serving sentence of imprisonment if their labour is based on the principle of voluntariness with financial compensation, labour or service of military persons, nor labour or services during war or state of emergency in accordance with measures prescribed on the declaration of war or state of emergency, shall not be considered forced labour.

159. The Criminal Code incriminates Illegal Crossing of State Border and Human Trafficking (Article 350), Human Trafficking (Article 388), Trafficking in Children for Adoption (Article

389) and Holding in Slavery and Transportation of Enslaved Persons (Article 390).

- Prohibition of forced labour

160. Pursuant to Article 52 of the Criminal Code, community service may be imposed for criminal offences punishable by imprisonment of up to three years or a fine. Community service is any socially beneficial work that does not offend human dignity and is not performed for profit. Community service may not be less than sixty hours or longer than three hundred and sixty hours. Community service shall last sixty hours during one month and shall be performed during a period that may not be under one month or more than six months. Community service may not be pronounced without consent of the offender. If the offender fulfils his obligations in respect of community service, the court may reduce the pronounced duration of community service by 1/4.

161. Moreover, pursuant to paragraph 4 of Article 51 of the Criminal Code, an unpaid fine may instead of imprisonment be replaced with a community service order, by converting each 1,000 dinars into eight hours of community service, provided the total duration of community service does not exceed three hundred and sixty hours.

162. The Law on Enforcement of Penal Sanctions stipulates in Articles 86-100 that the prisoners have the right and duty to work. The purpose of such work for prisoners is to acquire, maintain and develop their skills, working habits and professional knowledge. Prison labour must be purposeful and may not be degrading. Type of work shall be selected according to physical and mental abilities, qualifications and preferences of a prisoner, as well as the possibilities of the penal institution. A competent team within the penal institution shall assess prisoners' physical and mental abilities. Prisoners are entitled to remuneration for their work, which is paid once a month and shall amount to at least 20% of the lowest wage in the Republic of Serbia. Prisoners are entitled to daily and weekly rest and annual leave pursuant to general provisions.

163. The Rulebook on systemization of prisoners' jobs precisely specifies jobs in penal institutions. Jobs are determined according to organization and needs of the penal institution (farming and cattle breeding, industry-metals and lumber facilities, regular maintenance of the penal institution).

164. The Law on Defence³⁸, under paragraph 1 of Article 50, stipulates labour obligation in war or state of emergency in state authorities, authorities of autonomous provinces, authorities of local self-government units, companies, other legal entities as well as entrepreneurs.

165. Pursuant to paragraph 1 of Article 51 of the Law on Defence, to labour obligation are subjected all citizens with work capacity who attained 18 years of age, men up to 65 years of age and women up to 60 years of age.

- Illegal crossing of state border and human trafficking

³⁸ "Official Gazette of the Republic of Serbia", No. 116/2007

166. Article 350 of the Criminal Code stipulates for illegal crossing of state border and human trafficking imprisonment up to one year, and for more serious criminal offences imprisonment from one to ten years.

167. Since 2004, vast increase in illegal immigration from Albania has been recorded, partly as result of opening of the Anti-Trafficking Center in Vlora, Albania, coordinated by the Albanian, Greek, Italian and German Police, under the auspices of the ICITAP. Opening of this center meant cutting of many channels for illegal transporting of Albanian citizens to the Western European countries: either by sea from Albania to Italy or from Albania to Greece, enabling opening of new illegal channels, which lead today across the territory of the Republic of Serbia (AP K&M), toward Bosnia and Herzegovina or Croatia and further to Slovenia and Western European countries.

168. As result of suppression of illegal immigration in the territory of the Republic of Serbia, in 2004, 33 criminal offence reports were filed against 64 persons. 229 illegal immigrants were injured parties of the criminal offence: illegal crossing of state border from the Basic Criminal Code applicable in that period (Albania 50, China 32, Turkey 31, Bangladesh 7, Iran 3, Algeria 8, Pakistan 13, Afghanistan 73, Germany 8 and Bulgaria 4).

169. Prosecution for criminal offences by judicial authorities related to the filed criminal offence reports resulted in raising indictments in 8 cases, while sentences of imprisonment from 6 months up to 4 years were pronounced against 16 persons.

170. In 2005, as result of suppression of illegal immigration in the territory of Serbia, total number of 37 criminal offence reports were filed against 87 persons with a well-founded suspicion that criminal offences of illegal crossing of the state border were committed (71 citizens of Serbia, 6 citizens of Bosnia and Herzegovina, 4 citizens of China, 3 citizens of FYR Macedonia, 1 citizen of Slovenia, 1 citizen of Netherlands, 1 citizen of India and 1 citizen of Romania). By committing of the aforementioned criminal offence 219 illegal immigrants were the injured parties (Albania 92, China 56, Turkey 29, Bangladesh 4, Pakistan 2, India 8, Ukraine 2, Shri Lanka 4, Romania 1 and 21 citizens of Serbia from AP of K&M).

171. Upon investigation and raising of indictment, sentences at the courts of first instance were pronounced in 3 criminal cases: one sentence of imprisonment of 1 year, and 2 verdicts of release; court proceedings are underway on the basis of 31 criminal offence reports, while 3 criminal offence reports were rejected by the public prosecutor.

172. Police officers of the Ministry of Interior filed in 2006 79 criminal offence reports against 140 persons (127 citizens of Serbia, 2 citizens of Croatia, 2 persons of unknown citizenship, 1 citizen of Albania, 1 citizen of B&H, 1 citizen of Ukraine, 1 citizen of Turkey, 1 citizen of Slovakia, 1 citizen of Russian Federation, 1 citizen of Czech Republic, 1 citizen of France and 1 citizen of Bulgaria) with a well-founded suspicion that they have committed the criminal offence "Illegal Crossing of State Border and Human Trafficking". According to the mentioned criminal offences 434 persons were smuggled (Albania 263, unknown citizenship 77, Turkey 25, Serbia 45, Romania 8, Ukraine 6, Moldavia 6, FYR Macedonia 3 and France 1).

173. In 2007, police officers of the Ministry of Interior filed 89 criminal offence reports for illegal crossing of state border and human trafficking against 137 persons, while 343 smuggled persons were recorded. Out of the total number, 173 persons were citizens of Albania, while the rest, 75 persons, were citizens of Serbia (AP K&27), 40 citizens of Turkey, 22 citizens of Romania, 12 citizens of China, 3 citizens of Iraq, 3 citizens of FYR Macedonia, 3 citizens of Moldavia, 3 citizens of Bulgaria, 3 citizens of Pakistan, 2 citizens of Georgia, 1 citizen of Iran, 1 citizen of Croatia, 1 citizen of Cuba and 1 citizen of Chile.

174. In the period from 1 January to 29 February 2008, police members of the Ministry of Interior filed 11 criminal offence reports with a well-founded suspicion that they committed criminal offence: illegal crossing of state border and human trafficking against 9 persons (7 citizens of Serbia and 2 citizens of Ukraine), while 31 persons were smuggled (Serbia 14, Albania 5, Iraq 5, Armenia 3, FYR Macedonia 3 and Romania 1). In 2008 a new Law on Protection of State Border was adopted³⁹.

Concluding Remarks and Recommendations - 16

Human trafficking

175. Human trafficking is incriminated in Article 388 of the Criminal Code. This criminal offence includes acts of recruiting, transport, transfer, sale, purchase, acting as intermediary in sale, hiding or holding another person. This criminal offence is committed by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit with intent to exploit such person's labour, forced labour, commission of offences, prostitution or other forms of sexual exploitation or similar relationship, for removal of organs or body parts or service in armed conflicts.

176. For the basic form of the criminal offence of human trafficking two to ten years imprisonment is prescribed. When the offence is committed against a minor, the offender shall be punished by imprisonment from two to ten years even if there was no use of force, threat or any of the other mentioned methods of perpetration, but if the offence was committed against a minor with the use of force, the offender shall be punished by imprisonment of minimum three years. If the offence resulted in grave bodily injury of a person, the offender shall be punished by imprisonment of three to fifteen years; if the offence resulted in death of one or more persons, the offender shall be punished by imprisonment of minimum ten years, i.e. if the offence is committed by an organized group, the offender shall be punished by imprisonment of minimum five years.

177. In 2004, on the basis of well-founded suspicion that 24 criminal offences of human trafficking, from Article 111.b of the Criminal Code of that time, were committed, 24 criminal offence reports were filed against 51 person. Out of this number, 13 criminal offence reports were filed in cases where victims were 22 minors (13 children were victims of sexual exploitation - 12 girls and 1 boy; 8 children were intended to be forced into mendacity - 4 boys and 4 girls, while 1 girl was to be forced into coerced marriage). Out of this number of victims of trafficking in children, 8 victims were Roma (6 for mendacity and 2 for sexual exploitation). As

³⁹ "Official Gazette of the Republic of Serbia", No. 97/2008)

far as other 11 criminal offence reports are concerned, 13 victims were women of full age: 10 citizens of the State Community of Serbia and Montenegro and 3 foreign citizens (2 from Ukraine, 1 from Romania). Citizens of Serbia and Montenegro were recruited mainly for sexual exploitation in the territory of Italy and Serbia and Montenegro, while in 3 cases victims of human trafficking were recruited or transported by organized criminal groups, whose members were citizens of Serbia and Montenegro performing criminal activities in the territory of Ukraine, Hungary, Serbia and Montenegro, Bosnia and Herzegovina and Italy.

178. According to filed criminal offence reports (24), 2 sentences were pronounced at the courts of first instance in Niš and Pančevo, while imprisonment of 6 persons was prescribed from 2,5 to 3,5 years; 15 investigations were implemented, 4 indictments raised, while 3 criminal offence reports were rejected.

179. In 2005, on the basis of well-founded suspicion that criminal offences of human trafficking, from Article 111.b of the Criminal Code of that time, were committed, authorized police members of the Ministry of Interior filed 20 criminal offence reports against 43 persons of full age, of whom 36 were Serbian citizens (32 men and 4 women), while the rest were citizens of Ukraine - 4 (3 men and 1 woman), Bosnia and Herzegovina - 1 (man), Austria - 1 (woman) and Moldavia - 1 (woman).

180. There were 26 injured parties of the aforementioned criminal offences as follows: 24 women (15 of full age and 9 minors) and 2 boys. Out of this number, 18 victims were citizens of Serbia and Montenegro (of which 9 of full age and 2 minors), 3 citizens of Moldavia, 2 citizens of Ukraine and 1 citizen of Croatia. Police provided in co-operation with the Agency for Co-ordination of Protection of Victims of Trafficking accommodation in the Shelter for Victims of Human Trafficking for 44 women (23 citizens of Serbia and Montenegro and 21 foreign citizens – 6 citizens of Ukraine, 3 citizens of Romania, 8 citizens of Moldavia, 1 citizen of Bulgaria, 1 citizen of Croatia, 1 citizen of Russia and 1 citizen of Congo). Out of this number, the following were victims under 18 years of age: 7 girls, citizens of Serbia and Montenegro; 1 girl, citizen of Romania; and 1 girl, citizen of Bulgaria.

181. Out of 20 criminal offence reports related to human trafficking, there were 19 criminal offence reports for sexual exploitation and 1 for labour exploitation. For 6 criminal offence reports sentences were pronounced - imprisonment of 8, 6, 4 and 3 years.

182. In 2006, 37 criminal offence reports were filed for committed criminal offence from Article 388 of the Criminal Code - "Human Trafficking": 33 related to sexual exploitation and 4 to labour exploitation of victims, against 84 perpetrators (76 citizens of Serbia and 2 citizens of Moldavia, 1 citizen of Montenegro, 1 citizen of Turkey, 1 citizen of Romania, 1 citizen of Bosnia and Herzegovina, 1 citizen of Germany and 1 citizen of the Czech Republic).

183. There were 56 injured parties of the aforementioned criminal offences (29 minors and 27 persons of full age, i.e. 42 women and 14 men). According to citizenship, there were 52 injured parties from Serbia, 3 citizens of FRY Macedonia and 1 citizen of Bulgaria. Out of the total number of identified victims, 33 victims were accommodated in the Shelter for Victims of Human Trafficking. Other victims were provided support from the Agency for Co-ordination of

Protection of Victims of Trafficking in other ways, they were accommodated in foster families or Home for Abandoned Children.

184. In 2007, 78 criminal offence reports were filed. Based on these criminal offence reports, 66 requests were filed for investigation. Regarding 15 cases procedure was suspended, and after completed investigation 56 indictments raised. As far as national structure of the inditees is concerned, there were 32 Serbians, 3 Albanians, 8 Muslims, 1 Hungarian and 15 persons belonging to other nationalities. 12 sentences were pronounced, of which 9 imprisonment sentences, 3 conditional sentences and 3 verdicts of release.

185. Agency for Co-ordination of Protection of Victims of Trafficking identified in 2007 60 victims of human trafficking; out of the total number of identified victims, there were 26 minors and 34 persons of full age.

186. Identified persons were victims of sexual exploitation (26), labour exploitation (9), mendacity and forced committing of criminal offences (10), coerced marriage (2), and sale of babies (2).

187. Agency for Co-ordination of Protection of Victims of Trafficking accommodated in 2007, out of the total number of identified victims, in the Shelter for Victims of Human Trafficking 20 victims of human trafficking, while to other victims (40) some other way of support was provided (accommodation in foster family, support of the Center for Social Work, accommodation in the Home for Abandoned Children, etc.).

188. Trafficking in children for adoption is incriminated in Article 390 of the Criminal Code. For basic form of this criminal offence imprisonment from one to five years is stipulated, and for more serious crime imprisonment of minimum three years.

189. In 2007, 3 criminal offence reports for the mentioned criminal offence were filed to Public Prosecutors in the territory of the Republic of Serbia. 3 investigation requests were filed and 8 sentences of imprisonment pronounced.

- Mechanisms for the fight against trafficking

190. In October 2004, Council of the Government of the Republic of Serbia on Action Against Human Trafficking was established, and constituted in December 2005 as an expert, advisory body of the Government of the Republic of Serbia. The Council was established for coordination of the national and regional activities for the fight against human trafficking, studying of reports of the relevant international bodies on human trafficking and taking positions and proposing measures for implementation of recommendations of international bodies against human trafficking. Members of the Council are as follow: Minister of Interior, Minister of Education and Sports, Minister of Finance, Minister of Labour and Social Policy, Minister of Health and Minister of Justice.

191. As result of the joint project of the Ministry of Labour, Employment and Social Policy and the OSCE Mission in the Republic of Serbia, within the Belgrade Shelter and Reception Center for Children and Adolescents, on 1 March 2004, Agency for Co-ordination of Protection

of Victims of Trafficking was established, which is not responsible for illegal immigrants cases. The basic task of this Agency is to act as coordination body in organizing of aid and protection for victims of human trafficking in Serbia, and to make the first assessment of the potential victims and their needs. The role of the Agency is to orient the victims to institutions which provide direct aid; inform the victims on their status; provide necessary certificates for victims, monitoring of the stabilization and reintegration processes; and to provide statements of temporary residence, i.e. permanent residence.

192. Ministry of Interior of the Republic of Serbia adopted Instruction on conditions for approving temporary residence to foreign citizens - trafficking victims in 2004. According to this Instruction, authority of the Ministry of Interior responsible according to the victims' residence may approve temporary residence for humanitarian reasons to foreign citizens from 3 to 6 months, i.e. 1-year period, for whom the Agency for Co-ordination of Protection of Victims of Trafficking assesses that they should be provided protection and treatment as victims of human trafficking. Until now, 22 humanitarian residence permits for human trafficking victims were provided: in 2004, 1 humanitarian residence permit (1 minor girl, national of Iraq); in 2005 - 11 humanitarian residence permits (5 women citizens of Ukraine, 4 women citizens of Moldavia, 2 women citizens of Romania, of whom one was a minor); in 2006, 4 humanitarian residence permits were granted (1 minor girl citizen of Albania, 1 woman citizen of Romania and 2 women citizens of Moldavia); in 2007, 6 humanitarian residence permits were granted (2 women citizens of Ukraine, 1 woman citizen of Romania, 1 woman citizen of Bulgaria, 1 woman citizen of FRY Macedonia and 1 woman citizen of Moldavia).

193. At the initiative of the International Organization of Immigration (IOM), which turned to the Ministry of Finance for abolishing taxes for temporary residence permits for victims of human trafficking, the Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Law on Republic Administrative Taxes on the basis of which the foreign nationals (victims of human trafficking) are exempted from the tax payment obligation.

194. At the initiative of the National Coordinator in the fight against human trafficking, the Assembly of the Republic of Serbia adopted a proposal to introduce into the Law on Protection of Healthcare new provisions according to which for foreign nationals, victims of human trafficking, compensation is paid from the Republic Budget to healthcare institutions for providing healthcare services.

195. Within the Criminal Police Directorate - Sector for Combating Organized Crime, personnel of the Division for Suppression of Human Trafficking has been employed, while within the Border Police Directorate, Department for Suppression of Transborder Crime and Criminal Intelligence Affairs with the Division for Suppressing Illegal Immigration and Human Trafficking were established. Moreover, in Police Directorates, special police teams were established for combating human trafficking as well as in the Regional Centres toward neighbouring countries and at the Belgrade Airport.

196. The Government of the Republic of Serbia adopted in December 2006 "Strategy for Fight Against Human Trafficking".

- International co-operation

197. Republic of Serbia has inherited international legal obligations undertaken by signing of the United Nations Convention against Transnational Organized Crime, as well as the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol Against Smuggling of Migrants by Land, Sea and Air.

198. Related to the human trafficking issue, international co-operation is performed at the central, regional and local levels, by signing multilateral and bilateral agreements, and at the level of the Ministries of Interior by signing agreements on co-operation of border police with the neighbouring countries, as well as co-operation agreements with the EU Member States. International police co-operation at the EU level is performed particularly through the NCB-Interpol. This form of co-operation includes mutual help between the criminal police authorities in order to gather intelligence data, i.e. offer operational police support through databases and intelligence capacities in relation to criminal activities.

199. In order to improve regional co-operation and better exchange of information, Regional Electronic Mailing List was formed. The electronic mailing list, which originally served for information to the members of the Republic team for combating human trafficking on their meetings, has expanded in the meantime because of great interest and includes nowadays representatives of other state authorities and NGOs.

- Activities performed in combating human trafficking

200. Activities performed in combating human trafficking include education on human trafficking and trafficking in children of the following: police officers, social workers, judicial personnel, diplomats, journalists, employees in the Red Cross of Serbia, members of NGOs. Furthermore, recommendation of the Parliamentary Assembly of the Council of Europe related to Football Championship in Germany in 2006 was supported, and 4 videos broadcasted on the State TV RTS.

201. Media campaigns were performed on the theme "Human Trafficking" and implemented by NGOs: ASTRA, Beosupport, Save the Children, Anti Trafficking Center, Women in Action, etc.

202. Moreover, documentaries were broadcast on the TVs: RTS, B92, local TVs; articles published in the weekly newspapers: "Nedeljni telegraf", "Vreme", "Nin", "Blic", "Vranjske novine", "Timočki dodatak".

203. In October 2007, declared to be the Anti-Trafficking Month, a Regional seminar was held in Belgrade under the title, "Action against Trafficking in Human Beings: Criminal and Procedural Measures", under the auspices of the Council of Europe. In the daily newspaper "Politika", Fine Art Contest for pupils and students of elementary and high schools of all grades on the theme: "Modern Slavery" was published.

Article 9

Depriving of liberty and detention

204. Article 27 of the Constitution of the Republic of Serbia guarantees personal freedom and security. Everyone has the right to personal freedom and security. Depriving of liberty shall be allowed only on the grounds and in a procedure stipulated by the law. Any person deprived of liberty by a state body shall be informed promptly in a language they understand about the grounds for arrest or detention, charges brought against them, and their rights to inform any person of their choice about their arrest or detention without delay. Any person deprived of liberty shall have the right to initiate proceedings where the court shall review the lawfulness of arrest or detention and order the release if the arrest or detention was against the law. Any sentence which includes deprivation of liberty may be proclaimed solely by the court.

205. Pursuant to Article 28 of the Constitution of the Republic of Serbia, persons deprived of liberty must be treated humanely and with respect to dignity of their person. Any violence towards persons deprived of liberty shall be prohibited. Extorting a statement shall be prohibited.

206. Pursuant to Article 29 of the Constitution of the Republic of Serbia, any person deprived of liberty without decision of the court shall be informed promptly about the right to remain silent and about the right to be questioned only in the presence of a defense counsel they chose or a defense counsel who will provide legal assistance free of charge if they are unable to pay for it. Any person deprived of liberty without a decision of the court must be brought before the competent court without delay and not later than 48 hours, otherwise they shall be released.

207. Pursuant to Article 30 of the Constitution of the Republic of Serbia, any person under reasonable doubt of committing a crime may be remanded to detention only upon the decision of the court, should detention be necessary to conduct criminal proceedings. If the detainee has not been questioned when making a decision on detention or if the decision on holding in detention has not been carried out immediately after the pronouncement, the detainee must be brought before the competent court within 48 hours from the time of sending to detention which shall reconsider the decision on detention. A written decision of the court with explanation for reasons of detention shall be delivered to the detainee not later than 12 hours after pronouncing. The court shall decide on the appeal to decision on detention and deliver it to the detainee within 48 hours.

208. Pursuant to Article 31 of the Constitution of the Republic of Serbia, the court shall reduce the duration of detention to the shortest period possible, keeping in mind the grounds for detention. Sentencing to detention under a decision of the court of first instance shall not exceed three months during investigation, whereas higher court may extend it for another three months, in accordance with the law. If the indictment is not raised by the expiration of the said period, the detainee shall be released. The court shall reduce the duration of detention after the bringing of charges to the shortest possible period, in accordance with the law. Detainee shall be allowed pre-trial release as soon as grounds for remanding to detention cease to exist.

209. Under provisions of Article 132 of the Criminal Code it is stipulated that unlawful depriving of liberty is a criminal offence and that the offender shall be punished with

imprisonment up to three years. If the offence is committed by an official through abuse of position or authority, such person shall be punished with imprisonment of six months to five years. There are also two specifically identified forms of this offence: if unlawful depriving of liberty exceeded thirty days or was committed in cruel manner or if such act resulted in serious impairment of health of the person unlawfully deprived of freedom or if other serious consequences resulted, the offender shall be punished with imprisonment from one to eight years. If the offences result in death of the person unlawfully deprived of liberty, the offender shall be punished with imprisonment from two to twelve years.

210. Depriving of liberty and detention are performed in accordance with the applicable Criminal Procedure Code. Pursuant to paragraphs 1, 2 and 3 of Article 149 of the Code, the following rights are guaranteed to the detainee: right to eight hours of uninterrupted night rest everyday; detainee shall be provided with movement on fresh air in duration of at least two hours per day; detainees have a right to wear personal clothes, to use their sheets and obtain and use at their own expense books, expert publications, press, tools for drawing and writing and other things suited for their daily needs, except for objects that can injure, violate health and safety, or can be used for escape.

211. Pursuant to provisions of paragraph 1 of Article 150 of the applicable Criminal Procedure Code it is stipulated that upon the approval of the Investigative Judge and under his supervision or supervision of assigned persons, within the boundaries of the rules of behavior of the institution, detainee can be visited by a spouse or common-law partner, as well as his close relatives, and based on his demand – by a physician and other persons. Certain visitations can be prohibited if it is prejudicial for the course of the proceeding.

212. Pursuant to provisions of Article 152 of the applicable Criminal Procedure Code, supervision over detainees is performed by the authorized President of the Chamber. President of the Chamber (or the judge assigned by him/her) must visit the detainees at least once a week, and inform himself/herself, at his/her discretion, without presence of the warden and guards, on what kind of food is being served to detainees; the way detainees get other necessary items; and the way they are treated. He/she is also obliged to undertake necessary measures to eliminate irregularities noticed during the prison visit. President of the Chamber and Investigative Judge may visit all detainees at any time, talk to them and receive complaints from them.

213. In the period from 2004 till April 2008, police members of the Ministry of Interior applied the measure of depriving from liberty against 27,244 reported persons, and measure of detention against 35,450 persons. On the average per annum, measure of depriving from liberty is applied against 2,476 persons, and the measure of detention against 3,938 persons.

214. Misdemeanors Act stipulates in Article 166 that in the misdemeanor proceeding the defendant may be detained only by court order, if his/her identity or permanent residence or temporary residence cannot be determined, and there is well-founded suspicion that he/she shall escape; if by going abroad he/she can avoid liability for misdemeanor, for which imprisonment is stipulated; if he/she is caught in committing a misdemeanor offence, and detention is necessary to prevent further committing of misdemeanor offence. Authority in charge of conducting misdemeanor proceedings cannot issue a detention order, but it may request from court to order, extend or revoke detention.

215. Pursuant to paragraph 1 of Article 167 of Misdemeanors Act, the judge conducting misdemeanor proceedings adopts an order on detention of the defendant, where day and hour of the detention order are indicated, as well as the legal basis for detention. Detention may not be longer than 24 hours.

216. Furthermore, according to Article 168 of Misdemeanors Act, person under influence of alcohol or drugs caught while committing a misdemeanor offence, may be detained according to order of the court or authorized police officer if there is threat of further committing of a misdemeanor offence. Detaining of such person in the mentioned case may last till the person sobers up, but maximum twelve hours. If this person is a driver of a motor vehicle and has 1,2 g/kg or more blood alcohol concentration, or is under influence of other drugs, detention is mandatory. Detention is mandatory also in the case if the person refuses to be subjected to the alcohol or drug testing. A person convicted unjustifiably or deprived of his liberty unlawfully or with no grounds is entitled to compensation for all kinds of damages (material, non-material).

Compensation for the victims unlawfully detained and convicted without grounds

217. Constitution of the Republic of Serbia in Article 35 stipulates right to rehabilitation and compensation for any person deprived of liberty, detained or convicted for a criminal offence without grounds or unlawfully. Everyone shall have the right to compensation of material or non-material damage inflicted on him by unlawful or irregular work of a state body, entities exercising public powers or other bodies.

218. Compensation to persons unlawfully detained and convicted without any grounds is executed pursuant to adequate provisions of the Law on Contract and Torts. Ministry of Justice established a Commission which determines in a previous, peaceful procedure compensation according such basis, and if the claimant is not satisfied with the offered amount, he/she files a compensation claim in civil procedure before a municipal court.

Concluding Remarks and Recommendations - 15

Mechanisms of supervision over activities of police members and employees in penal institutions

a) Commission for monitoring the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

219. Minister of Interior of the Republic of Serbia established in September 2005 Commission for monitoring the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, with the task of revealing and preventing all forms of torture in the police performed by representatives of the police Internal Control Sector, Criminal Police Directorate and Police Directorate in the Ministry's headquarters and the Police Directorate of the City of Belgrade. The Commission has visited since its establishing till today all 27 district police directorates and 108 police stations and police branch offices, and interviewed several hundreds of police officers on procedures for protection and observing of basic rights and freedoms of detainees. The mentioned visits included all organizational units of

the Ministry of Interior, where detention premises are found, in order to directly establish status of detention facilities and premises, as well as premises for police interrogations. The goal of these visits was the control over use of non-conventional objects while conducting an interrogation, insight into documentation of the detainees, particularly bearing in mind observance of basic human rights and enhanced protection against ill-treatment and torture of persons detained in the facilities of the Ministry of Interior.

220. On the basis of all gathered data (video records, photo documentation and answers in the interviews with the detainees and police officers), the Commission for monitoring the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment made for each district police directorate a detailed survey (total number of 1189 pages) with proposal of measures to be undertaken. President of the Commission drafted a Programme for professional education, training and improvement of police officers related to prevention of torture and communication skills with the public, which has been included into the Annual Programme for professional training of police officers in the Republic of Serbia.

b) Internal police control

221. Particularly important segment in the police reform is establishing and strengthening of an efficient system of internal control and accountability, as basis for decriminalization of police, efficient fight against corruption in the police and as pre-requisite for establishing clear professional standards and police ethics. The most important, institutional segment of this system is the Police Internal Control Sector established by amendments to the Rulebook on internal regulation and systemization of jobs in the Ministry of Interior, in May 2006, in compliance with the new Police Law. The mentioned rulebook determines a completely new concept of the Police Internal Control Sector, which should ensure more efficient treatment by police officers, better coverage of the territory of the Republic and bringing the Sector closer to the citizens.

222. Basic function of the Police Internal Control Sector is prevention of all forms of excessive force and abuse of authorities by the police officers, and ensuring of lawful and professional treatment by the police while applying legal authorizations.

223. Bearing in mind competences and basic functions of the Police Internal Control Sector, particular attention is paid to the control and checking of lawful treatment by the police officers while using coercive means and police authorizations. In this regard, analysis of positions and conclusions of the district police directorates of the Ministry of Interior on the use of coercive means in concrete cases has been performed, and, if necessary, police officers of the Sector have directly participated in clearing up cases with indications that excessive force was applied by use of coercive means.

224. Moreover, important activity of the Police Internal Control Sector included checking of other claims and applications concerning treatment by and behaviour of police officers of the Ministry of Interior submitted by the citizens and legal entities. Bearing in mind the importance of permanent and quality education for efficient and successful work, particular attention should be paid to permanent professional training and improvement and other forms of education of the personnel related to performing of the internal control tasks. For this reason, the police personnel participated in numerous courses, seminars and symposiums home and abroad.

225. The other also important segment of the police internal control has been introduced by the Rulebook on the procedure for handling complaints against police officers filed by individuals.

226. Pursuant to paragraph 1 of Article 2 of the Rulebook on the procedure for handling complaints, head of the organizational unit of the Ministry of Interior settles the complaint, and if there is a well-founded suspicion on the basis of complaint that a criminal offence has been committed, which is prosecuted by official duty, he/she checks the facts and circumstances related to allegations from the complaint and the complete case documentation hands over to the Commission for further procedure. In compliance with Article 3 of the Rulebook, the complainant may file his/her complaint in writing, orally or in electronic format to the Ministry of Interior, i.e. organizational unit of the Ministry responsible according to permanent or temporary residence of the complainant.

227. Minister of Interior adopted a Decision on establishing 27 Commissions, as authorities of second instance in procedures for handling complaints as follows: 26 in district police directorates and one in the Ministry's headquarters. These commissions began to operate in January 2007. Complaints Bureau within the Minister's Office is responsible for correct and undisturbed operating and harmonization of practice and activities as well as elimination of all problems and doubts that appear within this field.

228. In the period from 1 January 2004 till 31 December 2007, total number of 13,870 applications and complaints of citizens were filed against treatment and work of police officers, of which 860 (or 6,2%) were grounded. Accordingly, disciplinary procedure for serious violation of official duty was initiated against 282 police officers, and for minor violation against 262 police officers. Till completion of disciplinary procedures, 33 police officers were suspended. Furthermore, 22 criminal offence reports were filed and 33 misdemeanor offence reports, while four employees terminated employment by mutual agreement.

- Civic Defender/Ombudsman

229. Ombudsman's activities in the territory of the Province of Vojvodina since 2003 provide external control over work of penal institutions found in this territory. Monitoring of NGOs also ensures implementation of independent control over protection of the rights of persons in penal and correctional institutions. In accordance with Article 1 of the Ombudsman Law, Civic Defender/Ombudsman is an independent state body that protects rights of citizens and controls work of the state administration authority, thus penal and correctional institutions in the whole territory of the Republic of Serbia.

- Administration for the Enforcement of Penal Sanctions

230. Prevention against torture of persons deprived of liberty is provided by internal supervision over work of penal institutions by authorized persons of Administration for the Enforcement of Penal Sanctions, which controls lawful and correct treatment in penal institutions - by regular, control and extraordinary visits.

231. Minister of Justice has submitted an initiative in the National Assembly for forming as soon as possible of the Commission envisaged by the Law on Enforcement of Penal Sanctions as parliamentary control of the work of the Administration for the Enforcement of Penal Sanctions. This Commission shall consist of five members, experts in the enforcement field, who are not employed in the Administration for the Enforcement of Penal Sanctions, and who are authorized to have insight into all documentation, conduct interviews with convicted persons, employees in the penal institution and have unlimited right to visit the penal institutions.

- Right of appeal of the convicted persons

232. Law on Enforcement of Penal Sanctions envisages novelties that will ensure better protection of rights of persons deprived of liberty. Convicted persons, while serving the prison sentence, have the possibility to file appeal if they are not satisfied by decision concerning any of their applications, petitions, appeals or if they are not resolved. Resolving of appeals is in accordance with the law, procedure is implemented, data and documentation necessary for resolving of appeals gathered. Against final decisions, convicted persons have the possibility of judicial recourse by initiating an administrative dispute before the Supreme Court of Serbia if they believe that during serving a prison sentence their rights determined by law are limited or violated.

333. In 2006, 355 appeals for the change of assignment act were filed, of which 298 were resolved. Out of these appeals, 96 were resolved positively, while 103 were resolved negatively, and 99 were resolved in some other way because of formal reasons. Against decisions of the Director of the Administration for the Enforcement of Penal Sanctions, 26 appeals were filed. Appeal was rejected in 20 cases.

234. In the same period, in the Administration for the Enforcement of Penal Sanctions 1,424 cases were recorded related to transfer of convicted persons. Appeals of convicted persons related to transfer were resolved in 1,335 cases. 123 appeals and 25 petitions were filed. In 9 cases appeal was accepted and decision annulled.

235. In 2006, for suspension of prison sentence 148 appeals were filed, mainly for health reasons and difficult family situation. 32 appeals were resolved positively. 28 appeals were filed against the Director's decision, of which appeal was rejected in 24 cases.

236. In 2006, 35 appeals were filed to the Director of Administration for the Enforcement of Penal Sanctions against the decision of the prison governor on appeals of convicted persons, of which in 29 cases the appeal was rejected as groundless. Against 11 final decisions of the Director petitions for judicial recourse were filed, of which 5 petitions were accepted, and 6 rejected. In this time period 217 appeals were also filed directly to the Director of Administration for the Enforcement of Penal Sanctions because of violation of rights and other irregularities against the convicted persons in the penal institution.

Article 10

Prisons and other detention institutions

237. Pursuant to Article 12 of the Law on Enforcement of Penal Sanctions, the Administration for the Enforcement of Penal Sanctions shall organize, implement and supervise the enforcement of imprisonment, juvenile prison, community work sanction, suspended sentence with protective supervision, security measures of mandatory psychiatric treatment and custody in a medical institution, mandatory drug and alcohol addiction treatment and rehabilitation in a correctional institution. Administration for the Enforcement of Penal Sanctions is an administrative authority within the Ministry of Justice. This Administration keeps single records of all prisoners and undertakes measures aimed at permanent professional education and advanced training of staff. The Administration shall establish co-operation with relevant institutions, associations and organizations engaged in issues of enforcement of penal sanctions.

238. Pursuant to Article 13 of the Law on Enforcement of Penal Sanctions, Administration for the Enforcement of Penal Sanctions includes the following penal institutions: penal-correctional facility and district prison - for enforcement of prison sentence; women's penal-correctional facility - for women sentenced to imprisonment and juvenile prison; juvenile penal-correctional facility - for enforcement of juvenile detention; Special Prison Hospital – for medical treatment of convicted and detained persons, enforcement of the security measure of compulsory psychiatric treatment and confinement in a medical institution, compulsory treatment of alcoholics and drug addicts; Correctional facility - for the enforcement of rehabilitation measures.

239. In 2006 the Government of the Republic of Serbia adopted a series of by-laws, which regulate in detail enforcement of penal sanctions (Regulation on establishing the Administration for the Enforcement of Penal Sanctions; Regulations on the titles and jobs in the Administration for the Enforcement of Penal Sanctions and Regulation on salary coefficients in the Administration for the Enforcement of Penal Sanctions). Furthermore, the Minister of Justice adopted the following regulations (Rulebook on the internal regulation and job systemization in the Administration for the Enforcement of Penal Sanctions; Rulebook on contents and form of the official ID cards of the Security Service personnel; House Rules of the penal-correctional facilities and district prisons; House Rules of the juvenile penal-correctional facility; Decision on confinement of persons convicted for criminal and misdemeanor offences to penal institutions in the Republic of Serbia; Rulebook on measures for maintaining order and security in penal institutions and co-operation with the authority responsible for internal affairs; Rulebook on disciplinary offences of the convicted persons, measures and procedures; Regulation on uniforms, emblems and insignia and uniforms worn at formal events).

- Separating defendants from convicted persons and classification of the convicted persons

240. Applicable Criminal Procedure Code under paragraph 3 of Article 148 stipulates that the same room cannot hold persons under reasonable suspicion to have participated in committing the same criminal offence, nor persons serving their sentence with persons in detention. Persons

for whom reasonable suspicion exists that they are repeated offenders shall not be, if possible, placed in the same room with other detainees, for the reason of possible harmful influence.

241. In accordance with provisions of Article 32 of the Law on Enforcement of Penal Sanctions, the treatment of prisoners should be suited to their character and purpose of correctional programme. Prisoners are classified into various categories for the purpose of implementing correctional programmes.

242. Pursuant to Article 34 of the Law on Enforcement of Penal Sanctions, prisoners serve, as a rule, sentences together. Where necessary due to the health condition of a prisoner or where provided by this Law, it may be provided that a prisoner is held separately from other prisoners. Male and female prisoners are held separately.

243. Convicted persons are placed into certain premises based on careful assessment of all circumstances and data recorded in prison admission, particularly bearing in mind age, personal characteristics and preferences, as well as other features on which positive mutual influence and absence of danger for mutual physical and mental threat depend. Convicted persons may be engaged to work in the penal institution or outside the penal institution depending on the determined individual treatment programme.

244. Standard part of the prison staff training are the European Prison Rules. The Rules are available to all convicted persons, bearing in mind that all prison libraries are well stocked with international conventions in the sphere of protection of human rights, the European Prison Rules and standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

245. Administration for the Enforcement of Penal Sanctions in co-operation with the OSCE has drafted the Manual on health care for the convicted persons and Code of conduct of the healthcare personnel in penal institutions.

- Status in prisons and penal-correctional facilities

246. Penal sanctions in the Republic of Serbia, without the AP K&M, are executed in 29 penal institutions (8 penal-correctional facilities in: Požarevac, Sremska Mitrovica, Niš, Valjevo, Čuprija, Šabac Sombor and Padinska Skela; Women's penal-correctional facility in Požarevac; Special Prison Hospital in Belgrade and 17 district prisons in: Belgrade, Novi Sad, Leskovac, Čačak, Zrenjanin, Pančevo, Subotica, Vranje, Kragujevac, Kraljevo, Kruševac, Prokuplje, Užice, Zaječar, Novi Pazar, Negotin and Smederevo).

247. Pursuant to the Law on Enforcement of Penal Sanctions, Training Personnel Center has been established within the Administration for the Enforcement of Penal Sanctions.

248. According to data of the Administration for the Enforcement of Penal Sanctions in 2006, in penal institution of the Republic of Serbia there were on average approximately 8,500 persons deprived of liberty as follows: 5,800 convicted persons, 1,800 detainees, 320 convicted for misdemeanor offence, 170 person confined to a correctional facility, 50 juvenile detainees, as well as 180 convicted and 80 detained women.

Total number of persons deprived of liberty by categories in 2006

Deprived of liberty	01.01.2006	came in 2006	Total	left in 2006	31.12.2006
Convicted	5,616	7,095	12,711	6,956	5,755
Measures of medical treatment	228	45	273	72	201
Detainees	1,876	8,138	10,014	8,413	1,601
Juvenile prison	34	16	50	17	33
Corrective measure	178	62	240	81	159
Convicted for misdemeanor offence	32	5,612	5,744	5,600	144
Total	8,064	20,968	29,032	21,139	7,893

Table 8

249. Basically, for work with detainees and convicted persons in the Administration for the Enforcement of Penal Sanctions 4,000 employees are engaged, of whom 2,200 in the Guard service, 270 in the Treatment service, 750 in the Training and labour service, 210 in the Medical Service and 570 in the General affairs service.

250. Functioning of the system for the enforcement of penal sanctions faces the following problems: prison overpopulation; inadequate architectonic solutions for the facilities (oversized facilities); insufficient network coverage of specialized institutions; pronounced strong impact of informal convictional system in big penal-correctional facilities; unfavourable criminology structure of convicts related to types of institutions; unfavourable educational structure of employees; unfavourable professional structure of employees in relation to criminological profile; inadequate structure and system of the employee organization; impossibility of adequate employment of convicted persons in economic units; shortage of funds for normal operating and implementation of treatment programmes for convicted persons; problems in implementation of healthcare protection and protection of the rights of persons deprived of liberty.

251. The Strategy for the reform of the system for the enforcement of penal sanctions developed in 2004 promotes several priority goals, of which the most important are the following: confinement of each person deprived of liberty in a secure and safe way in humane conditions in compliance with international standards; building of new and reconstruction of the current facilities for accommodation of persons deprived of liberty and their adapting to the European standards, type and needs of certain categories of persons deprived of liberty; implementation of new programmes for treatment, individualization and adapting of programmes to special categories of persons deprived of their liberty; permanent training and professional education of the prison personnel; promoting other types of sanctions beside the penal ones for punishment and re-socialization of convicted persons; acceptance of convicted persons upon release and decrease of the return rate.

Treatment of juveniles

252. Provision on treatment of juveniles are not included in the Criminal Procedure Code any more, but are prescribed in a separate law - Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles⁴⁰, which came into effect on 1 January 2006.

253. Pursuant to paragraphs 1, 2 and 3 of Article 3 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, a juvenile is a person who at the time of commission of the criminal offence has attained fourteen years of age and has not attained eighteen years of age. A younger juvenile is a person who at the time of commission of the criminal offence has attained fourteen and is under sixteen years of age. An elder juvenile is a person who at the time of commission of the criminal offence has attained sixteen and is under eighteen years of age.

254. Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles regulates criminal legal status of juveniles: both of the juvenile offenders and the juvenile injured parties because of the committed criminal offence. This law unifies provisions of the substantive, adjective and executive legislation applied for juveniles; moreover, novelties have been introduced that reflect in giving priority to the educational principle versus punishment; in giving priority to extrajudicial forms of intervention, observing the principle of subsidiarity in pronouncing penal sanctions; in paying particular attention to protection of the juvenile's personality in all stages of criminal proceedings.

255. Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles explicitly envisages specialization of all key stakeholders concerned with juvenile justice and protection, in all stages of criminal proceedings. Judicial Training Center provides professional training and acquiring of special knowledges in the judicial sphere for all actors in the proceedings concerning juvenile delinquents in co-operation with departmental ministries of the Government of the Republic of Serbia, scientific institutions, expert and professional societies and NGOs. Upon the first training stage, including 16 regional seminars, Judicial Training Center issued adequate certificates for 4,642 participants.

256. In the Republic of Serbia there are 109 municipal and 30 district offices of public prosecutions, in which Public Prosecutors with special knowledges in the sphere of the rights of the child and criminal protection of juveniles perform their activities; there are 138 benches of municipal courts and 30 benches of district courts, chaired by judges who acquired special knowledges in the sphere of the rights of the child and criminal protection of juveniles. At the second instance court, i.e. in the Supreme Court of Serbia juvenile cases are presided by specialized judges.

257. Since the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles came into effect, tasks related to prevention and suppression of juvenile delinquency and criminal protection of juveniles injured by criminal offence have been, as a rule, performed by police officers specially trained for work with juveniles (to whom adequate certificates were issued), as well as other police officers in the security sector within constable, patrol and other activities.

⁴⁰ "Official Gazette of the Republic of Serbia", No. 85/2005

258. In order to provide professional, ethical and other treatment of juveniles by the police pursuant to law, the Ministry of Interior adopted two internal binding acts: Instructions on treatment of juveniles and elder juveniles by the police officers and the Special Protocol on activities of police officers in protection of juveniles against abuse and neglecting.

259. Pursuant to paragraph 1 of Article 9 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, types of criminal sanctions pronounced to juvenile offenders are prescribed. These measures are as follows: educational measures, juvenile detention and security measures

260. Educational measures include: warning and guidance (court admonition, alternative sanctioning may be ordered for the term up to one year, except for the alternative sanctioning, which envisages that the juvenile compensates for the damages caused, within his/her personal capacity, through work that may not exceed 60 hours during a three month period, or alternative sanctioning when the juvenile participates, without remuneration, in the work of humanitarian organizations or community work of social, local or environmental character, through work that may not exceed 120 hours during a period up to six months), measures of increased supervision, which may last from six months up to two years (increased supervision by parents, adoptive parent or guardian; increased supervision in foster family; increased supervision by guardianship authority; increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles) and institutional measures (remand to rehabilitation institution, from six months up to two years; remand to correctional institution, from six months up to four years; committal to special institution for treatment and acquiring of social skills, up to three years; if this measure is ordered instead of security measures, the juvenile stays only as long as necessary, and upon reaching twenty one years of age enforcement of the measure shall continue in an institution for enforcement of the security measure of mandatory treatment and confinement).

261. Pursuant to Article 28 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, conditions for a juvenile prison sentence are prescribed. These conditions are as follows: that a juvenile at the time of committing of criminal offence has attained sixteen years of age - an elder juvenile; that he/she has committed a criminal offence punishable by imprisonment of over five years; that the court believes that he/she may be sentenced to juvenile prison if due to high degree of guilt, nature and gravity of the offence an educational measure would not be appropriate; and that the juvenile is responsible for criminal offence (mentally competent and guilty).

262. Pursuant to Article 29 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, juvenile detention may not last less than six months or more than five years; juvenile detention of up to ten years may be pronounced for criminal offences carrying a statutory punishment of twenty years imprisonment or more severe punishment or in case of joinder of at least two criminal offences punishable by more than ten years imprisonment.

263. Against juveniles for whom juvenile prison sentences have been pronounced or educational measures ordered, security measures may be ordered as well (mandatory psychiatric treatment and confinement in a medical institution; mandatory psychiatric treatment at liberty; mandatory treatment of drug addicts; mandatory treatment of alcoholics; prohibition to drive a

motor vehicle; confiscation of objects; expulsion of a foreigner from the country; publishing of judgment). The security measure of mandatory treatment of alcoholics and the measure of mandatory treatment of drug addicts may not be ordered together with admonition and guidance measures. The security measure of mandatory psychiatric treatment and confinement in a medical institution may be ordered separately.

264. Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles prescribes under paragraph 1 of Article 57 that a criminal proceeding against a juvenile is instituted for all criminal offences only at the motion of the Juvenile Public Prosecutor with special qualifications in the field of the rights of the child and juvenile delinquency. Pursuant to paragraph 1 of Article 58 of the same law, for criminal offences punishable by up to five years imprisonment or a fine, the Juvenile Public Prosecutor may decide not to press charges although evidence exists giving rise to reasonable suspicion that the juvenile had committed a criminal offence, if in his opinion it would not be appropriate to prosecute the juvenile due to the nature of the criminal offence and circumstances under which it was committed, his/her previous living circumstances and personal characteristics. In order to determine these circumstances the Juvenile Public Prosecutor may request information from the juvenile's parents, adoptive parent or guardian, other persons or institutions and, when necessary, may summon these persons and the juvenile to directly give information. He may request the opinion of the guardianship authority on the purpose to be served by prosecuting the juvenile, and may delegate collection of such information to a professional if there is any with the Public Prosecution Office.

265. Pursuant to paragraphs 1 and 6 of Article 62 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the Juvenile Public Prosecutor may subject the decision not to prosecute to consent of the juvenile and his parents, adoptive parent or guardian, as well as readiness of the juvenile to accept one or more diversion orders specified by the Law. If the juvenile fails to comply with the accepted diversion orders or complies only partially to a degree that does justify initiating of proceeding, the Juvenile Public Prosecutor files a motion with the Juvenile judge of the competent Court to initiate preparatory proceeding.

266. First instance proceedings are conducted before juvenile judges and juvenile benches of a district court. Second instance proceedings are also conducted by specialized benches of the immediate superior court. Currently, it is the Superior Court bench of the Republic of Serbia because there are no appellate courts.

267. Pursuant to paragraphs 2, 3 and 4 of Article 65 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, questioning of the juvenile during preparatory proceeding must be attended by the Juvenile Public Prosecutor, juvenile defence counsel and the juvenile's parent, adoptive parent or guardian. If necessary, these persons shall attend other actions during preparatory proceeding. The Juvenile judge may order the juvenile to retreat when particular actions are undertaken. The Juvenile judge may exclude attendance of parents, adoptive parent or guardian if such decision is in the interest of the juvenile. Questioning of the juvenile, when appropriate, shall be conducted with the assistance of a psychologist, pedagogue or other professional. The Juvenile judge may allow attendance of the guardianship authority representative in preparatory proceeding. If such person is in attendance, he/she may put motions and direct questions to the person being questioned.

268. Pursuant to Article 73 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, on receiving the motion of the Juvenile Public Prosecutor to pronounce criminal sanction, the Juvenile judge schedules a sitting of the bench or the main hearing. Juvenile prison sentence and institutional measures may be pronounced only after conclusion of the main hearing. Other educational measures may be ordered by sitting of the bench. Sitting of the bench may order holding of the main hearing. The juvenile, his parents, adoptive parent or guardian, Juvenile Public Prosecutor, defence counsel and guardianship authority representative shall be summoned to attend the sitting of the bench. There will be mandatory attendance of the Juvenile Public Prosecutor, defence counsel and guardianship authority representative at this sitting. If the Juvenile Public Prosecutor or defence counsel, fail to justify their absence from the sitting of the bench, the President shall accordingly inform the directly superior Public Prosecutor and/or the relevant bar association. The Juvenile Judge shall inform the juvenile of the educational measure ordered at the sitting of the bench. Pursuant to Article 77 of the same law, the Juvenile Judge shall schedule the main hearing or sitting of the bench within eight days of receiving the motion of the Juvenile Public Prosecutor. The Juvenile judge requires approval of the President of the Court for any extension of this period.

269. Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles stipulates under paragraphs 1 and 2 of Article 75 that public shall always be excluded from trials of a juvenile. The bench may allow persons engaged in education and protection of juveniles or suppression of juvenile delinquency to attend the main hearing.

270. The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles includes special provisions on protection of juveniles as injured parties in criminal proceedings. According to paragraph 1 of Article 152 of the same law, when conducting proceeding for criminal offences committed against juveniles, the state prosecutor, investigative judge and judges of the bench shall treat the victim with care, having regard to his/her age, character, education and living circumstances, particularly endeavouring to avoid all possible prejudicial consequences of the proceeding on his/her character and development. Questioning of a child or juvenile shall be conducted with the assistance of psychologist, pedagogue or other qualified person.

271. Pursuant to Article 154 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, a juvenile who is a victim shall have a legal representative from the first questioning of the defendant. If the juvenile does not have a legal representative, he shall be appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles. The costs of representation shall be borne by the Court budget.

272. Chapter 8 of the Misdemeanors Act stipulates special provisions on juvenile misdemeanor offenders. Pursuant to Article 65 of this law, educational measures are the only misdemeanor sanctions which may be exercised over younger juvenile. In accordance with Article 65 of the Law, to elder juveniles educational measures and penalties may be pronounced.

273. According to the data of the Ministry of Interior of the Republic of Serbia, in the recent years a slight drop in juvenile delinquency has been recorded, according to the number of filed criminal offence reports, uncovered and reported criminal offences and their perpetrators.

However, recently, a slight increase of criminal offences with elements of violence has been recorded, which have been committed against juveniles as injured parties as well as by juvenile offenders. Among these criminal offences, the number of reported grand thefts, extortions and robberies is increasing as well as number of bodily injuries, illicit sexual activities, domestic violence and violence at sports events.

274. Moreover, increased number of juveniles in public places without supervision of parents/guardians, exposed to different forms of abuse, neglecting and exploitation, has been recorded. According to data of the Ministry of Interior, in the sphere of suppression of juvenile delinquency, in 2005 - 7,596 criminal offences were committed by 5,373 minors, of whom 864 children (74 of female and 790 of male gender) and 4,509 juveniles (244 of female and 4,265 of male gender). In 2006 - 7,451 criminal offences were committed by 4,862 minors, of whom 702 children (46 of female and 656 of male gender) and 4,160 juveniles (202 of female and 3,958 of male gender). In 2007 - 7,402 criminal offences were committed by 4,592 minors, of whom 561 children (37 of female and 524 of male gender) and 4,031 juveniles (232 of female and 3,799 of male gender).

275. According to the latest statistical data concerning criminal offences committed by minors, in 2006 - there were 3,041 criminal offence reports, and a total number of 2,267 minors indicted; total number of 1,556 minors were convicted as follows: younger juveniles – total number of 490 (204 disciplinary measures, 255 measures of increased supervision and 31 institutional measures, were pronounced) and elder juveniles – total number of 1,076 (17 juvenile prison sentences, 383 disciplinary measures, 605 measures of increased supervision and 71 juvenile prison sentences were pronounced).

276. When juvenile offenders are concerned, special individual programmes of treatment are applied adapted to their needs and personal characteristics. Personnel responsible for work with minors is specially trained through seminars and workshops organized by the Administration for the Enforcement of Penal Sanctions in co-operation with the Council of Europe and UNICEF. On the basis of unified criteria, security risk, capacities and needs of juveniles are considered, upon which superintendent of the facility, at proposal of an expert team, determines programme of treatment.

277. Programmes aimed at improvement of children's safety are implemented in co-operation with the Ministry of Education and Ministry of Interior (School Without Violence, School Policeman, Actions for increased traffic control of selective contents – School, Action for increased control over prohibition of sale and serving alcoholic drinks to minors, Prevention activities among school children and adolescents, Drugs Ain't Cool, There's Only One Life).

Article 11

Fulfillment of a contractual obligation

278. Penal legislation of the Republic of Serbia does not envisage the penalty of imprisonment for the impossibility of fulfilling a contractual obligation. Non-fulfillment of a contractual obligation or its delayed fulfillment entitles the creditor to ask for compensation for the damage he suffered thereupon, while it creates an obligation for the debtor to compensate the damage.

With regard to the conclusion of a contract, compensation for the damage as well as liability for compensation for the damage rules of the law on contracts and torts are applied, in particular provisions of the Law on Obligations.

Article 12

Status of a foreigner

279. Under Article 17, the Constitution of the Republic of Serbia specifies that foreign nationals in the Republic of Serbia shall enjoy, in accordance with international agreements, all the rights guaranteed by the Constitution and the law except for the rights that under the Constitution and the law belong only to the citizens of Serbia.

280. Given that this field had until recently been regulated through the old Law on Movement and Stay of Foreigners⁴¹, a new law pertaining to the field entitled the Law on Foreign Nationals⁴² was adopted by the National Assembly on October 23, 2008.

Travel documents

281. The Law on Travel Documents⁴³ in Article 3 sets out that a citizen of the Republic of Serbia has the right to a travel document provided that conditions stipulated by the Law are met. A citizen of the Republic of Serbia may have only one travel document of the same kind. A travel document can be used only by the person in whose name the document is issued.

282. Pursuant to Article 7 of the Law on Travel Documents, travel documents include: a passport, a diplomatic passport, a service passport, and a travel certificate as well as travel documents issued on the basis of an international agreement. A travel document is also a navigation passport of a crew member on a vessel for inland navigation as well as a seaman's passport of a member of the sea ship crew if it contains a visa.

283. Pursuant to Article 25 of the Law on Travel Documents, a form of a passport, a diplomatic passport, and a service passport contains a segment used for an automatic data reading into which visible alphanumeric data are entered, as well as security elements as prescribed by the minister in charge of internal affairs. A person to whom the travel document is issued has the right to turn to a competent body for the inspection of data used for automatic data reading that are entered into their travel document.

284. Pursuant to Article 27 of the Law on Travel Documents, the documents are issued upon the request submitted to the body in charge of issuing the passport in whose territory the person submitting a request resides, i.e. stays, but the request can also be submitted through a competent diplomatic or consular mission of the Republic of Serbia. A passport and a travel certificate are issued on personal request, while a diplomatic passport and a service passport are issued on the request of a competent state body. Travel documents issued on the basis of international

⁴¹ "Official Gazette of SFRY", No. 56/80, 53/85, 30/89, 26/90, 53/91 and "Official Gazette of FRY", No. 68/2002

⁴² "Official Gazette of the Republic of Serbia", No. 97/2008

⁴³ "Official Gazette of the Republic of Serbia", No. 90/2007

agreements are issued on personal request unless otherwise specified by an international agreement. An application for the issuing of a travel document should contain correct and genuine data. For the purpose of ascertaining the identity and other facts relevant for deciding on the request for issuing a passport, a diplomatic passport, a service passport, and a travel certificate, as well as taking a photograph, fingerprinting and registering a signature, a person to whom the document is to be issued must be present when the request is submitted. Photographing and data collection is done in a way prescribed by the minister in charge of internal affairs.

285. Pursuant to Article 35 of the Law on Travel Documents, a body to which a request for issuing a travel document has been submitted will reject the request through a decision, i.e. it will not issue a travel document in the following cases: if a decision has been brought on conducting an investigation or if charges have been pressed against the person seeking the issuing of a travel document – at request of a competent court, that is public prosecutor's office; if the person seeking the issuing of a travel document has been condemned to unconditional imprisonment of more than three months, i.e. until they have served their sentence; if the person seeking the issuing of a travel document is banned from travelling in accordance with valid international acts; if, in accordance with valid regulations, a person seeking the issuing of a travel document is banned from moving so that the spreading of contagious diseases, i.e. an epidemic could be prevented; if, on grounds of the country's defense, the prescribed permit for traveling abroad has not been issued or there is some other impediment envisaged by the law that regulates military service in case of a proclaimed state of war or state of emergency. A request for the issuing of a travel certificate cannot be rejected.

286. Over the period from January 1 2004 to February 29 2008 in the Republic of Serbia the total of 3,800,708 requests for the issuing of a travel document were submitted. On the basis of these requests the total of 3,799,092 travel documents was issued. In accordance with the law, 1,616 requests for the issuing of a passport were rejected, which accounts for 0.04% of the total number of requests.

Refugees and internally displaced persons

287. In 2002 the Government of the Republic of Serbia adopted the National Strategy for Addressing the Issue of Refugees and Internally Displaced Persons which sets out to define major objectives and directions to follow within the process of finding a permanent solution to the problem of refugees. Given that a period of time has passed since the adoption of the Strategy and that some practices delineated in the Strategy are now outdated, some parts need to be amended.

288. At the proposal of the Commissariat for Refugees, the Government of the Republic of Serbia in 2006 formulated the Bill Proposal on Amendments to the Law on Refugees. The Law on Amendments to the Law on Refugees is supposed to create a normative framework for the removal of shortcomings of the valid Law⁴⁴ with regard to determining the rights of refugees as well as their integration.

⁴⁴ "Official Gazette of the Republic of Serbia", No. 18/92

289. Internally displaced persons from Kosovo and Metohija are citizens of the Republic of Serbia and have all the rights that other citizens of Serbia have. The legal status of internally displaced persons from Kosovo and Metohija is regulated through the signature of the Memorandum of Understanding between the Commissariat for Refugees and UNHCR on the issuing of identity cards for internally displaced persons on the basis of which they can exercise their rights in the place of registered residence. There is no discrimination among internally displaced persons regarding the access to rights. In practice, a small number of internally displaced persons, the Roma mainly, have difficulties with realizing some of their rights because they do not possess some of the basic personal documents (they are not registered in the birth registry, they do not have a permanent residence address, etc.).

290. In the Republic of Serbia there are 97,354 refugees, out of which 74% came from Croatia and 26% from Bosnia and Herzegovina. In the territory of the Republic of Serbia beyond the AP of Kosovo and Metohija there are 209,722 internally displaced persons from the AP of Kosovo and Metohija.

291. The Government of the Republic of Serbia together with the Government of the Republic of Croatia and the Government of Bosnia and Herzegovina signed the Sarajevo Declaration within the process initiated by the European Commission, OSCE, and UN High Commissioner for Refugees. By signing the document the signatories committed themselves to devising a Road Map that will include specified obligations that must be assumed in order for the issue of refugees within the region to be tackled.

Asylum

292. The Constitution of the Republic of Serbia, by virtue of Article 57, guarantees a foreign national who has well-founded reasons to fear of persecution on grounds of the race, gender, language, religion, nationality, and association with a group or because of their political views the right to an asylum in the Republic of Serbia. The procedure for acquiring asylum is regulated by the law.

293. The subject matter of asylum (principles, requirements, the procedure for acquisition and loss of asylum, the position, rights, and duties of asylum seekers) is regulated in the Law on Asylum⁴⁵ that has been in force since April 1, 2008.

294. Article 2 of the Law on Asylum provides definitions of: a foreigner (a foreigner is any person that is not a citizen of the Republic of Serbia regardless of whether they are foreign nationals or a stateless person) and asylum (asylum is the right to residence and protection of a foreigner who pursuant to a decision of a competent body that decided on their request for asylum in the Republic of Serbia has been granted asylum or any other form of protection envisaged by the Law).

295. The Law on Asylum envisages the following forms of protection: asylum (the right to residence and protection granted to a refugee in the territory of the Republic of Serbia if a competent body rules that their fear of persecution in the state of their origin is well-founded)

⁴⁵ "Official Gazette of the Republic of Serbia", No. 109/2007

and subsidiary protection (a form of protection that the Republic of Serbia grants a foreigner who, if they returned to the state of origin, would be exposed to torture, inhuman or humiliating treatment, or their life, security or freedom would be threatened with large-scale violence caused by external aggression, internal armed conflicts or mass violation of human rights).

296. A request for asylum is processed in double-instance administrative proceedings. Pursuant to Article 19 of the Law on Asylum, in the first instance the asylum request is decided on by a competent organizational unit within the Ministry of Interior Affairs – Asylum Office. In accordance with Article 20, Paragraph 1 of this Law appeals lodged against decisions of this body are decided on by the Asylum Committee composed of President and eight members appointed by the Government of the Republic of Serbia for the period of four years.

297. The Law on Asylum regulates temporary protection of foreigners. In accordance with Article 36, Paragraphs 1, 5, and 6 of the Law, in case of mass arrival of foreigners from the state in which their life, security or freedom is threatened with large-scale violence, external aggression, internal armed conflicts, mass violation of human rights or other circumstances that gravely violate public order, when because of the mass arrival there is no possibility of administering an individual procedure for obtaining the right to asylum, temporary protection will be ensured in keeping with social, economic, and other means of the Republic of Serbia. On the provision of temporary protection the Government of the Republic of Serbia decides. Persons granted temporary protection can with no impediments whatsoever submit an asylum request. Temporary protection is an exceptional measure and can last for a year at the longest, and if reasons for temporary protection still hold, it can be extended. Foreigners who have been granted temporary protection still have the right to submit a request for asylum.

298. Pursuant to Article 58 of the Law on Asylum, a person who expressed their intention of seeking asylum or submitted a request for asylum as well as a person granted asylum can be issued the following documents: a certificate on the intention of seeking asylum, an identification document (an identity card for an asylum seeker and an identity card for a person granted asylum).

Article 13

Obligation of a foreigner to leave the territory of the Republic of Serbia

299. Constitution of the Republic of Serbia by virtue of Article 39, Paragraph 3 stipulates that entry and stay of foreign nationals in the Republic of Serbia is regulated by the law. A foreign national may be expelled only on the basis of a decision of a competent body, in a procedure envisaged by the law and if the right to appeal has been provided for them, and that only when there is no threat of persecution on grounds of race, gender, religion, nationality, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by the Constitution.

300. Expulsion of a foreigner from the country represents one of the safety measures envisaged by the Criminal Code in Article 79, Paragraph 1, point 8. This safety measure, in accordance with Article 80, Paragraph 1, can be pronounced if the perpetrator has been pronounced punishment or a conditional sentence.

301. Pursuant to Article 88, Paragraphs 1 and 2 of the Criminal Code, a court can expel from the territory of the Republic of Serbia a foreigner who committed a criminal offence for the period of one to ten years. When assessing whether to pronounce this measure the court will take stock of the nature and seriousness of the criminal offence committed, motives underlying the offence committed, the way in which the criminal offence has been committed, and other circumstances that are indicative of undesirability of further stay of the foreigner in the Republic of Serbia.

302. Law on Offences in Article 57 stipulates that a court can pronounce a measure of expulsion of a foreigner from the territory of the Republic of Serbia if they have committed an act that makes their further stay in the country desirable. A protective measure can be pronounced for the period of six months to 2 years.

303. The Republic of Serbia signed an agreement with the EU (with all EU member states with the exception of the Kingdom of Denmark) on the readmission of persons who illegally reside in the territory of other signatory state.

304. In accordance with the agreement, the Republic of Serbia is obliged to readmit its citizens (their minor unmarried children regardless of their citizenship or place of birth as well as their spouse that has other citizenship on condition that they have the right to enter and reside in the territory of the Republic of Serbia except when these persons have the right to stay in the country requesting readmission); persons who lost their citizenship once they entered the territory of an EU member state except when these persons have been promised naturalization by the EU member state; a third country national or a stateless person if it has been proved or can be reasonably assumed that the person has or at the time of entry had a valid visa or a residence permit issued by the Republic of Serbia and that they entered the territory of an EU member state in an illegal way by having previously resided in or been in transit through the territory of the Republic of Serbia.

305. Over the period from January 1, 2003 to December 31, 2007 in the territory of the Republic of Serbia 3,799,446 places of residence of foreigners were registered. In the same period of time residence was cancelled for 12,381 foreign nationals for reasons stipulated by the law, which accounts for about 3% of the total number of foreigners that registered their residence in the territory of the Republic of Serbia.

Prohibition of expulsion of persons to countries where they can be exposed to torture

306. Pursuant to Article 539 of the valid Criminal Procedure Law, extradition of defendants or sentenced persons is conducted in accordance with provisions of international agreements, but if an international agreement is inexistent or it does not regulate certain issues, extradition procedure is administered in accordance with provisions of the Law.

307. Pursuant to Article 548, Paragraph 2, Minister of Justice shall not allow extradition of a foreign national that in the Republic of Serbia enjoys the right to asylum, if a political or military criminal offence is in matter, if a foreign national's life or freedom are threatened because of their race, religion, ethnicity, social standing or political views, if there are well-founded reasons

for assuming that in the state asking for extradition a foreign national must be exposed to inhuman treatment or torture, or if in the proceedings that preceded the extradition a foreign national was not allowed to have defense counsel. The Minister of Justice can refuse to extradite a foreign national if for the criminal acts in matter national legislation envisages imprisonment of up to three years or if a foreign court ruled apprehension of up to one year.

308. A similar practice is laid out in Article 525, Paragraph 2 of the new Criminal Procedure Code.

Article 14

Courts

- Organization of the judiciary

309. Pursuant to article 143, Paragraphs 1, 2, 3, and 4 of the Constitution of the Republic of Serbia, judicial power in the Republic of Serbia belongs to courts of general and special jurisdiction. The Supreme Court of Cassation is the highest instance court in the Republic of Serbia. Establishment, organization, jurisdiction, structure, and composition of courts are regulated by the law. Provisional courts, courts-martial or special courts cannot be established.

310. Pursuant to Article 6, Paragraph 1 of the Constitutional Law for Enforcement of the Constitution of the Republic of Serbia⁴⁶, courts and public prosecutor's offices continue to work until regulations referring to their organization and jurisdiction as well as the position of judges, public prosecutors, and deputy public prosecutors have been brought in line with the Constitution, unless otherwise specified by the Law.

311. The Law on Organization of Courts⁴⁷ lays foundations for the introduction of a new network of courts, and that the Appellate Court as a general jurisdiction court apart from municipal and district courts, while it envisages commercial courts, the High Commercial Court, magistrate courts, the High Magistrate's Court, and the Administrative Court as special jurisdiction courts. Until new judicial laws that will regulate and harmonize organization and jurisdiction of courts with the Constitution of the Republic of Serbia are enacted, the stated Law will be enforced.

312. Military courts in the Republic of Serbia have been abolished by the Law on Takeover of Competences of Military Courts, Military Prosecutor's Offices, and Military Attorney's Offices⁴⁸ that entered into force on January 1, 2005.

- Work of courts

313. The Law on Organization of Courts in Article 70 stipulates adoption of the Court Rules of Procedure. The Court Rules of Procedure is passed by the minister in charge of justice in agreement with President of the Supreme Court of Serbia, while implementation of the Court Rules of Procedure is supervised by the ministry that is in charge of justice. The Court Rules of Procedure defines, *inter alia*, the organization and work of courts, informing the public about the

⁴⁶ "Official Gazette of the Republic of Serbia", No. 98/2006

⁴⁷ "Official Gazette of the Republic of Serbia", No. 63/2001, 42/2002, 27/2003, 29/2004, 101/2005 and 46/2006

⁴⁸ "Official Gazette of the Republic of Serbia", No. 137/2004

work of courts, court staff's treatment of citizens while performing duties, acting upon complaints and petitions, keeping records of statistics, and compiling reports on the work done by courts.

314. The Law on Judges⁴⁹ by virtue of Article 55 sets forth that a judge is deemed to be performing their duties unconscientiously if they are dilatory in resolving a case, ignore prescribed time limits in administering proceedings or making a decision, or in any other way acts contrary to criteria specified by the Supreme Court of Serbia. Any prolonged engagement in activities, duties, or procedures identical or similar to those marked as incompatible with their function is also deemed an unconscientiously performed duty. Performance of judicial duties that is insufficiently successful according to criteria prescribed by the Supreme Court of Serbia is deemed incompetence.

315. Pursuant to Article 58, Paragraph 1 of the Law on Judges, the High Personnel Court may in the course of the procedure for the dismissal of a judge due to negligent or incompetent performance of judge's functions pronounce the measure of caution or removal from the office for the period of one month to one year, but the measure will be recorded in the judge's personal record. As long as the measure is effective, the judge has the status as if being suspended from duty, while the caution may not be pronounced twice under Article 6 of the Law.

Table of received, settled, and outstanding complaints at the Service for Petitions and Complaints of the Supreme Court of Serbia in 2004-2007

	Newly received	Total pending	Settled	Outstanding
2007	1,547	1,629	1,547	82
2006	1,247	1,615	1,552	63
2005	1,471		1,074	397
2004	1,377	1,396		

Table 9

- Training of judges and public relations

316. Judicial Training Centre (a centre for professional advancement and education of Serbian judges and prosecutors) organized a large number of seminars and professional gatherings focused on the topic of protection of human rights both in relation to implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights and other widely accepted international treaties. Non-governmental and international organizations greatly contribute to the education of judges and court advisers by ensuring participation of a large number of experts in the field of protection of human rights in these seminars.

317. In order to ensure realization of continuous and initial training the Law on the Training of Judges, Public Prosecutors, Deputy Public Prosecutors and Assistant Judges and Prosecutors has been adopted. The High Judiciary Council adopted the initial training programme by complying

⁴⁹ "Official Gazette of the Republic of Serbia", No. 63/2001, 42/2002, 27/2003, 29/2004, 44/2004, 61/2005 and 101/2005

with legal provisions. Continuous training is realized on the basis of annual plans that are adopted every year by the Programme Council of the Judicial Training Centre after previous screening of the needs of the prosecutor's office and courts in all districts of the Republic of Serbia.

318. In jurisdictional bodies there are appointed officers who are responsible for the availability of information of public interest. They have undergone general training as well as special training for jurisdictional bodies.

319. On the Internet website of the Supreme Court of Serbia citizens can get informed about judgements passed by the highest court instance and obtain answers to questions in cases envisaged by the law. The work of courts and public prosecutor's offices includes activities of a spokesperson that performs the function of informing the public about the work of courts and public prosecutor's offices. With the view of establishing a more transparent judicial system and promoting relations between courts and public prosecutor's offices on the one hand and the media and citizens on the other, the Secretariat for Implementation of the National Strategy for Judiciary Reforms issued a Guide for spokespersons and court representatives who are in charge of public relations entitled *Public Relations in Courts*, and a Guide for representatives of prosecutor's offices and the media entitled *Public Relations in Prosecutor's Offices*.

320. The Guide *Public Relations in Courts* is the first guide of the kind in the region and it provides very practical tips and suggestions for the promotion of relations between courts and public prosecutor's offices in Serbia, and the public. The objective of the Guide is to respond to the needs of a dynamic society undergoing transition and is primarily designed for courts and public prosecutors as well as employees at courts and public prosecutor's offices since their performance is subject to daily appraisal of the media and citizens. Experiences and suggestions embodied by the Guide have already been implemented by some courts in Serbia.

321. The Guide for representatives of prosecutor's offices and the media entitled *Public Relations in Prosecutor's Offices* is a fruit of experience and practice of specialized prosecutor's offices for war crimes and organized criminal. The aim of the Guide is to provide assistance and support for journalists that deal with judicial topics so that they could better handle often quite complicated legal issues and terminology. The Guide is of use also to an increasing number of professionals responsible for public relations in prosecutor's offices and contributes to their better understanding of specificities of the media that is a mirror of the public. The Guide copies were distributed to all district and municipal courts and prosecutor's offices in the territory of Serbia, journalists who deal with judiciary and the media, and will be beneficial for representatives of the "seventh power".

Publicity of court proceedings

322. Article 142, paragraph 3 of the Constitution of the Republic of Serbia stipulates that main hearing before the court is public and may be restricted only in accordance with the Constitution.

323. The valid Criminal Procedure Code in Article 291 stipulates that the principal hearing is open to the public and that it can be attended by adults. Pursuant to Article 292 of the Law, the court may, *ex officio* or at the motion of parties, bar the public from the whole principal hearing

or some of its segments if this is necessary for the purpose of keeping a secret and maintaining the public order, safeguarding moral, protecting the interests of minors or protecting the personal or family life of the defendant or the injured party. Barring of the public from hearing does not apply to parties to the procedure, the injured and their representatives as well as the defense counsel.

324. The principle of publicity is one of the major principles enshrined in the Civil Procedure Code, prescribed by Article 4 of the Code. Articles 307 and 311 of the Code regulate application of the principle of publicity of proceedings similarly as the Criminal Procedure Code.

Legal assistance

325. Pursuant to Article 67 of the Constitution of the Republic of Serbia, everyone is guaranteed the right to legal assistance. Legal assistance is provided by the bar, being an independent and autonomous service, as well as by legal assistance offices established in local self-government units in accordance with the law. The law stipulates conditions for receiving free legal assistance.

326. Legal profession is regulated by the Law on Legal Profession⁵⁰. According to Article 2 of the Law, lawyers provide legal assistance that includes legal advice, compilation of suits, appeals, and other petitions, writing of contracts and other documents, standing proxy and defense of natural persons and legal entities before courts and other state bodies.

327. Pursuant to Article 15 of the Law on Legal Profession, a lawyer is obliged to engage genuinely and continually in providing legal assistance. A lawyer is obliged to provide legal assistance to a party in a conscientious manner in accordance with the law, Bar Association Statute, and Code of Professional Ethics adopted by the Bar Association. In the Republic of Serbia there is the Bar Association of Serbia and eight branch bar associations.

328. The issue of free legal assistance is regulated through laws that refer to court proceedings. Article 66 of the valid Criminal Procedure Code lays out that in the course of criminal proceedings the court can appoint some attorney a proxy of the injured party, on their request, in case when proceedings is administered for a criminal offence for which under the law a sentence of 5 years of imprisonment can be pronounced or even a heavier sentence if this is in the interest of the criminal proceedings provided that the injured party due to their financial position cannot bear the costs of representation. Pursuant to Article 72 of the Code, when proceedings is administered for a criminal act for which a sentence of imprisonment of more than 3 years is prescribed, i.e. if this is required on grounds of fairness, the court can appoint to the injured party an attorney on their request if the injured party cannot bear the costs of defense because of their financial position.

329. The Civil Procedure Code in Article 164 prescribes that the court can exempt from bearing the costs of the procedure a party that due to their general financial position is not able to bear the costs of the procedure. Article 166 of this Code sets out that the first instance court will acknowledge the party's right to free counseling in case when the party is entirely exempted

⁵⁰ "Official Gazette of the Republic of Serbia", No 24/98, 26/98, 11/2002

from paying the costs of the procedure and if this is necessary for the protection of party's rights. A lawyer whose name is on the list of lawyers that the Bar Association present to the court will be appointed a counsel.

Concluding remarks -19

Independence of the judiciary

330. The Constitution of the Republic of Serbia in Article 4 guarantees the division of power into the legislature, the executive, and the judiciary. The relation between three branches of power is based on balance and mutual control. The judiciary is independent.

331. Pursuant to Article 142, paragraphs 1, 2, 4, and 6 of the Constitution of the Republic of Serbia, the judiciary is unified in the territory of the Republic of Serbia. Courts are autonomous and independent in their work and they perform their duties in accordance with the Constitution of the Republic of Serbia, laws, and other general acts when stipulated by the law, generally accepted rules of international law, and ratified international agreements. Judges and jurors participate in a trial in a manner stipulated by the law. The law can also regulate that only judges may participate in a trial in particular courts and in particular cases. The court decides on matters within the Council, while the law can stipulate that a single judge decides on particular matters.

332. Pursuant to Article 145 of the Constitution of the Republic of Serbia, court decisions are passed in the name of people and they are based on the Constitution, the law, a ratified international treaty, and a regulation passed on the basis of a law. Court decisions are obligatory for all and may not be subject to extrajudicial control – they can only be reconsidered by a competent court in legal proceedings prescribed by the law. A passed sentence may be fully or partially forgiven without a court decision, by general pardon or amnesty.

333. Constitution of the Republic of Serbia in Article 153 establishes the High Judicial Council that takes over the function of judge election from the High Council of Judiciary that had existed before. The High Judicial Council is conferred on greater powers that it was the case with High Council of Judiciary since judges are elected by the National Assembly only for the first post, while the next election, when judges are elected for a permanent post, falls under the competence of the High Judicial Council.

334. Constitution of the Republic of Serbia in Article 146 guarantees a permanent tenure to judges, while pursuant to Article 147 of the Constitution the National Assembly, at the proposal of the High Judicial Council, elects as a judge the person who is elected to the post of a judge for the first time. Tenure of office of a judge elected to the post of judge for the first time lasts three years. In accordance with the law, the High Judicial Council elects judges to the posts of permanent judges, in the same or other court. The High Judicial Council decides on the election of judges who hold the post of permanent judges to other or higher court.

335. Pursuant to Article 148 of the Constitution of the Republic of Serbia, a judge's tenure of office terminates at their own request, upon entering into force of legally prescribed conditions or upon relief of duty for reasons stipulated by the law as well as if they are not elected to the position of a permanent judge. The High Judicial Council passes a decision on termination of a judge's tenure of office. A judge has the right to appeal with the Constitutional Court against this decision. The lodged

appeal excludes the right to lodge a Constitutional appeal. The proceedings, grounds, and reasons for termination of a judge's tenure of office as well as reasons for the relief of duty of the President of Court are stipulated by the law.

336. Constitution of the Republic of Serbia in Article 149 stipulates that in performing their judicial function a judge is independent and subordinate only to the Constitution and the law. Any exertion of influence on a judge while they perform their judicial function is prohibited.

337. Pursuant to Article 148 of the Constitution of the Republic of Serbia, a judge has the right to perform their judicial function in the court to which they were elected and may be transferred or posted to another court only with their own consent.

338. Pursuant to Article 151 of the Constitution of the Republic of Serbia, a judge may not be held responsible for the opinion they expressed or for voting in the process of passing a court decision, except in cases when they committed a criminal offence by violating the law. In addition, a judge may not be arrested within legal proceedings instituted due to a criminal offence committed in performing a judicial function without the approval of the High Judicial Council. The Constitution under Article 152 states that a judge is prohibited from engaging in political actions. Other functions, actions, or private interests that are incompatible with the judiciary function are stipulated by the law.

339. Law on Organization of Courts in Article 6 contains provisions which prohibit any use of a public office and the media, or any public appearance that may influence legal proceedings as well as any other influence on the court.

Transfer of competences of military courts to the courts of general jurisdiction

340. On enacting of the Law on Transfer of Competences of Military Courts, Military Prosecutor's Offices and Military Attorney's Office to Authorities of Member States⁵¹ and the Law on the Takeover of Competences of Military Courts, Military Prosecutor's Offices and Military Attorney's Office, the Law on Military Courts and the Law on Military Prosecutor's Offices ceased to be in force on December 31, 2004.

341. On enacting of the above mentioned laws, jurisdiction of military courts that existed in the territory of the Republic of Serbia was taken over by courts of general jurisdiction in accordance with real and territorial jurisdiction prescribed by relevant procedural laws.

342. For first instance trials for criminal acts: against the Army of Serbia – within Chapter 35 of the Criminal Code: terrorism (Article 312); malicious destruction (Article 313); sabotage (Article 314); espionage (Article 315); disclosing a state secret (Article 316) if criminal acts target military facilities and military persons and if data refer to state defense; in criminal acts of conspiracy for unconstitutional activity if the association is related to the undermining of military and defense power, military facilities and military persons; in criminal acts against the official duty related to the function in the Army of Serbia and Montenegro and the Ministry of Defense; in criminal acts whose perpetration is related to weaponry, arms, ammunition, and explosive that serve defense purposes; in criminal acts perpetrated by officers of the Army of Serbia and

⁵¹ "Official Gazette of Serbia and Montenegro", No. 55/2004

Montenegro and the Ministry of Defense while on a peace mission abroad; in criminal acts perpetrated by prisoners of war if the law does not stipulate jurisdiction of other court as well as for execution of the sentence of imprisonment for convicted military persons who under the law retain the status of a military person after the conviction, the Military Departments that belong to the following district courts are in charge: 1) District Court in Belgrade for Belgrade and for the territory under the jurisdiction of district courts in Valjevo, Zajecar, Negotin, Pozarevac, Smederevo, Uzice, and Sabac; 2) District Court in Novi Sad for Novi Sad and for the territory under jurisdiction of district courts in Zrenjanin, Pancevo, Sombor, Sremska Mitrovica, and Subotica; 3) District Court in Nis for Nis and for the territory under jurisdiction of district courts in Vranje, Gnjilane, Jagodina, Kosovska Mitrovica, Kragujevac, Krusevac, Kraljevo, Leskovac, Novi Pazar, Pec, Pirot, Prizren, Pristina, Prokuplje, and Cacak.

Article 15

Prohibition of retroactivity

343. The Constitution of the Republic of Serbia in Article 34, Paragraph 4 stipulates that no person may be held guilty for any act which did not constitute a criminal offence under the law or any other regulation based on the law at the time when it was committed, nor can a penalty which was not prescribed for this act be imposed. The penalties are determined in accordance with the regulation in force at the time when the act was committed, save when the subsequent regulation is more favourable for the perpetrator. Criminal offences and penalties are laid down by the law.

344. The Criminal Code in Article 5 prescribes that a perpetrator of a criminal act is processed under that law that was in force when the criminal act in matter was committed. If the law was amended once or more than once after the criminal act had been committed, the most lenient law will be enforced.

Article 16

Legal capacity

345. Constitution of the Republic of Serbia in Article 37, paragraphs 1 and 2 stipulates that everyone has legal capacity. Upon becoming of age (turning 18) all persons become capable of deciding independently about their rights and obligations.

346. Under valid legislation of the Republic of Serbia legal agents are natural persons and legal entities. Natural persons gain legal subjectivity upon their birth, and lose it upon their death. Pursuant to Article 3 of the Law on Inheritance⁵², a child conceived at the point of death of the deceased can be an heir if it is born alive. Legal agents gain legal subjectivity once the data are entered into registries of legal agents.

Article 17

Right to privacy

347. Constitution of the Republic of Serbia in Article 40 stipulates that a person's home is inviolable. No one may enter a person's home or other premises against the will of its occupant nor conduct a search in them without a written decision of the court. The occupant of the apartment or other premises has the right to be present during the search in person or through their legal representative together with two other witnesses who may not be under age. If the occupant or their legal representative is not present, the search can be conducted at the presence of two adult witnesses. Entering a person's apartment or other premises, and in special cases conducting of search without witnesses, is allowed without a court order if necessary for the purpose of immediate arrest and detention of a perpetrator of a criminal offence or elimination of a direct and grave danger for people or property in a manner stipulated by the law.

348. Pursuant to Article 41 of the Constitution of the Republic of Serbia, confidentiality of letters and other means of communication are inviolable. Derogation is allowed only for a specified period of time and based on a decision of the court if necessary for conducting criminal proceedings or protecting the safety of the Republic of Serbia, in a manner stipulated by the law.

349. Pursuant to Article 42 of the Constitution of the Republic of Serbia, protection of personal data is guaranteed. Collecting, keeping, processing, and using of personal data is regulated by the law. Use of personal data for any purpose other than the one the data were collected for is prohibited and punishable in accordance with the law, unless this is necessary for conducting criminal proceedings or protecting security of the Republic of Serbia, in a manner stipulated by the law. Everyone has the right to be informed about personal data collected about them, in accordance with the law, and the right to court protection in case of their abuse.

350. Law on Police in Article 75 stipulates that the police collect, process, and use personal data, provide protection and keep records of personal and other data to the collecting of which they are authorized by the Law for the purpose of preventing and tracking criminal acts and offences, and identifying their perpetrators. Other data on a person the police may collect, process, and make use of only if the police are authorized for this by the other law and if law-prescribed protection of these data is ensured. An authorized employee keeps as confidential, uses, and handles personal data they collect while performing their office, in accordance with the law.

351. Criminal Code in Article 102, Paragraphs 2, 3, 4, and 5 sets out that data from penal records can be presented only to the court, public prosecutor, and an internal affairs authority related to criminal proceedings conducted against a person that had been convicted before, an authority in charge of executing criminal penalties, and an authority that participates in the process of providing amnesty, pardon, rehabilitation, or deciding on termination of legal consequences of the conviction, as well as to custody authorities, if necessary for performing activities that fall under their competence. On an elaborated request, these data can be handed over to a state authority, a company, other organization, or an entrepreneur if legal consequences

⁵² "Official Gazette of the Republic of Serbia", No. 46/95

of conviction or safety measures still hold and if there is a fair reason founded on the law for such a thing. No one has the right to ask a citizen to present evidence on conviction or absence of conviction. On request of citizens, they may be given data on their conviction or absence of conviction only if they need the data for exercising their rights.

352. Article 146 of the Criminal Code incriminates unauthorized collecting, obtaining, releasing, and purposeless usage of personal data that are collected, processed, and used in accordance with the law.

353. Labour Law⁵³ in Article 26, Paragraph 2 prescribes that an employer cannot ask an applicant to present data on the family, i.e. marital status and family planning, that is to present documents and other evidence that are not directly relevant for activities for the performance of which the labour relation is established.

354. Law on Free Access to Information of Public Importance⁵⁴ in Article 14 envisages protection of privacy and other personal rights. This Article prescribes that an authority will not allow exercising of the right to a free access to information of public importance to the one who requests it if this would entail violation of the right to privacy, the right to respectability, or any other right of a person to whom the requested information refers to personally save for cases when the person in matter agreed to it or if the information refers to a person, a phenomenon, or an incidence of public interest, especially to a state official or political actor, and if the information in matter is important given the function this person is performing as well as when the information refers to a person who through their conduct, particularly regarding the private life, triggered the request for the information.

Article 18

Freedom of religion

355. Constitution of the Republic of Serbia in Article 11 lays down the principle of secularity of the State and prohibits establishment of a state religion.

356. Article 43 of the Constitution of the Republic of Serbia guarantees freedom of thought, conscience, beliefs, and religion as well as the right to stand by one's belief or religion or to change them of one's own accord. No person has the obligation to declare their religious or other beliefs. Everyone has the freedom to manifest their religion or religious beliefs in worship by observing, practicing, and teaching, individually or in community with others, and to manifest religious beliefs in private or public. Freedom of manifesting religion or beliefs may be restricted by the law only if that is necessary in a democratic society for the purpose of protecting lives and health of people, morals of a democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or for the purpose of preventing the causing or inciting of religious, national, or racial hatred. Parents and legal guardians have the right to provide religious and moral education for their children in conformity with their own convictions.

357. Article 44 of the Constitution of the Republic of Serbia sets out that churches and religious communities are equal and separated from the State. Churches and religious communities are equal and

⁵³ "Official Gazette of the Republic of Serbia", No. 24/2005

⁵⁴ "Official Gazette of the Republic of Serbia", No. 120/2004 and 54/2007

free to organize independently their internal structure, religious matters, to perform religious rites in public, to establish and manage religious schools, social and charity institutions, in accordance with the law. The Constitutional Court may ban a religious community only if its activities infringe the right to life, the right to mental and physical health, children's rights, the right to personal and family integrity, the right to property, public safety and order, or if it incites religious, national or racial intolerance.

358. Freedom of religion is more closely regulated through the Law on Churches and Religious Communities⁵⁵. Pursuant to Article 1 of the Law, in accordance with the Constitution of the Republic of Serbia everyone is guaranteed the right to freedom of conscience and religion. Freedom of religion includes: freedom to enjoy or not to enjoy, to retain or to change one's religion or religious belief, that is freedom of believing, and freedom to manifest one's faith in god; freedom to manifest one's religion or religious beliefs in worship, observance, practice and teaching, individually or in community with others, in public or in private, by cherishing and developing religious tradition; freedom to develop and enhance religious education and culture.

359. Pursuant to Article 4 of the Law on Religious Communities, subjects of religious freedom are traditional churches and religious communities, confessional communities, and other religious organizations.

360. Pursuant to Article 9, Paragraph 1 of the Law on Religious Communities, it is prescribed that churches and religious communities registered in accordance with the Law have the status of a legal entity. Pursuant to Article 17 of the Law, the ministry in charge of religious affairs manages the Registry of Churches and Religious Communities.

361. Pursuant to Article 10 of the Law on Churches and Religious Communities, traditional churches and religious communities are those that in the Republic of Serbia have several centuries long historical continuity and that gained their legal subjectivity on the basis of special laws, and they are: Serbian Orthodox Church, Roman Catholic Church, Slovak Evangelical Church a.c., Reformed Christian Church and Evangelical Christian Church a.c. as well as those that in Serbia have several centuries long historical continuity and that gained their legal subjectivity on the basis of special laws, and that Islamic Religious Community and Jewish Religious Community. Article 16 prescribes that confessional communities are all the churches and religious organizations the legal status of which had been regulated through the registry in accordance with earlier laws on the legal status of religious communities.

362. Pursuant to Articles 31-44 of the Law on Religious Communities, churches and religious communities can engage in worship, educational, and cultural activities.

363. In the Republic of Serbia all of the large churches and religious communities exist as well as a number of confessional organizations that belong to new Protestantism. The Serbian Orthodox Church is a dominant one by the number of believers and it includes Serbs and members of some national minorities. According to the latest census of 2002, of the total of 7,498,001 inhabitants of the Republic of Serbia, AP Kosovo and Metohija excluded from the data, 6,371,584 inhabitants declared as orthodox, i.e. 84.98%. The number of declared orthodox believers should be augmented by members of the Romanian Orthodox Church in Banat the

⁵⁵ "Official Gazette of the Republic of Serbia", No. 36/2006

number of which coincides with the number of members of the Romanian national minority in the Republic of Serbia. The Catholic Church includes the Hungarians, Croats, and members of other national minorities, and the number of these believers totals 410,976, i.e. 5.48% of the total number of inhabitants. There are 239,658 members of the Islamic religion, or 3.196% of the total number of inhabitants. Islam is a faith of Muslims/Bosniacs, Albanians at the south of the Republic of Serbia, and members of other national minorities. There are 80,837 Protestants in Serbia, or 1.078% of the total number of inhabitants. Traditional Protestantism includes Lutherans and Calvinists and they involve the Slovak Evangelical Church a.c. and the Reformed Christian Church. The Slovak Evangelical Church a.c. gathers the whole of Slovak national minority and a small number of Hungarians (about 50,000), while believers of the Reformed Christian Church are composed of a small number of members of the Hungarian national minority (15,000). Other Protestants are believers of the Christian Adventist Church, the Christian Baptist Church, the Pentecostal Church of Christ, Religious Community of Jehovah's Witnesses, and numerous other churches that belong to the evangelical movement. In the Republic of Serbia there are 785 members of the Judaist faith, i.e. 0.01046% of the total number of inhabitants. 787 inhabitants of the Republic of Serbia declared as members of pre-oriental unities, or 0.0071%. There are 18,768 believers, or 0.0063%, who do not belong to any specific church. Persons who declined to declare themselves religion-wise total 197,031 or 2.63%. Of the total number, 0.053% or 40,068 inhabitants declared themselves as non-believers, whereas 137,291 or 1.83% are registered as unknown.

Religious education

364. Law on Churches and Religious Communities in Article 40 envisages the right to religious teaching in state and private primary and secondary schools.

365. The Law on Amendments to the Law on Primary School⁵⁶ enshrines almost all provisions of the Decree on organization and realization of religious teaching of an alternative subject in primary and secondary school⁵⁷ with regard to the right to organize religious teaching, the curriculum and syllabus, a proposal of the textbook and teaching tools, authorization of textbooks for usage, a form of teacher's educational attainment, determining the list of teachers and the way they are included in the teaching process. Instead of an optional subject, i.e. an option to choose or not to choose classes of religion envisaged by the Decree on organization and realization of religious teaching of an alternative subject in primary and secondary school, the Law on Amendments to the Law on Primary School designates religion as an optional subject which, if selected, must be attended regularly. The Committee established by the Government of the Republic of Serbia formulates the proposal of the programme of religious teaching by traditional churches and religious communities, a draft textbook and other teaching tools, for providing an opinion to the minister for education within the process of selecting educational counselors for religious teaching and for the monitoring of organization and realization of the religious curriculum. Identical provisions as to the exercising of the right to religious teaching are contained in the Law on Amendments to the Law on Secondary School⁵⁸ except for the fact that an optional subject is directly selected by students who are not obliged to inform their parents or guardians about the choice, a provision contained in the Decree on

⁵⁶ "Official Gazette of the Republic of Serbia", No. 22/2002

⁵⁷ "Official Gazette of the Republic of Serbia", No. 46/2001

⁵⁸ "Official Gazette of the Republic of Serbia", No. 23/2002

organization and realization of religious teaching of an alternative subject in primary and secondary school.

366. According to Article 37 of the Law on Churches and Religious Communities, religious educational institutions have organizational and curricular autonomy, and churches and religious communities independently decide on the curriculum and syllabus, textbooks and reference books, they appoint and relieve from duty teaching and other staff and monitor their work. Certificates and diplomas of accredited religious educational institutions have the same status as valid certificates and diplomas obtained in state educational institutions.

367. Central schools for education of the clergy of the Serbian Orthodox Church are schools of theology in which students enroll after they have obtained the primary school degree. Today in Serbia there are schools of theology in Sremski Karlovci, Belgrade, Kragujevac, and Prizren (Nis). The historical Prizren School of theology in 1999, i.e. after international administration was established in Kosovo and Metohija, was moved to Nis.

368. The Serbian Orthodox Church educates its high school staff at the Faculty of Theology in Belgrade. The Faculty is a part of the Belgrade University and enables students to obtain a master's degree or, once they have finished attending lectures, a degree of a doctor of theological sciences in accord with the Bologna process. Specific and essential staff for the protection of cultural heritage is educated at the High School (Academy) for Arts and Conservation. The founder of the School is the Serbian Orthodox Church and the Academy was accredited by the Ministry of Education.

369. Highly educated staff for the needs of the Catholic Church is schooled at the Institute of Theology and Catechism in Subotica. Teaching is done in the Hungarian and Croatian language. The Diocese Classical Grammar School "Paulinum" exists in Subotica and the teaching is bilingual. The Theology Seminary "Augustinianum" in Subotica was founded in 2003.

370. The Faculty of Islamic Studies was founded in 2001. The Faculty enrolls a comparatively small number of students, and apart from the Faculty's staff, professors and lecturers from other faculties are also engaged, including those that come from some high education institutions from Bosnia and Herzegovina.

Funding of churches and religious communities

371. Law on Churches and Religious Communities in Article 26 provides for an opportunity for churches and religious communities to finance performance of their activities through revenues they generate from their own property, foundations, legacies, and funds, inheritance, presents and donations, other legal affairs and non-profit activities, in accordance with the law. This Article provides for independent management of the property and money resources in accordance with their own autonomous regulations. Churches and religious communities can engage in economic or other activities in a way and in line with regulations that regulate performance of these activities.

372. This very Law envisages an opportunity for state aid through which some activities of churches and religious communities can be funded. Article 28 enables the State to financially support churches and religious communities for the purpose of promoting religious freedoms and cooperation with churches and religious communities, which is in the interest of both parties. Seeking to provide social security of priests and religious employees, the legislator in Article 29 of the Law envisaged that the State, in agreement with churches and religious communities, can provide funds for pension, disability, and health insurance of this category of citizens. A competent state authority and a local self-government body authority, on the basis of Article 32 of the Law, can allocate budget funds for construction, maintenance, and reconstruction of religious facilities, in line with needs and capacities. Religious educational institutions that obtain verification, i.e. accreditation, pursuant to Article 36, have the right to budget funds proportionate to the number of believers according to the last census in the Republic of Serbia. In order to promote religious freedoms and education, pursuant to this Article the State can provide financial assistance also to religious educational institutions that are not a part of the educational system. Pursuant to Article 43 of the Law state bodies and local self-government bodies have an opportunity to provide donations for churches and religious communities, depending on their capacities, for their cultural and science institutions and programmes.

373. Based on the stated provisions of the Law, the Ministry of Religion of the Republic of Serbia in 2007 provided substantial financial aid to churches and religious communities. Budget funds were allocated for realization of cultural, publishing, and information programmes; for the purpose of helping the clergy, monks, and religious employees; as well as donations for religious schools; for reconstruction and construction of sacral cultural heritage; scholarships for students of theology and dioceses of the Serbian Orthodox Church outside Serbia. The most significant cultural and publishing institutions of churches and religious communities as well as for stimulating cultural and artistic events and spiritual music RSD 57,462,900.00 was allocated. For the improvement of the social status of priests and religious officers through contributions for compulsory pension and disability insurance and health insurance and the aid for those that serve in border and economically undeveloped regions RSD 117,655,135.09 was allocated. Assistance for religious schools amounted to RSD 157,480,500.00, and for the purpose of granting a scholarship for the most talented and socially underprivileged students of faculties of theology in the country and abroad RSD 56,169,000.00 was spent. As assistance to construction of religious buildings the State allocated RSD 219,911,500.00. Appreciating the role of church in preservation of a religious component of the national identity of Serbs in former states of Yugoslavia, RSD 29,931,167.94 was allocated. Churches and religious communities were approved substantial funds through realization of the National Investment Plan. The stated funds were distributed to all churches and religious communities in Serbia depending on the portion of believers on the basis of the last census.

374. Law on Restitution of Property to Churches and Religious Communities⁵⁹ in Article 1 regulates conditions, the method, and procedure for restitution of property that in the territory of the Republic of Serbia was taken from churches and religious communities as well as from their foundations and associations through enforcement of regulations on agricultural reforms, nationalization, sequestration, and other regulations enacted and enforced over the period after 1945 as well as other acts on the basis of which the property was expropriated without market compensation. Through law enforcement vast property has been returned to some churches and

⁵⁹ "Official Gazette of the Republic of Serbia", No. 46/2006

religious communities, but the whole procedure is hampered because of inexistence of valid documentation and innumerable changes to the property that were undertaken over the period after the expropriation.

375. Substantial funds for churches and religious communities are approved also from the budget of the AP of Vojvodina. Budget funds are allocated through regular and extraordinary public competitions, as well as through settling special requests. If necessary, funds for this purpose are provided from budget reserves.

376. In the course of 2006 the total of RSD 40,272,592.00 was distributed, of which through two regular competitions RSD 10,692,480, an extraordinary competition RSD 2,400,000.00, for the funding of extraordinary requests RSD 1,234,112.00, and from budget reserves RSD 25,946,000.00. 141 requests of traditional churches and religious confessions that exist in the territory of the AP of Vojvodina were resolved in a positive manner.

377. Viewed by churches and religious communities individually, the Serbian Orthodox Church received RSD 20,730,112.00, the Roman Catholic Church RSD 9,972,480.00, the Romanian Orthodox Church in Banat RSD 1,650,000.00, the Reform Christian Church RSD 1,460,000.00, the Greek Catholic Church RSD 1,230,000.00, the Slovak Evangelical Church a.c. RSD 850,000.00, the Islamic Religious Community RSD 200,000.00, the Jewish Community RSD 210,000.00, and the Evangelical Christian Church RSD 1,000,000.00.

Concluding Remarks and Recommendations - 21

Conscientious objection

378. Article 45 of the Constitution of the Republic of Serbia guarantees the right to conscientious objection. Provisions of the Article stipulate that a person is not obliged to, if contrary to their religion or beliefs, perform military or other duties involving the use of arms. Persons filing a conscientious objection may be called upon to fulfill their military duties without an obligation to bear arms.

379. Article 197 of the Law on Armed Forces of Serbia⁶⁰ stipulates the revocation of the Law on Armed Forces of Yugoslavia save for Articles 279-336 of the Law on Armed Forces of Yugoslavia⁶¹ which are to apply until new regulations on military duty have come into effect.

380. Pursuant to Article 296, Paragraphs 1 and 2 of the Law on Armed Forces of Yugoslavia, a soldier serving the military service bearing arms, as well as soldiers who, due to religious or other conscientious reasons, serve their military service without arms in a military unit or institution or the Ministry of Defense, shall serve the military service for a period of six months. A recruit wishing to serve the military service in a civilian service due to religious or other reasons of conscience shall serve the service for a period of nine months.

⁶⁰ "Official Gazette of the Republic of Serbia", No. 116/2007

⁶¹ "Official Gazette of the Federal Republic of Yugoslavia", No. 43/94, 44/99, 74/99, 3/2002 and "Official Gazette of Serbia and Montenegro", No. 7/2005 and 44/2005

381. Amendments to the Regulation on Compulsory Military Service eliminated most discrepancies of the Law on Armed Forces of Yugoslavia in relation to international standards. Pursuant to Article 27 a) of the Regulation thereof, the right to conscientious objection to military service and/or the right to serve in the military without bearing arms or in civilian service may not be granted to a person: owning a license to bear or keep arms; having submitted a request to bear or keep arms within the period of last three years; having been indicted for a crime pursued as per official duty or a criminal offence with elements of violence pursued by private suit; having been indicted for crimes with elements of violence over the period of previous three years.

382. Pursuant to the Draft Law on Civil Services, the preconditions for exercising the right to conscientious objection have been expanded in relation to the abovementioned Article 27 a) of the Regulation on the Compulsory Military Service, wherefore it was proposed that the right to conscientious objection may not be exercised by a military conscript (recruit or person in the reserve forces): having owned or owning a license to bear arms; having been indicted for a crime pursued as per official duty or a criminal act with elements of violence pursued by private suit; having been engaged or engaging in the sale or repair of arms or munitions; having been accused or tried for a crime pursued as per official duty; having been criminally punished or indicted on multiple occasions for inciting or taking part in riots or altercations; if the person is registered as owner or collector of firearms or trophy arms; if the person was or is a member of a hunting, shooting, archery or any other club, society or association making use of blade weapons or firearms; if it is determined that the person has provided false information in the civil service request submitted.

Article 19

Freedom of thought and expression

383. Article 46 of the Constitution of the Republic of Serbia guarantees freedom of thought and expression, as well as freedom to receive or impart information and ideas through speech, writing, art or in some other manner. Freedom of expression may be restricted if necessary to protect rights and reputation of others, to uphold the authority and impartiality of the court and protect public health, morals of a democratic society and national security of the Republic of Serbia.

384. Constitution of the Republic of Serbia guarantees freedom of media and press. Pursuant to Article 50 of the Constitution, every person shall have the freedom, without prior permission and in the manner envisaged by law, to establish newspapers and other forms of public information. Television and radio stations shall be established pursuant to law. Censorship shall not be applied in the Republic of Serbia. The competent court may prevent the dissemination of information and ideas through means of public informing only if necessary in a democratic society to prevent inciting a violent overthrow of the system established by the Constitution or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence or to prevent advocacy of racial, national or religious hatred, inciting discrimination, hostility or violence. The law regulates the realization of the right to correcting false, incomplete or inaccurately imparted information resulting in violation of rights or interests of any person, as well as the right to react to the communicated information.

385. Pursuant to provisions of Article 51 of the Constitution of the Republic of Serbia, every person shall be entitled to being informed accurately, fully and timely on issues of public importance and the media shall have the obligation to respect the right. Every person shall have the right of access to data kept by state bodies and organizations vested with public competencies, pursuant to law.

Freedom of the media

386. Provisions contained in Article 50, paragraphs 1, 2 and 3 of the Constitution of the Republic of Serbia stipulate that every person shall have the freedom, without prior permission and in the manner envisaged by law, to establish newspapers and other forms of public information. Television and radio stations shall be established pursuant to law. Censorship shall not be applied in the Republic of Serbia. The law regulates the realization of the right to correcting false, incomplete or inaccurately imparted information resulting in violation of rights or interests of any person, as well as the right to react to the communicated information.

387. Law on Broadcasting⁶², pursuant to Article 1 thereof, sets forth the conditions and manner of performing broadcasting activities, in line with international conventions and standards.

388. The basic principles underlying the Law on Broadcasting are: freedom, professionalism and independence of public broadcasting media; rational and efficient usage of the radio-frequency spectrum as a limited natural resource; prohibition of all forms of censorship and/or influence on the work of broadcasting public media; full affirmation of civic rights and freedoms, in particular the freedom of expression and pluralism of thought; application of internationally recognized norms and principles referring to the field of broadcasting, in particular respect for human rights in the field; impartiality, prohibition of discrimination and transparency of issuing broadcasting licenses; stimulation of broadcasting and creativity development in the field of radio and television media in the Republic of Serbia.

389. The Republic Broadcasting Agency has been established in line with the basic principles proclaimed by the Law on Broadcasting, as an autonomous and independent organization performing public competencies pursuant to law. The agency issues licenses for programme broadcasting and supervises the work of broadcasters pursuant to law.

390. The law envisages two public broadcasting services, the Broadcasting Institution of Serbia and the Broadcasting Institution of Vojvodina. The public service is fully autonomous from the authorities and is financed by the citizen subscription fee. When establishing its programme policy, the public service is liable to follow the general programme standards and pursue a general interest in compliance with law. The public broadcasting services of Serbia and Vojvodina became operational on May 1, 2006.

- Media in the Republic of Serbia

391. There is no official statistics of the number of printed public media in the Republic of Serbia. According to unofficial statistics, there are some 300 printed public media, 18 of which

⁶² "Official Gazette of the Republic of Serbia", No. 62/2006

are dailies and 10 are weeklies published in the entire territory of the Republic of Serbia. Other media are either regional or local in character.

392. According to official statistics of the Republic Broadcasting Agency, five televisions have been issued licenses for broadcasting their programs at the national level. Based on the Law on Broadcasting, the Broadcasting Institution of Serbia has been issued two frequencies as a public service of Serbia. Five radio programs have been issued licenses for broadcasting radio programs at the national level, while three frequencies have been issued to the Broadcasting Institution of Serbia pursuant to the Law on Broadcasting, as a public service. One license has been issued at the level of AP Vojvodina for broadcasting television program, as well as two frequencies to the Broadcasting Institution of Vojvodina as a public service of Vojvodina. One broadcaster has been issued a license for broadcasting radio program at the provincial level, while two radio frequencies have been issued to the Broadcasting Institution of Vojvodina as a public service.

393. At the regional level, 28 television and 24 radio broadcasters have been issued broadcasting licenses. At the local level, broadcasting licenses have been issued to 148 television and 267 radio broadcasters.

Right to information

394. Pursuant to Article 51 of the Constitution of the Republic of Serbia, every person shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right. Furthermore, everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law.

395. Article 1 of the Law on Public Information⁶³ regulates the right to public information as a right to freedom of expressing thoughts, as well as the rights and obligations of participants in the public information process. The right to public information includes, in particular, the freedom of expression of thought, freedom to collect, research, publish and impart ideas, information and opinions, freedom to print and distribute newspapers and other printed media, freedom to produce and broadcast radio and television programs, freedom to receive ideas, information and opinions, as well as freedom to establish legal entities dealing with public information.

396. Article 2 of the Law on Public Information stipulates that public information is free and in the interest of the public. Public information may not be censored. No person may, even indirectly, restrict the freedom of public information, in particular by misusing state or private authorities, by misusing rights, influence or control over the means of printing and distributing printed media or over broadcasting devices and radio frequencies, or in any other manner conducive to limiting a free flow of ideas, information and opinions. Furthermore, no person may exert physical or any other kind of pressure in terms of media and their employees, or other influence restricting their professional duties. The court shall decide upon violation of freedom of information by urgent procedure.

⁶³ "Official Gazette of the Republic of Serbia", No. 43/2003 and 61/2005

397. Article 7 of the Law on Public Information regulates the issue of prohibiting monopoly in the field of public information. In order to protect the principle of free competition and pluralism of ideas and opinions, every aspect of monopoly in the field of public information is forbidden. No person may have monopoly over establishing and/or distributing a media. No person may have monopoly over publishing ideas, information and opinions in a media.

398. Article 47 of the Law on Public Information envisages the right to reply and correction. A person that information refers to which may damage the person's right or interest may request from an editor-in-chief to publish a reply, without remuneration, stating that the information is false, incomplete or incorrect.

399. Article 1 of the Law on Free Access to Information of Public Importance regulates the right of access to information of public importance kept by state bodies, in order to realize and protect the interest of the public to be informed and to realize a free democratic polity and open society. In order to exercise the right, the Law establishes an autonomous state body which is independent in performing its competencies – Commissioner for Information of Public Importance.

400. Article 5 of the Law on Free Access to Information of Public Importance stipulates the right of every person to be informed whether a state body keeps a specific piece of information of public importance and/or whether the information is accessible. Every person is entitled to being made available a piece of information of public importance, by being allowed insight into the document containing the information of public importance, the right to a copy of the document and the right to, upon request, being delivered the copy of the document by mail, fax, e-mail or in another manner.

- Public Enterprise and Institutions Conducting Activities in the Field of Public Information

401. The Republic of Serbia founded a public enterprise and three public institutions in the field of public information, namely: Public Enterprise "Tanjug News Agency", Federal Public Institution "Radio Yugoslavia", Federal Public Institution "Film Journal", Federal Public Institution "Yugoslav Survey".

402. The legal entities have been established to conduct activities of public interest in the field of public information, according to regulations adopted by bodies of the former federal state (Federal Republic of Yugoslavia). Operations of these entities are funded by state-owned resources and their ongoing activities are funded by the resources of the Budget of the Republic of Serbia. They submit annual reports to the Government of the Republic of Serbia on their work and operations. Their final status in the Republic of Serbia is still not resolved.

- Accreditation of Foreign Journalists and Correspondent Offices

403. Provisions of the Law on the Import and Distribution of Foreign Mass Communication Media and on Foreign Information Activity in Yugoslavia⁶⁴ were invalidated on the day of the

⁶⁴ "Official Gazette of the Socialist Federal Republic of Yugoslavia", No. 39/74 and 74/87

Law on Public Information coming into effect, except for the provisions regulating the position of foreign information institutions and representatives of foreign media. Since the last amendment to the law was adopted in 1996, it is necessary that the valid provisions be harmonized with the Constitutions of the Republic of Serbia and effective laws of the Republic of Serbia.

404. According to the registry maintained by the Ministry of Culture, competent for issuing accreditations, 357 journalists, 77 agencies, 116 newspapers and 155 radio and television broadcasters were accredited on a permanent basis in the Republic of Serbia in 2007. Foreign journalists and correspondent offices are treated equally and have equal access to information as national journalists and agencies.

Concluding Remarks and Recommendations - 22

Insult and libel

405. Chapter 17 of the Criminal Code regulates criminal offences against honor and reputation. Article 170 defines the criminal offence of insult, while the criminal offence of libel is defined in Article 171. The novelty with regard to previous criminal legislation is that penalties for these criminal offences included fines only. The criminal offence of insult is not valid if the statement is given within a serious critique in a scientific, literary or artistic piece of work, while performing official duty, journalistic activities or political activities, while defending a right or protecting justified interests, or if it is obvious from the means of expression or other circumstances that the act is not performed with the purpose of demeaning. The novelty is that the offence of libel and insult, even when it is directed against a state body, is no longer prosecuted by a public prosecutor. According to the provisions, the issue is prosecuted by a private person and/or the damaged party, which sends a message to judges that the criminal offences are no longer considered dangerous for society.

406. According to the latest statistical data for 2006, the total of 1348 adults were convicted of the criminal offence against honor and reputation, 923 of which were charged a fine (765 on account of insult and 158 on account of libel), while others were issued court notices and suspended financial sentences.

Article 20

Prohibition of the propagation of war

407. Pursuant to Article 50, paragraph 1 of the Constitution of the Republic of Serbia, a competent court may prevent the dissemination of information and ideas through a public information means only when this is necessary in a democratic society to prevent inciting to violent overthrow of the system established by the Constitution or damaging of the territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence or to prevent advocacy of racial, ethnic or religious hatred inciting discrimination, hostility or violence.

408. Pursuant to provisions of Article 386 of the Criminal Code, every person advocating for or encouraging aggressive war shall be punished with a sentence of two to twelve years. The

offence of ordering the waging of aggressive war envisages the punishment of imprisonment not shorter than ten years or the punishment of imprisonment between thirty to forty years.

409. Article 17 of the Law on Public Information stipulates that the competent court may, at the motion of the public prosecutor, prohibit the dissemination of information when this is deemed necessary in a democratic society to prevent propagation of war or instigation to direct violence or to prevent advocacy of racial, ethnic or religious hatred encouraging discrimination, hostility or violence, or when it is established that the publication of information directly threatens to result in a serious, incorrigible consequence whose occurrence may not be prevented by other means. Article 38 of the Law thereof forbids encouragement of discrimination in ideas, information and opinions.

Prohibition on inciting racial, ethnic or religious hatred

410. Article 49 of the Constitution of the Republic of Serbia distinctly prohibits and criminalizes any form of inciting and encouraging racial, ethnic, religious or any other form of inequality, hatred or intolerance.

411. Article 317 of the Criminal Code prohibits encouragement of ethnic, racial or religious hatred and intolerance. The penalty for a basic criminal offence in this sense is the punishment of imprisonment between six months to five years. More specific forms of the criminal offense are punished by imprisonment between one to eight years and/or two to ten years.

412. Article 174 of the Criminal Code envisages a fine or imprisonment of up to three months for every person who demeans a nation or an ethnic minority.

413. A provision contained in Article 387 of the Criminal Code envisages the punishment of imprisonment of between six months to five years for any person who breaches the fundamental human rights and freedoms guaranteed by commonly accepted provisions of international law and ratified international treaties based on differences in race, color of skin, nationality, ethnic origin or any other personal characteristic. The same punishment applies to persons persecuting organizations or individuals for their promotion activities in favor of equality of people. Any person disseminating ideas on superiority of one race over another or promoting racial hatred or encouraging racial discrimination shall be punished by imprisonment between three months to three years.

414. Article 38 of the Law on Public Information prohibits hate speech and/or publishing of ideas, information and opinions which incite discrimination, hatred or violence against a person or a group of persons based on their belonging or not belonging to a race, religion, nation, ethnical group or their sexual affiliation, irrespective of whether the publishing thereof implies committing a criminal offence.

415. Article 40 of the Law on Public Information stipulates that there is no prohibition of hate speech if the information is a part of a scientific or journalistic text and is published: without intent to incite discrimination, hatred or violence against a person or a group of persons (in particular if such information is integral to an impartial journalistic report); with the aim to

indicate, from a critical point of view, discrimination, hatred or violence against a person or a group of persons or to events which represent or may represent encouragement of such behavior.

416. Article 79 of the Law on Broadcasting stipulates that competent representatives of public broadcasting services, when producing or broadcasting information programs, are liable to respect the principle of impartiality and objectivity when dealing with different political interests and different subjects, to stand for freedom and pluralism of expressing public opinion and to prevent all forms of racial, religious, national, ethnic or other kind of intolerance or hatred, as well as intolerance in terms of sexual affiliation.

417. As one of the activities of incriminated violent behavior in sports events, Article 20 of the Law on Preventing Violence and Unruly Behavior in Sports Events⁶⁵ refers to a perpetrator inciting national, racial or religious hatred or intolerance leading to violence or physical confrontation with participants of the event by behavior or slogans in the sports event. The criminal offence shall be penalized by imprisonment of between six months to five years. If the activity is conducted in a group, the set punishment is one to eight years of imprisonment, and the leader of the group shall be punished by one to ten years imprisonment. As for specific forms of the criminal offense, the set punishment is one to eight years imprisonment.

Article 21

Freedom of gathering and peaceful assembly

418. Article 54 of the Constitution of the Republic of Serbia stipulates that citizens may assemble freely. Assembly held indoors is not subject to permission or registering. Gathering, demonstrations and other forms of citizen assembly held outdoors are registered with the competent state body, pursuant to law. The freedom of assembly may be restricted by law only if necessary to protect public health, morals, rights of others, or security of the Republic of Serbia.

419. Peaceful assembly of citizens is further regulated by the Law on Citizen Assembly⁶⁶ as of 1992. Provisions of the law relating to assembly held indoors are not harmonized with the Constitution of the Republic of Serbia, wherefore the drafting of amendments to the law is under way.

420. Article 5 of the Law on Preventing Violence and Unruly Behavior in Sports Events stipulates that provisions relating to citizen assembly apply accordingly to the organization of sports events applies.

421. A total of 193,673 public gatherings were held in the period between January 1, 2004 through December 31, 2007 in the territory of the Republic of Serbia, 141,244 and/or 72.9% of which were sports gatherings. Of the total number of gatherings, 264 gatherings were cancelled, and 20 decisions were adopted on prohibiting holding of public gatherings, namely: in 2004 – 6, in 2005 – 2; in 2006 – 4, in 2007 – 8. Most gatherings were prohibited in order to prevent obstructing public traffic, jeopardizing health, public morals or the safety of people and property.

⁶⁵ “Official Gazette of the Republic of Serbia”, No. 67/2003 and 90/2007

⁶⁶ “Official Gazette of the Republic of Serbia”, No. 51/92

Article 22

Freedom of association

422. Constitution of the Republic of Serbia under Article 55 guarantees the freedom of political, union and any other form of association as well as the right to stay out of any association. Associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law. Secret and paramilitary associations shall be prohibited. Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred. Judges of Constitutional Court, judges, public prosecutors, Defender of Citizens, members of police force and military persons may not be members of political parties.

Political organizations and associations of citizens

423. The realization of the freedom of association into political organizations in the Republic of Serbia is still governed by the Law on Political Organizations⁶⁷. As regards the realization of the right to association of citizens in the Republic of Serbia, it is still governed by the Law on Social Organizations and Associations of Citizens⁶⁸ and the Law on Association of Citizens in Associations, Social Organizations and Political Organizations Established for the Territory of Socialist Federal Republic of Yugoslavia⁶⁹. Associating of foreigners in the Republic of Serbia is regulated by the Law on Movement and Stay of Aliens. In July 2008 the Government of the Republic of Serbia proposed the Draft Law on Civic Associations which was thereafter forwarded under urgent procedure to the National Assembly for adoption.

424. The Registry of Political Organizations and, since July 26, 2006, the Registry of Associations, Social Organizations and Political Organizations are maintained by the Ministry of Public Administration and Local Self-Government. The Registry of Associations of Citizens and Social Organizations, in accordance with the Law on Social Organizations and Associations of Citizens, is still maintained by the Ministry of Interior.

425. At present, there are 615 political organizations entered into the Registries, out of which 558 political organizations are registered as active and 57 political organizations are deregistered.

426. Over the period July 2003 - April 2008, 181 new political organizations were entered into the Registries whilst 27 political organizations were deregistered. All deregistered political organizations were deregistered on the grounds of notifications of cessation of operations which were submitted by the authorized representatives of these political organizations.

427. Over the period 1990 - April 2008, not a single political organization was banned. A decision to ban a political organization is normally taken by the Constitutional Court at the

⁶⁷ "Official Gazette of the Socialist Republic of Serbia", No 37/90

⁶⁸ "Official Gazette of the Socialist Republic of Serbia", No 24/82, 39/83, 17/84, 50/84, 45/85 and 12/89.

⁶⁹ "Official Gazette of the Federal Socialist Republic of Yugoslavia", No 42/90

request of the Government of the Republic of Serbia, the Republican Public Prosecutor or the authority in charge of the Registry of Political Organizations. If the Constitutional Court decides to ban the work of a political party, that political party shall be deregistered from the Registry as of the date of submittal of the decision taken by the Constitutional Court.

428. Over the period July 1, 2003 - March 31, 2008, the aggregate number of 8,061 associations of citizens and social organizations was registered into the Registry of Social and Political Organizations that is maintained by the Ministry of Public Administration and Local Self-Government. In the same period, 559 organizations were deregistered, out of which only 290 organizations due to cessation of operations, whilst in 269 other cases the cause of deregistration was a change of name, meaning that such organizations have continued to operate, only by a different name.

429. According to the data available in April 2008, over 30,000 associations of citizens and social organizations have theretofore been registered in the territory of the Republic of Serbia; out of which 13,778 associations of citizens and social organizations have been registered with the Ministry of Public Administration and Local Self-Government.

Trade unions

430. Labour Law of the Republic of Serbia provides that a trade union is an independent, democratic and self-supporting organization of employees that they join voluntarily for advocacy, representation, promotion and protection of their professional, labor, economic, social, cultural and other individual and collective interests.

431. Pursuant to Article 206 of the Labour Law, the freedom to organize in trade unions and pursue trade union activity is granted to employees, with pertinent entry into the Registry.

432. Pursuant to Article 218 of the Labour Law, a trade union shall be considered representative: if it has been set up and active on the basis of principles of freedom of trade union organization and activity; if it is independent from public bodies and employers; if it is funded mainly from membership fee and own sources; if it has the sufficient number of members on the basis of registration forms (comprising the membership of no less than 15% of the total number of employees with that employer and/or comprising the membership of no less than 10% of employees in that branch, group, subgroup of line of business in the territory of a certain territorial unit); if it is entered into the Registry pursuant to the Law and other regulations. When representativeness on the basis of number of members is being established, the priority is given to the last signed registration form for the trade union.

433. Labour Law in Article 239 stipulates that a trade union for which representativeness has been established shall be entitled to the following rights: right to collective bargaining and collective agreement on the respective level; right to participation in collective legal disputes; right to participation in tripartite and multipartite bodies on the pertinent level; other rights in accordance with the law.

434. The right to organize in trade unions within the Police and Armed Forces is governed by separate Laws. Pursuant to Article 134 of the Law on Police, police officers shall be entitled to organize in trade unions, professional and other associations in accordance with the Law. Law

on Armed Forces of Serbia under Article 14, Paragraph 3, specifies that professional members of the Armed Forces of Serbia are entitled to organize in trade unions pursuant to regulation enacted by the Government.

- Right to strike

435. Pursuant to Article 61 of the Constitution of the Republic of Serbia, the employed shall have the right to strike in accordance with the law and collective agreement. The right to strike may be restricted only by the law in accordance with nature or type of business activity.

436. Under Article 135 the Law on Police specifies that general regulations shall apply as appropriate to the organizing and carrying out strikes. Even when on strike authorized officers are required to apply police powers, if necessary, in order to: protect human life and safety; arrest and bring before competent authority persons apprehended while committing an offence subject to public prosecution; prevent criminal offences and identify perpetrators of offences subject to public prosecution. Police officers may not strike in case of: war, imminent threat of war or state of emergency; armed rebellion, insurrection or other forms of violent disturbance of the democratic and the constitutional system of the Republic of Serbia, or threats made against fundamental human rights and freedoms; declared natural disaster or immediate threat of natural disaster in the area of responsibility of two or more regional departments of the Ministry of the Interior or the entire territory of the Republic of Serbia, other disasters endangering normal life and the safety of life and property; large-scale threats to public order.

437. In accordance with Article 14, Paragraph 5 of the Law on Armed Forces of Serbia, strikes by the members of military services in the Republic of Serbia are prohibited.

Article 23

Family

438. Pursuant to Article 62 of the Constitution of the Republic of Serbia, everyone shall have the right to decide freely on entering or dissolving a marriage. Marriage shall be entered into based on the free consent of man and woman before the state body. Contracting, duration or dissolution of marriage shall be based on the equality of man and woman. Marriage, marital and family relations shall be regulated by the law. Extramarital community shall be equal with marriage, in accordance with the law.

439. Constitution of the Republic of Serbia under Article 66 guarantees families, mothers, single parents and children the special protection. In accordance with the provisions of Paragraphs 1 and 2 thereof, families, mothers, single parents and any child in the Republic of Serbia shall enjoy special protection in the Republic of Serbia in accordance with the law. Mothers shall be given special support and protection before and after childbirth.

440. The family, marriage and common-law marriage legal issues in the Republic of Serbia are governed by the Family Law. Pursuant to Article 2 of the Law, family shall enjoy special protection of the State, and everyone shall have the right to respect of their family life. Under

Article 3, marriage is a contracted union between a man and a woman, governed by this Law. Marriage may be concluded only on the grounds of free consent of future spouses. Spouses shall be equal.

441. Pursuant to Article 4 of the Family Law, common-law marriage is permanent cohabitation of man and woman, between whom there are no marriage obstacles. Rights and responsibilities of the common-law partners are stipulated by the Law. Common-law marriage, within the meaning of the Family Law, is equalized in formal and legal terms to formal marriage, in particular under the provisions regulating: the status of children born out of wedlock; the obligation of mutual support and the right to joint property of common-law partners in the course of duration of common-law marriage; the jurisdiction of relevant authorities in the domain of the realization of parental rights over children born out of wedlock upon termination of common-law marriage; the right of common-law partners to adopt children, etc.

442. In accordance with Article 15 of the Family Law, marriage shall be concluded by two persons of opposite sex by giving the statements of will before the registrar. Pursuant to Article 30, Paragraph 1, marriage may be terminated by death of spouse, annulment or divorce.

443. In divorce proceedings or proceedings for annulment of marriage, the Court shall be under obligation to decide on the issues of the exercise of parental right and the right of the child to maintain personal contact with the non-resident parent. A novelty in the Family Law is introduced by way of Paragraph 4, Article 60, pursuant to which a child who has reached the age of 15 and who is capable of reasoning shall have the right to decide with which parent he/she will live. As well, in accordance with Article 61, Paragraph 4 of the Law, the child who has reached 15 years of age and who is capable of reasoning shall have the right to decide on the manner of maintaining personal contact with the non-resident parent.

444. Another novelty in the Family Law is introduced by way of Articles 75 and 76. The provisions of these Articles regulate that parents shall be entitled to jointly exercise their parental right upon termination of their marriage or co-habitation (in case of common-law marriage) if they conclude an agreement on joint exercise of parental right. Agreement on joint exercise of parental right shall be deemed valid only if verified in the court proceedings. The court may verify such an agreement only if the theretofore obtained expert findings and opinions confirm that the stipulations of the agreement serve the best interest of the child.

445. In order to ensure full and timely protection of the child, the Family Law in Article 263 stipulates that proceedings for parental right, for deprivation of parental right or for protection of all rights of the child may be initiated only by the child, other parent, public prosecutor or guardianship authority. Citizens, health care institutions, educational institutions, state or other organizations have the right and duty to inform the public prosecutor or the guardianship authority on any violation of the rights of the child.

446. All proceedings for parental right, for deprivation of parental right or for protection of all rights of the child are deemed urgent; therefore, it is binding on the court to schedule the first hearing within 8 days as of the receipt of the complaint, whilst the court of the second instance is under obligation to decide on the appeal within 15 days as of the receipt of the appeal.

Article 24

Protection of the rights of the child

447. Pursuant to Article 64 of the Constitution of the Republic of Serbia, a child shall enjoy human rights suitable to his/her age and mental maturity. Every child shall have the right to personal name, entry in the registry of births, the right to learn about its ancestry, and the right to preserve his own identity. A child shall be protected from psychological, physical, economic and any other form of exploitation or abuse. A child born out of wedlock shall have the same rights as a child born in wedlock. Rights of the child and their protection shall be regulated by the law.

Capacity of the child to exercise rights

448. Constitution of the Republic of Serbia under Article 37, Paragraph 2, specifies that upon becoming of age all persons shall become capable of deciding independently about their rights and obligations. A person becomes of age after turning 18.

449. Positive regulations provide that no child below 14 years of age shall be required or allowed to work. Children between 14 and 18 are considered to have partial capacity to exercise rights, which means that minors of such age shall be allowed to perform certain jobs permitted by the law with the mandatory consent of their parents or legal guardians/representatives; minors shall be allowed to perform certain jobs permitted by the law without consent of parents or legal guardians/representatives if these jobs are of limited scope and significance. In accordance with Article 193 of the Family Law, the authorization of guardianship authority shall be required in case of activities which cannot be independently performed by either parents or guardians and which pertain to the property or certain rights and interests of the child such as alienation or encumbrance of property of the child, waiving inheritance, etc. Partial capacity to exercise rights also includes the capacity of the minor to: in capacity as father, recognize paternity or give consent to recognition of paternity (16 years of age); in capacity as mother, give consent to recognition of paternity (16 years of age), in capacity as child, decide with which parent he/she will live (15 years of age), decide on the manner of maintaining personal contact with the non-resident parent (15 years of age), decide on giving his/her consent to undertaking medical intervention (15 years of age), decide on secondary school he/she will attend (15 years of age). In case of adoption or fostering, a child who is 10 years of age or over and capable of reasoning shall be required to give his/her consent to his/her adoption or foster care placement.

450. In specific cases, full capacity to exercise rights may be attained before the age of 18. The Family Law prescribes under Article 11, Paragraphs 1 and 2, that full capacity to exercise rights shall be attained at the age of majority or under the age of majority if marriage is concluded with the Court permission. Under Article 11, Paragraph 3, this Law specifies that the Court may permit a minor 16 years of age or over to attain full capacity to exercise rights if the minor has become a parent and has reached the physical and mental maturity necessary for independent care of own person, rights and interests. This concept, of granting a minor parent of 16 years of age the full capacity to exercise rights only by virtue of consent of the Court in an extra-judicial procedure, represents a significant novelty as compared to the previous Law.

451. In accordance with Article 65 of the Family Law, a child who is capable of forming his/her own opinion shall have the right to freely express such opinion; child shall have the right to duly receive all information necessary for forming own opinion; child's opinion must be given due attention in all issues concerning the child and in all proceedings whereupon his/his rights are decided on; child who has reached 10 years of age shall have the right to freely and directly express his/her opinion in every court and administrative proceedings where his/her rights are decided upon; child who has reached 10 years of age shall have the right to address court or administrative organ, alone or through another person, and request assistance in realization of his/her right to free expression of opinion.

Support to children without parental care

452. Within the meaning of the Family Law, as specified under Article 113, Paragraph 3 thereof, child without parental care is: child who has no living parents; child whose parents are unknown or their residence is unknown; child whose parents are fully deprived of parental right and/or capacity to exercise rights; child whose parents have not yet acquired capacity to exercise rights; child whose parents are deprived of the right to protect and raise the child, or educate the child; and, child whose parents fail to show due interest in the child. This Law explicitly regulates the following specific aspects of the protection of children without parental care: adoption, fostering, placement in social care institutions for children without parental care and guardianship.

- Adoption

453. Adoption procedures are prescribed under Articles 88 through 109 of the Family Law. Pursuant to provisions thereof, parental rights of biological parents of adopted child shall be terminated upon the adoption; mutual rights and duties between the adopted child and his/her relatives by blood shall also be terminated upon the adoption. Only this type of adoption is recognized by the Serbian law. In accordance with the Family Law, adoption shall result in founding of equal rights and duties among adopted child and his/her offspring and adopter and his/her relatives as between child and parent or other relatives.

454. Unlike the old Law, which allowed the adoption to be established by way of a protocol agreed before an administrative authority (i.e. in a form of agreement), the new Family Law stipulates that adoption shall be established on the basis of a decision taken by the guardianship authority (i.e. in a form of administrative act). In the Republic of Serbia, relevant data on prospective adopters and children are centralized within the Integrated Personal Registry that is maintained by the Ministry in charge of family care affairs. An innovative element has been introduced in the procedure for establishing the eligibility of prospective adopters – *Preparation of prospective adopters*. The preparation of prospective adopters shall be carried out according to a special programme prescribed by the Minister in charge of family care affairs. During this preparation process, individual qualities of prospective adopters and their suitability for the role shall be explored and assessed. As well, the prospective adopters shall be given training in various parenting skills and capacities needed for such a specific situation. The adoption may cease to have effect only for the reasons of voidability or nullity, on the basis of action for annulment brought before a court of general jurisdiction.

455. As a significant novelty, the new Family Law provides for the age limit regarding the calendar maturity of prospective adopters and children. The minimum age of adopted children shall be 3 months and the maximum age shall be 18 years. Maximum age limit imposed for prospective adopters is 45 years. There must be at least 18 years age difference between the age of the adoptive parent and the prospective adopted child. Exceptionally, the Minister in charge of family care affairs may permit adoption to a person who is older than 45 years of age or to a person who is less than 18 years older than the child concerned, but only if the reasons for doing so are strongly justified. In accordance with the Family Law, common-law partners are permitted to adopt children. Under circumstances specified in this Law, foreign nationals may also adopt a child.

- Placement of children without parental care in foster families and social care institutions

456. As a result of the implementation of the Social Welfare System Reform Strategy, various reform projects and Family Law that opened up new possibilities regarding children without parental care, there has been a significant increase in the number of foster families and children placed with them and a significant decrease in the number of children placed in institutions. In this respect, two orphanages have been closed down, whilst in the still existing institutions the occupancy rate has been very substantially reduced, as a rule by 30% - 50%.

457. The development of foster care concept is still in progress, in particular a specialized foster care which is aimed at providing accommodation for children with behaviour problems, children with disabilities and physically or mentally underdeveloped children.

Citizenship of the Republic of Serbia

458. Constitution of the Republic of Serbia, under Article 38, specifies that acquiring and terminating the citizenship of the Republic of Serbia shall be regulated by the law. A citizen of the Republic of Serbia may not be expelled or deprived of the citizenship or the right to change it. Any child born in the Republic of Serbia shall have the right to citizenship of the Republic of Serbia unless conditions have been met to acquire citizenship of some other country.

459. Conditions for acquiring and terminating the citizenship of the Republic of Serbia are prescribed by the Law on Citizenship of the Republic of Serbia⁷⁰. This Law guarantees equal rights to all citizens in acquiring the status of citizen without discrimination on any grounds, such as gender, race, colour, language, creed, ethnic origin, income scale, social or any other status.

460. Pursuant to provisions of Article 6 of this Law, the citizenship of the Republic of Serbia shall be acquired: by origin; by birth in the territory of the Republic of Serbia; by acceptance; and, under international treaties.

461. Pursuant to provisions of Article 7 of this Law, the citizenship of the Republic of Serbia shall be acquired by origin by a child: whose both parents were citizens of the Republic of Serbia at the time of his or her birth; whose one parent was a citizen of the Republic of Serbia at the time of the child's birth and the child was born in the territory of the Republic of Serbia; who

⁷⁰ "Official Gazette of the Republic of Serbia", No 135/2004 and 90/2007

was born in the territory of the Republic of Serbia and whose one parent was a citizen of the Republic of Serbia at the time of his or her birth and the other one was unknown, or of unknown citizenship, or stateless.

462. Law on Citizenship of the Republic of Serbia permits dual or multiple citizenships. Agreement on Dual Citizenship between Federal Republic of Yugoslavia and Bosnia and Herzegovina is applied in the territory of the Republic of Serbia. In case of a multiple citizenship, in accordance with Article 5 of the Law, a citizen of the Republic of Serbia who has the citizenship of a foreign state as well shall be considered a citizen of the Republic of Serbia when he or she is in the territory of the Republic of Serbia; accordingly, he or she shall have the corresponding rights and duties.

463. As compared to the old Law, the new Law on Citizenship of the Republic of Serbia introduces more relaxed criteria for acquiring the citizenship on the basis of acceptance.

464. Transitional and final provisions of the Law on Citizenship of the Republic of Serbia, which in general have a protective character in terms of the rights of citizens, provide that the citizens of former SFRY who held the citizenship of some other Republic of SFRY or some other State constituted in the territory of SFRY and who were registered as permanent residents in the territory of the Republic of Serbia on April 27, 1992 (the promulgation of the Constitution of FRY), as well as the citizens of the Republic of Montenegro who were registered as permanent residents in the territory of the Republic of Serbia on June 03, 2006, shall have the right to acquire the citizenship of the Republic of Serbia.

465. Pursuant to Article 23 of the Law on Citizenship of the Republic of Serbia, a person belonging to Serbian or some other nation or ethnic community from the territory of the Republic of Serbia who has no permanent residence in the territory of the Republic of Serbia, or a refugee or exiled or displaced person who has residence in the Republic of Serbia or has taken refuge abroad, may be accepted into the citizenship of the Republic of Serbia if he or she files a written statement that he or she considers the Republic of Serbia to be his/her own state.

466. Pursuant to Article 27 of the Law on Citizenship of the Republic of Serbia, the citizenship of the Republic of Serbia shall cease: through discharge; through renunciation; or, under international treaties. The Law further lays down respective criteria for each of the three types of cessation of citizenship.

467. Under Article 34, the Law on Citizenship specifies that not only a person whose citizenship of the Republic of Serbia ceased at the request of his or her parents through a discharge or renunciation but a person who was discharged from the citizenship of the Republic of Serbia and has acquired foreign citizenship as well, may re-acquire the citizenship of the Republic of Serbia if he or she files an application for reacquiring of the citizenship of the Republic of Serbia, if he or she submits a written statement to the effect that he or she considers the Republic of Serbia to be his/her own state and if he or she meets other criteria as set by the law.

468. Decision on acquisition or cessation of the citizenship of the Republic of Serbia is not subject to appeal in administrative proceedings. However, the protection of rights is enabled

through court proceedings, by bringing an action before the Supreme Court of the Republic to review the legality of final administrative act.

469. In mid-July 2005 the Republic of Serbia revised its policy on administrative fees in compliance with recommendations under the European Convention on Nationality, thus ensuring that the fees for the acquisition of the citizenship of the Republic of Serbia are reasonable and present no obstacle to applicants.

Measures taken to prevent the involvement of children in armed conflicts

470. The provisions of Article 197 of the Law on Armed Forces of Serbia (that superseded the Law on the Yugoslav Army) stipulate that the provisions of Chapter XVII of the Law on the Yugoslav Army - Military Duty (Articles 279 through 336) shall stay in force until the passage of a regulation on military, labor and material duty.

471. Law on the Yugoslav Army in Article 288 specifies that recruitment duty is the obligation of a conscript to fulfill prescribed obligations and orders from territorial military authorities in charge, with regard to registration, medical and other examinations and check-ups, recruitment and deployment. Recruitment duty shall start at the beginning of the calendar year in which the citizen has attained the age of 17 years and shall last until the beginning of military service, i.e. until transfer to reserve corps if military service has been regulated in some other way. Pursuant to Article 289 of this Law, recruitment shall be conducted in the calendar year in which a conscript has attained the age of 18 years. The conscript may, upon his request, be recruited in the calendar year in which he has attained the age of 17 years. During war, President of the Republic may order the recruitment of conscripts who have attained the age 17 years.

472. Under Article 301, Paragraph 1, the Law on the Yugoslav Army prescribes that recruits who are assessed as capable or partially capable shall do military service when they have attained the age of 21 years, but military duty shall not cease at the end of the calendar year in which they have attained the age of 27 years. Pursuant to Article 285, military duty shall cease: upon attaining a specified age (60 years of age for men and 50 years of age for women); upon establishing that conscript is incapable; upon cessation of the conscript's citizenship of the Republic of Serbia. Pursuant to Article 303, Paragraph 2, where it is established that a conscript has not been sent to do military service until the end of the calendar year in which he has attained the age of 27 years, he shall be sent to do military service until the end of the calendar year in which he has attained the age of 35 years.

473. According to the Draft Law on Military, Labor and Material Duty, young people shall be registered for military service in the calendar year in which they have attained the age of 18 years. Registration is only the first stage in the fulfillment of recruitment duty and is prescribed as the duty of every male person to report to the relevant authority in the calendar year in which he has attained 18 years of age, for the purpose of registration and regulation of specific documents related to military records. In addition, according to this Draft Law, recruits shall be called for medical examination and recruitment before being sent to do military service, but not before they have attained the age of 18 years. Also, the Draft Law on Military, Labor and

Material Duty does not stipulate that during war the recruitment of conscripts may be ordered before the calendar year in which they have attained the age of 18 years.

Article 25

Electoral system

474. Constitution of the Republic of Serbia under Article 52 guarantees the electoral right. Every citizen of age and working ability (capacity to exercise rights) of the Republic of Serbia shall have the right to vote and be elected. Suffrage shall be universal and equal for all, the elections shall be free and direct and voting is carried out by secret ballot in person. Election right shall be protected by the law and in accordance with the law.

475. Pursuant to Article 114, Paragraphs 1 and 2 of the Constitution of the Republic of Serbia, the President of the Republic shall be elected on direct elections, by secret ballot, in accordance with the Law. Elections for the President of the Republic shall be scheduled by the Chairman of the National Assembly, 90 days before the end of term of office of the President of the Republic, so that elections finish within the following 60 days, in accordance with the law.

476. The election of the President of the Republic of Serbia is governed by the Law on the Election of the President of the Republic of Serbia⁷¹. In accordance with Article 9 of the Law, the President of the Republic may not perform another public function or professional duty. The President of the Republic of Serbia shall be obliged to fully comply with the regulations governing the conflict of interest in performing the public duties. Pursuant to Article 12 of the Law, no one shall be elected to a position of the President of the Republic more than twice, irrespective of the actual duration of his/her first and second term of office.

477. Under Article 100 the Constitution of the Republic of Serbia specifies that the National Assembly shall consist of 250 Deputies, who are elected on direct elections by secret ballot, in accordance with the Law. In the National Assembly, equality and representation of different genders and members of national minorities shall be provided, in accordance with law.

478. The election of Deputies to the National Assembly of the Republic of Serbia is governed by the Law on the Election of Representatives⁷². In accordance with Article 9 thereof, suffrage includes the right of citizens: to elect and to be elected; to nominate candidates and to be nominated as candidates; to make decisions concerning both nominated candidates and electoral lists; to publicly ask nominated candidates questions; to be timely, truthfully, completely and impartially informed about both the programs and activities of submitters of electoral lists and of the candidates on those lists, as well as to make use of other rights envisaged by this Law.

479. Pursuant to Article 40a of the Law on the Election of Representatives, for every four candidates on the electoral list (first group of four places, second group of four places and so on until the end of the list) there shall be one candidate of the gender less represented on the list, and the number of candidates of the gender less represented on the list shall be at least 30% of the total number. If an electoral list should not meet the set conditions, it shall be deemed incomplete for proclamation, and the submitter of the list shall be called to remedy the deficiencies of the

⁷¹ "Official Gazette of the Republic of Serbia", No 111/2007

⁷² "Official Gazette of the Republic of Serbia", No 35/2000 and 18/2004

list, in accordance with the Law. If the submitter of the list should not remedy the deficiencies, the Republic Electoral Commission shall refuse to proclaim the electoral list.

480. Pursuant to Article 95, Paragraphs 1 and 2 of the Law on the Election of Representatives, every voter, candidate and submitter of electoral list has the right to file an appeal with the Republic Electoral Commission over the infringements of electoral rights during the elections, or over the irregularities in the procedure of candidacy or voting. An appeal against a decision, act or mistake by a polling board shall be filed with the Republic Electoral Commission.

481. Pursuant to Article 97 thereof, all rulings of the Republic Electoral Commission passed as a result of objections raised are subject to appeal. An appeal against the rulings of the Republic Electoral Commission may be lodged with the Supreme Court of Serbia. This appeal shall be lodged through the Republic Electoral Commission within 48 hours of receipt of the ruling. The Republic Electoral Commission is bound to hand over the appeal and all required documents to the Supreme Court of Serbia within 24 hours from the hour of receipt of the appeal. The Supreme Court of Serbia shall rule on the appeal according to provisions of the Law regulating the procedure in administrative cases. A ruling on the appeal shall be made not later than 48 hours after the receipt of the appeal and accompanying documentation. The ruling on the appeal shall take immediate effect and neither requirements for extraordinary revision of the court ruling, nor requests for repeated proceedings, envisaged by the Law on Administrative Procedure, can be filed against it. If the Court endorses this appeal and annul electoral activity or elections, the relevant electoral activity, or elections, shall be repeated at the latest within 10 days.

482. The election of councilors of assemblies of units of local self-government is governed by the Law on Local Elections. In accordance with this Law, the citizens shall elect councilors on the basis of free, universal and equal suffrage, directly and by secret vote. The right to elect a councilor shall belong to all adult citizens of the Republic of Serbia with the capacity to exercise rights and with residence in the territory of the unit of local self-government where he/she practices his/her right to vote. Eligible to be elected for councilor shall be all adult citizens of the Republic of Serbia with the capacity to exercise rights and with residence in the territory of the unit of local self-government in which he/she was nominated for a councilor. Pursuant to Article 20 of the Law on Local Elections, the electoral list shall include no less than 30% of candidates of the less represented gender on the list.

483. Pursuant to Article 54 of the Law on Local Elections, appeal against the decision of the Election Commission may be filed with the competent District Court within 24 hours of the delivery of the decision. The Election Commission shall deliver to the court without delay and no later than within 12 hours all the necessary information and records for taking a decision. In the election right protection proceedings, the Court shall accordingly apply the provisions of the Law governing disputes in administrative proceedings. The decision upon the appeal shall be taken no later than 48 hours from the receipt of the appeal with accompanying records. The decision taken in the appeal proceedings shall be final and may not be subject to a request for the exceptional review of the court decision, nor for the reopening of the proceedings as specified by the Law on Administrative Disputes.

484. According to Article 55 of the Law on Local Elections, if the court adopts the appeal, it shall invalidate the decision or action in the candidate nomination or councilor election

procedure or it shall invalidate the election of the councilor. If the court decides that the contested decision should be invalidated, if appropriate and if the ascertained facts provide reliable grounds for it, the court may take a meritorious decision solving the election dispute. The decision of the court shall fully replace the invalidated enactment. If upon the objection or appeal, an action in the election procedure or the election of councilors has been invalidated, the municipal electoral commission shall repeat the adequate election action or the elections in the term for repeated elections prescribed by this Law. The said term will start as of the day of enacting the decision on the invalidation.

485. According to Article 75, Paragraph 1 of the Law on Local Elections, requests for deciding on electoral disputes for which jurisdiction of a court is not defined by law may be submitted by: any elector, candidates for President of the Republic, deputy or council member, as well as parties who nominate candidates. Under Article 77, Paragraph 1, this Law provides that where an irregularity in an election procedure was proved, and had a significant influence on the result of the election, the Constitutional Court issues a decision annulling the entire electoral procedure or parts thereof, which must be designated precisely. Pursuant to provisions of Article 78, the decision of annulment of the entire electoral procedure or parts thereof issued by the Constitutional Court shall take effect as of the day of its submittal to the competent authority.

Article 26

Concluding remarks and recommendations - 23

Prohibition of discrimination

486. Constitution of the Republic of Serbia under Article 21, Paragraphs 1 through 3, specifies that all citizens are equal before the Constitution and law. Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited.

487. Within the legal system of the Republic of Serbia there is no single, all-embracing law to comprehensively regulate the area of (non-)discrimination. However, discrimination is prohibited under a number of specific laws and subject to criminal sanctions in fields such as education, employment, media and health care.

488. Pursuant to Article 128 of the Criminal Code of the Republic of Serbia, whoever denies or restricts the right of man and citizen guaranteed by the Constitution, laws or other legislation or general acts or ratified international treaties on grounds of nationality or ethnicity, race or religion or due to absence of such affiliation or difference in political or other conviction, sex, language, education, social status, social origin, property or other personal characteristic, or pursuant to such difference grants another privileges or benefits, shall be punished with imprisonment up to three years. If the specified act is committed by an official in discharge of duty, such person shall be punished with imprisonment of three months to five years.

489. Pursuant to Article 317 of the Criminal Code, whoever instigates or exacerbates national, racial or religious hatred or intolerance among the peoples and ethnic communities living in Serbia shall be punished by imprisonment of six months to five years. If the specified offence is

committed by coercion, maltreatment, compromising security, exposure to derision of national, ethnic or religious symbols, damage to other persons, goods, desecration of monuments, memorials or graves, the offender shall be punished by imprisonment of one to eight years. Whoever commits the specified offence by abuse of position or authority, or if these offences result in riots, violence or other grave consequences to co-existence of peoples, national minorities or ethnic groups living in Serbia, shall be punished by imprisonment of one to eight years i.e. imprisonment of two to ten years.

490. Under Article 387 the Criminal Code stipulates that whoever on grounds of race, colour, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties ratified by the Republic of Serbia, shall be punished by imprisonment of six months to five years. The same penalty shall be imposed on whoever persecutes organizations or individuals due to their commitment for equality of people. Whoever propagates ideas of superiority of one race over another or propagates racial intolerance or instigates racial discrimination, shall be punished by imprisonment of three months to three years.

491. Law on Foundations of the Education System⁷³ under Article 46 prohibits all actions which may result in endangerment or derision or instigation of endangerment or derision of groups or individuals on grounds of their racial, national, linguistic or religious affiliation. According to this Law, persons who endanger or deride groups or individuals on grounds of their racial, national, linguistic, gender or religious affiliation shall be punished with a pecuniary fine.

492. In accordance with Article 18 of the Labour Law, both direct and indirect discriminations are prohibited against persons seeking employment and employees in respect to their sex, origin, language, race, color of skin, age, pregnancy, health status or disability, nationality, religion, marital status, familial commitments, sexual orientation, political or other belief, social background, financial status, membership in political organizations, trade unions or any other personal quality. Under Article 20, discrimination is prohibited in relation to: employment conditions and selection of candidates for a certain job; working conditions and all rights resulting from the labor relationship; education, training and advanced training; promotion at work; and, termination of the labour contract. Provisions of the labour contract establishing discrimination on some of the specified grounds shall be null and void.

493. In the domain of public information, the Broadcasting Law under Article 3, point 6, specifies that the regulation of relations in the broadcasting sector shall be *inter alia* based on the principles of impartiality, prohibition of discrimination, and transparency of the procedure for issuing broadcasting licences. The prohibition of discrimination is further elaborated in a number of provisions of this Law. Pursuant to Article 38, Paragraph 2 thereof, any legal or natural person, fulfilling the prescribed conditions and adopted regulations, may be granted a licence to broadcast a radio and television programme under equal terms. In accordance with provisions of Article 77, Paragraph 3, programmes produced and broadcast within the public broadcasting service must ensure diversity and balance (mutual coordination or conformity) of content

⁷³ "Official Gazette of the Republic of Serbia", No 62/2003, 64/2003, 58/2004 and 62/2004

upholding democratic values of modern society, particularly the respect for human rights and cultural, national, ethnic and political pluralism of views and opinions.

494. Serbian Public Information Law, under Article 16, prohibits discrimination in distribution of press and other means of public information. This Article regulates that persons engaged in media distribution (media distributors) may not refuse to distribute any publisher's press publications or other means of public information, except on the grounds of justified commercial reasons. In this respect, the provisions of Article 16 also prohibit the media distributors to set such distribution conditions which may be in contravention to the market principles.

495. With the aim of achieving public interest in the public broadcasting sector, the Broadcasting Law of the Republic of Serbia, under Article 78, provides that public broadcasting service carriers shall *inter alia* produce and broadcast programmes intended for all segments of society, without discrimination, particularly taking into consideration specific societal groups such as children and youth, minority and ethnic groups, handicapped, socially and medically vulnerable groups, etc.

496. One of the key principles in regard to health care, as contained in Article 20 of the Law on Health Care of the Republic of Serbia, is the principle of equity. Realization of the principle of equity in provision of health care is supported by the prohibition of discrimination *inter alia* on grounds of race, national affiliation, creed, culture and language.

497. Law on Prevention of Discrimination against Persons with Disabilities⁷⁴ under Article 1, prescribes for the general regime of prohibition of discrimination on basis of disability; particular cases of forbidden discrimination against persons with disabilities; procedures for protection of persons who had been victims of discrimination; and, measures that State and local authorities take in order to promote and encourage equality and social inclusion of persons with disabilities.

498. The Law on Prevention of Discrimination against Persons with Disabilities, as defined under Article 2 thereof, builds upon the following principles: prohibition of discrimination against persons with disabilities; respect for human rights and dignity of persons with disabilities; integration of persons with disabilities in all spheres of social life on the basis of equality; inclusion of persons with disabilities in all decision-making processes pertaining to their rights and duties; and, equality of rights and duties.

499. The provisions of Articles 39 through 45 of the Law on Prevention of Discrimination against Persons with Disabilities provide for specific rules of civil procedure in cases of discrimination on grounds of disabilities. Proceedings are initiated by a complaint lodged by person with disability claiming to have been a victim of discrimination, or that person's legal representative. Exceptionally, under circumstances stipulated by the Law, the complaint may be lodged by companions of disabled persons. The lodger of complaint may request: prohibition of carrying out of act that would constitute discrimination; cessation of continued or repeated carrying out of the act of discrimination; removal of consequences of discrimination; declaration that defendant carried out an act of discrimination; and, compensation for material or other damage caused. Civil procedures in cases of discrimination on grounds of disabilities are subject to re-examination.

⁷⁴ "Official Gazette of the Republic of Serbia", No 33/2006

Measures aimed at improving full and effective equality

500. Constitution of the Republic of Serbia under Article 21, Paragraph 4, specifies that special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination. Under Article 76, Paragraph 3, the Constitution provides a similar solution for national minorities.

501. Measures aimed at ensuring equality are provided for, as well, in the Law on Protection of Rights and Freedoms National Minorities⁷⁵. Under Article 4, this Law provides that State authorities may, in accordance with the Constitution and the Law, pass legal rules, individual legal acts and take measures with the aim of securing full and effective equality for the persons belonging to national minorities and to the majority nation. Authorities will pass legal acts and take measures with the aim of improving the position of persons belonging to the Roma national minority. Legal rules, individual legal acts and measures referred to shall not be deemed acts of discrimination.

502. Law on Employment and Insurance in case of Unemployment⁷⁶ in Article 31 provides that Government or competent authority in a territorial autonomy or local self-government shall be entitled to enact programmes of proactive employment policy. Such programmes should specify the priorities, measures, resources and competencies envisaged for the implementation of the proactive employment policy, while focusing on the employment of vulnerable groups such as refugees and displaced persons, or persons belonging to national minorities with a high unemployment rate. Pursuant to the provisions of Article 34 of this Law, the employers who employ: persons who have never before been employed; persons who have been unemployed for a rather long period; persons who are over 50 years of age; refugees and displaced persons; persons belonging to national minorities with a high unemployment rate; persons with disabilities and persons with a diminished capacity for work, shall have the right to subsidies for health, social, and pension security contributions as well as for the insurance in case of unemployment which shall be provided through the National Employment Service.

503. Under Article 8, Paragraph 1, the Law on Prevention of Discrimination against Persons with Disabilities stipulates that it shall not be considered discrimination to adopt provisions of legislation, regulations, decisions or specific measures aimed at: improving the status of persons with disabilities, their families and their organizations; or, providing a special support which is needed for the realization of the rights of persons with disabilities under conditions of equality. Pursuant to Article 32, Paragraph 2 of this Law, the incentives that are introduced in order to accelerate the effectuation of the employment of persons with disabilities in accordance with the Law governing the employment of persons with disabilities shall not be deemed discrimination in employment.

504. Measures of affirmative action are also provided for in the Law on the Election of Representatives and Law on Local Elections.

⁷⁵ “Official Gazette of the Federal Republic of Yugoslavia”, No 11/2002

⁷⁶ “Official Gazette of the Republic of Serbia”, No 17/2003

505. Measures of affirmative action are also contained in a number of by-laws which have been adopted on different levels of the public governance. The Resolution on the Measures Aimed at Increasing the Participation of Persons belonging to National Minorities in the Public Administration Bodies, adopted by the Government of the Republic of Serbia, provides that such public administration bodies for which it is planned that more than 1/3 of the total number of systematic employees should work in regional units formed for the territory in which, in accordance with the decisions of the authorities of local self-government units, the language of one or more national minorities is in equal official use, must undertake necessary measures and envisage in their Rules on Internal Organization and Job Systematization a relevant number of jobs that stipulate as mandatory the knowledge of at least one minority language and script of those minority languages and scripts that are officially used in the territory for which the local self-government unit from that territory is formed. Further, where the recruiting procedure for publicly announced vacant positions in the referred to regional units entails testing of the candidates' knowledge and skills in writing, the candidates shall be provided with tests and other likewise material in the minority language concerned. The most consequential aspect of the affirmative measures provided for in this Resolution specifies that at short-listing and selecting the successful candidate, upon the publicly announced vacancy, the Personnel Committee and/or the head of the public administration body are obliged, while respecting the principle of professionalism that implies the candidate's possession of adequate professional qualifications, knowledge and skills, to give particular consideration to the issue of actual representation of persons belonging to national minorities in the overall structure composition of that body, as the principal selection criterion when choosing between the equally eligible candidates.

506. The by-laws which contain measures of affirmative action have also been adopted by administration bodies on the local levels. Some of the Statutes adopted by the units of local self-government contain provisions which prescribe that municipality administration and public enterprises founded by the municipality must give careful consideration to ethnic composition of their structure i.e. must clearly specify in their Acts on Systematization a minimum number of employees belonging to national minorities.

Article 27

National minorities

507. The ethnic structure of the population of the Republic of Serbia, according to the 2002 Census, is provided in the table below:

	Republic of Serbia		Central Serbia	AP Vojvodina
	Number	%		
Serbs	6212838	82.86	4891031	1321807
Montenegrins	69049	0.9	33536	35513
Albanians	61647	0.8	59952	1695
Ashkalia	584	0.01	413	171
Bosniacs	136087	1.8	135670	417
Bulgarians	20497	0.3	18839	1658
Bunjevci	20012	0.3	246	19766
Vlachs	40054	0.5	39953	101

Gorani	4581	0.1	3975	606
Greeks	572	0.01	352	220
Egyptians	814	0.01	685	129
Jews	1158	0.02	706	452
Yugoslavs	80721	1.1	30840	49881
Hungarians	293299	3.9	3092	290207
Macedonians	25847	0.3	14062	11785
Moslems	19503	0.3	15869	3634
Germans	3901	0.05	747	3154
Roma	108193	1.44	79136	29057
Romanians	34576	0.5	4157	30419
Russians	2588	0.03	1648	940
Ruthenians	15905	0.21	279	15626
Slovaks	59021	0.8	2384	56637
Slovenians	5104	0.07	3099	2005
Turks	522	0.01	385	137
Ukrainians	5354	0.1	719	4635
Croats	70602	0.9	14056	56546
Tzintzars	293	0.004	248	45
Czechs	2211	0.03	563	1648
Backa Croats (Sokci)	717	0.01	38	679
Total population	7498001		5466009	2031992

Table 10

508. The rights of national minorities are protected in accordance with Article 14 of the Constitution of the Republic of Serbia: “The State shall guarantee special protection to national minorities for the purpose of exercising full equality and preserving their identity.” In accordance with Article 47 of the Constitution, national affiliation may be expressed freely and no person shall be obliged to declare his national affiliation.

509. The provisions of Article 75 of the Constitution of the Republic of Serbia regulate that persons belonging to national minorities shall be guaranteed special individual or collective rights in addition to the rights guaranteed to all citizens by the Constitution. Individual rights shall be exercised individually and collective rights in community with others, in accordance with the Constitution, law and international treaties. Persons belonging to national minorities shall take part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script through their collective rights in accordance with the law. Persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law.

510. Under Articles 76 through 80, the Constitution of the Republic of Serbia guarantees to persons belonging to national minorities: prohibition of discrimination on grounds of affiliation

to a national minority; equality in administering public affairs; prohibition of forced assimilation; right to preservation of specificity; right to association and cooperation with compatriots.

511. The provisions of Article 81 of the Constitution of the Republic of Serbia regulate that in the field of education, culture and information, the Republic of Serbia shall give impetus to the spirit of tolerance and intercultural dialogue and undertake efficient measures for enhancement of mutual respect, understanding and cooperation among all people living on its territory, regardless of their ethnic, cultural, linguistic or religious identity.⁷⁷

512. Status of national minorities in the Republic of Serbia is governed by the Law on Protection of Rights and Freedoms National Minorities. This Law provides in Article 2 the following definition of national minority "...a national minority is a group of citizens of this State sufficiently representative, although in a minority position in the territory of the State, belonging to group of the population with a lasting and firm connection with the territory of the State and possessing some distinctive features, such as language, national or ethnic belonging, origin or religion, upon which it differs from the majority of the population, and its members should show their concern over preservation of their common identity, including culture, tradition, language or religion."

513. In accordance with Article 19, Paragraphs 1, 2 and 7 of the Law on Protection of Rights and Freedoms National Minorities, persons belonging to national minorities may elect their national councils for the purpose of exercising their right to self-governance in the fields of the use of language and script, education, media and culture. National council is legal person and represents a national minority in the fields of use of language, education, informing in the language of the national minority and culture. National council participates in decision-making or decides on issues belonging to the referred to fields and establishes institutions to operate within these fields' scope of reference.

Funding of national minorities

514. Most of the persons belonging to national minorities live in AP Vojvodina. In accordance with the Decision on Allocation of Budget Resources of the Provincial Secretariat for Regulations, Administration and National Minorities for the purpose of grants to ethnic communities⁷⁸ and Decision on Final Allocation of Budget Resources of the Provincial Secretariat for Regulations, Administration and National Minorities for the purpose of grants to ethnic communities⁷⁹, and according to the financial plan and Budget funds available in AP Vojvodina, in 2006 there were three tenders announced for the purpose of co-financing of regular activities and material costs of national minority organizations i.e. organizations which are important for the preservation of national minorities' national and cultural identity. Aggregate funds allocated on the basis of tenders amounted to RSD 18,144,997.52. In addition, funds amounting to RSD 1,110,000.00 were also granted from current budgetary reserve. Thus,

⁷⁷ In 2005, the Executive Council of AP Vojvodina launched a project "Affirmation of Multiculturalism and Tolerance in Vojvodina" aimed primarily at reducing the interethnic tension, and, in the long term, at fostering the spirit of tolerance and mutual respect and trust with the citizens of the Province. The Project has been implemented by the Provincial Secretariat of Regulations, Administration and National Minorities of AP Vojvodina, in cooperation with other Provincial Secretariats, institutions of education, and non-governmental and other organizations.

the aggregate budget funds allocated in 2006 for the referred-to activities amounted to RSD 19,254,997.52 (Hungarians - 7,840,00.00; Croats - 1,220,00.00; Slovaks -1,290,00.00; Romanians - 1,240,00.00; Ruthenians - 1,000,000.00; Roma - 3,610,000.00; Bunjevci - 580,000.00; Macedonians - 135,000.00; Ukrainians - 320,000.00; Germans - 445,000.00; Slovenians - 180,000.00; Bulgarians - 150,000.00; Czechs - 240,000.00; Ashkalia - 130,000.00; Jews - 160,000.00; Egyptians - 20,000.00; other minorities 694,997.52).

515. In AP Vojvodina, in 2006, on the basis of the Decision on Allocation of Budget Resources of the Provincial Secretariat for Regulations, Administration and National Minorities⁸⁰, aggregate amount of RSD 9,400,000.00 was distributed to eight national councils, as follows: RSD 4,130,000.00 to the National Council of Hungarian national minority; RSD 1,000,000.00 to the National Council of Slovakian national minority; RSD 100,000.00 to the National Council of Croatian national minority; RSD 640,000.00 to the National Council of Ruthenian national minority; RSD 440,000.00 to the National Council of Bunjevci national minority; RSD 750,000.00 to the National Council of Romanian national minority; RSD 430,000.00 to the National Council of Ukrainian national minority; and, RSD 350,000.00 to the National Council of Macedonian national minority. National councils whose seats are not registered within the territory of AP Vojvodina but still take activities pertaining to the part of their population living in the territory of AP Vojvodina were also granted funds from the Budget. These funds were distributed as follows: RSD 330,000.00 to the National Council of the Roma national minority; RSD 330,000.00 to the National Council of Bulgarian national minority.

516. In 2007, the Provincial Secretariat for Regulations, Administration and National Minorities, in line with the financial plan and Budget funds available in AP Vojvodina, announced two regular tenders for the purpose of grants to ethnic communities. The aggregate funds granted to minority organizations in 2007 amounted to RSD 30,891,142.00, out of which: RSD 25,209,082.00 were allocated on the basis of the tenders; RSD 2,067,060.00 were allocated on the basis of the Decision on Final Allocation of Budget Resources of the Provincial Secretariat for Regulations, Administration and National Minorities for the purpose of grants to ethnic communities; and, RSD 3,615,000.00 were allocated from the current budgetary reserve.

517. The amount of RSD 30,891,142.00 was distributed to national minorities as follows: Ashkalia - RSD 181,000.00; Bulgarians - RSD 310,000.00; Bunjevci - RSD 970,000.00; Egyptians - RSD 30,000.00; Jews - 280,000.00; Hungarians - RSD 14,110,000.00; Macedonians - RSD 720,000.00; Multicult. - RSD 1,230,000.00; Germans - RSD 850,000.00; Roma - RSD 2,611,060.00; Romanians - RSD 2,070,000.00; Ruthenians - 1,645,000.00; Slovaks - RSD 2,320,000.00; Slovenians - RSD 270,000.00; Ukrainians - RSD 718,000.00; Croats - RSD 2,296,082.00; Czechs - RSD 230,000.00; and, Greeks - RSD 50,000.00.

518. Pursuant to the Executive Council of AP Vojvodina's Decision on Allocation of Budget Resources of the Provincial Secretariat for Regulations, Administration and National Minorities, and pursuant to the Executive Council of AP Vojvodina's Decision on Allocation of Resources from the Budgetary Reserve, in 2007, national councils of national minorities were awarded funds to the aggregate amount of RSD 13,500,000.00. These funds were distributed as follows:

⁷⁸ "Official Journal of the AP Vojvodina", No 9/2004

⁷⁹ "Official Journal of the AP Vojvodina", No 5/2006

⁸⁰ "Official Journal of the AP Vojvodina", No 9/2004

RSD 5,340,000.00 to the National Council of Hungarian national minority; RSD 1,440,000.00 to the National Council of Croatian national minority; RSD 860,000.00 to the National Council of Ruthenian national minority; RSD 880,000.00 to the National Council of Bunjevci national minority; RSD 1,612,000.00 to the National Council of Romanian national minority; RSD 1,165,000.00 to the National Council of Ukrainian national minority; RSD 1,440,000.00 to the National Council of Slovakian national minority; and, RSD 763,000.00 to the National Council of Macedonian national minority.

Improvement of co-operation between the Police and minority groups

519. At the initiative of OSCE Mission in Serbia and ODIHR, the Ministry of Interior of the Republic of Serbia has set in motion a project entitled *Policing Marginalized, Minority and Socially Vulnerable Groups*. The aim of this project is to raise awareness of police officers, through training courses, on the rights of persons belonging to marginalized, minority and socially vulnerable groups, and to advise on the steps that should be taken in policing when addressing the safety needs of these groups. The Ministry of Interior has designated a Coordinator for liaison and improvement of cooperation with marginalized, minority and socially vulnerable groups. As a part of this Project, activities are currently underway on preparation of a draft plan for further education of police officers in several different areas of policing. Some of these programmes focus on: police work in the context of multi-cultural, multi-ethnic and multi-confessional society; issues related to religious diversity; issues related to prevention and combating all violations, misdemeanors or criminal offences against citizens on grounds of their religious or national affiliation.

520. Regional law-enforcement departments provide that persons belonging to national minorities use their minority language in all police procedures in which they may take part, and that all facts relevant to such procedures are presented to persons belonging to national minorities in their minority language. Regional law-enforcement departments also ensure that organizational units operating within their regions use, in addition to Serbian language and script, all minority languages and scripts which are in official use in the region concerned. Minority languages and scripts in official use in a particular region are those languages and scripts which are prescribed as official under the Statute of respective local self-government unit. Bilingual boards have been posted on all facilities and institutions operating within the Ministry of Interior in areas populated by mixed nationality groups (in Serbian language and in minority languages which are in official use in the municipality concerned).

495. Upon its completion, the *New Identification Documents* project shall for the first time enable persons belonging to national minorities to have their names and surnames written in the authentic form i.e. in the spelling of their national minority language, in their new ID cards, travel documents, driving licences, etc. The Provincial Secretariat for Regulations, Administration and National Minorities of AP Vojvodina, in cooperation with the Ministry of Interior, has produced translations of standard forms required for the issuance of new documents (application forms for ID card, driving licence, registration of residence, registration, etc.). Translations of ID card forms in official minority languages were produced and printed as early as 2006. Information on availability of this option was publicly disseminated through the mass media.

521. Already at the level of announcing the acceptance of applications for enrollment at police schools, the Ministry of Interior of the Republic of Serbia is taking affirmative steps with regard

to prospective candidates who belong to national minorities. Namely, the Ministry pro-actively establishes contacts with the representatives and members of national minorities, provides the representatives and members of national minorities with information on the criteria set for the enrollment, in their minority language, and, encourages them to submit their applications. As regards the recruitment of employees at the Ministry of Interior, there are no legal or other limitations or stipulations on the grounds of national, religious or any other affiliation of the candidates applying for the job.

522. In the period 2003-2006, a community policing project entitled *Police in the Local Community* was realized in the territory of Bujanovac Municipality, Medvedja Municipality and Presevo Municipality. The project was run cooperatively by OSCE Mission in Belgrade and local self-governments in the three municipalities. The project was centered upon: addressing the issues of local safety and security; enhancing the respect for and protection of human rights; and, improving the police work by establishing a better cooperation between police officers and citizens, particularly – persons belonging to national minorities. In this respect, the Ministry of Interior, in cooperation with international partners, has realized a Multiethnic Police Programme for Presevo, Bujanovac and Medvedja. Consistently with this Programme, the Ministry of Interior has employed new personnel from among the ranks of national minorities, mainly candidates who belong to Albanian national minority. Training sessions were held for the newly employed police officers, after which they were deployed to police stations in the municipalities of Presevo, Bujanovac and Medvedja. The aim of this programme is to increase the ethnic representation of minorities within the ranks of police so as to reflect the ethnic composition of the corresponding communities. Many other activities have also been undertaken in these municipalities to that effect; the aim of these activities is to raise awareness and educate different groups of people (people working with the local self-government bodies, representatives of local communities, citizens) on their key role in tackling issues affecting safety. Training courses, seminars, forums, round tables and workshops organized for the representatives of different structures and groups, led to their increased participation in the safety-oriented projects, action plans and programmes. Advisory Citizens Groups have been instituted within the stated municipalities, operating at the level of one more local communities. A primary function of these Citizens Groups is to provide a communication bridge between the citizens, police forces and other relevant stakeholders in the community.

Concluding remarks and recommendations - 24

The rights of Roma

523. In January 2005, the Government of the Republic of Serbia adopted several Action Plans for the improvement of Roma status in the fields of education, employment, housing and health care. In the same year, the Republic of Serbia joined the regional initiative “Decade of Roma Inclusion, 2005 - 2015”.

524. The most effective results so far have been achieved through the implementation of a Common Action Plan for Advancement of Education of Roma. On the basis of this Action Plan, the Ministry of Education, in cooperation with the National Council of the Roma national minority, implements a project entitled *Broadening the Access of Roma Children to Pre-School Education*. In total, 25 educational institutions take part in the implementation of this Project, as

well as 30 Roma coordinators who are engaged to facilitate the cooperation between the Roma parents and the institutions. The Ministry of Education and the Institute for Pedagogy and Andragogy have jointly launched the *Functional Primary Education* Project. This Project employs 11 local Roma coordinators. Both Projects are financially supported by the Roma Educational Fund. In cooperation with OSCE Mission and with the support of European Agency for Reconstruction, the Ministry of Education of the Republic of Serbia implements a *Roma Teaching Assistants* Project. This Project focuses on providing the needed support to Roma children by involvement of Roma teaching assistants in the pre-school and primary schools tuition.

525. Since the initiation of the Decade of Roma Inclusion, the Ministry of Education has undertaken, independently or in cooperation with other relevant figures, the following activities: engaging the Ministry of Education's experts within working groups for the readmission of returnees; correlating the programme-activities of the Ministry of Education and local self-governments by agency of the local Roma representatives. In addition, the Ministry of Education in 2006 provided the Principals of schools with the official letters containing a proposed set of measures aimed at increasing the participation of Roma children in primary education, with special focus on the evaluation procedure and criteria for enrolment of pupils belonging to the Roma national minority and the preparation of all documents required for their enrollment.

526. In cooperation with the Council of Europe, the Ministry of Education promotes and realizes further development of elective curriculum course "Romany language with Elements of National Culture". In cooperation with OSCE, the Ministry of Education has realized *Capacity building in the Ministry of Education's School Administrations for the implementation of local Action Plans for advancement of Roma education* Project, *Promotion of the Roma Decade in school administrations of the Ministry of Education* Project, and a Conference entitled *Media-promotion of the activities of Roma teacher assistants in classes*. In cooperation with OSCE and Georg Eckert Institute, the Ministry of Education has produced Ethno Guide. In cooperation with the Roma Education Fund and Faculties of Philosophy of Belgrade and Novi Sad, the Ministry of Education has realized a project entitled *Adaptation of criteria instruments for primary school enrolment*. In cooperation with the Government of the Kingdom of Norway, the Ministry of Education has realized a project entitled *Together towards equality*.

527. Specific projects realized by the Ministry of Education in cooperation with NGOs, UNICEF and UNESCO, are: programme-activities realized jointly with NGO Pomoc Deci, NGO Save the Children, NGO Civic Initiatives, NGO Center for Interactive Pedagogy; programmes for active learning/teaching – adapted methodology for children with special needs; correlation of the Ministry of Education's programme-activities and local self-governments' programme-activities by agency of the local Roma representatives.

528. The Ministry of Education has adopted the criteria for enrollment of students belonging to the Roma national minority at secondary schools. In accordance with the adopted criteria, the students belonging to the Roma national minority can be admitted into their aimed educational profile if the total sum of their points, earned on all bases, is not lower by 30 points than the average sum of the points required for that profile at the targeted school. Under the criteria, only one Roma student who enrolled on grounds of the implementation of affirmative action can be admitted per educational profile per school. As for the higher education, the Roma applicants can

be admitted into their targeted faculties and higher schools founded by the Republic of Serbia if they earn the stipulated minimum number of points on the qualifying exam i.e. if they pass the entrance exam. The implementation of the affirmative action measures resulted in the enrollment of 188 Roma students at secondary schools and 98 Roma students at faculties and higher schools founded by the Republic of Serbia, in the academic year of 2007/2008.

529. In 2006, the Ministry of Labour, Employment and Social Policy was allocated RSD 120,000,000.00 from the Budget of the Republic of Serbia for the implementation of the Roma Employment Action Plan. These resources are used through the measures of affirmative action related to the employment of Roma, implemented within the priority measures of the general employment policy. On the basis of public announcement for self-employment subsidies, which was realized through the National Employment Service, the agreements were concluded with 90 unemployed persons belonging to the Roma national minority.

530. In the context of National Housing Policy, which is being prepared as a separate segment of informal and social housing, the Ministry of Capital Investments addresses the Roma housing issues and defines the steps for the improvement of the Roma housing situation. In 2006, the Ministry of Capital Investments had no Budget funds available for implementation of Action Plan regarding housing, but it adopted the Guidelines for the improvement and legalization of Roma settlements. On the basis of the resources allocated from the 2007 Budget, the Objective no. 3 from the Roma Housing Action Plan is currently being implemented. This Objective provides for the regulation of legal status and property-relations of houses and other inhabited structures in Roma settlements. In this respect, it is envisaged that relevant spatial planning documentation for app. 20 Roma settlements will be produced, in compliance with the prescribed measure.

531. In accordance with Article 22 of the Law on Health Insurance, the beneficiaries of health insurance shall also be: the persons belonging to the population groups which are exposed to the increased risk of disease; the persons who need health protection in relation to prevention, suppression, early detection and treatment of a disease of higher socio-medical importance; the persons belonging to socially endangered population if they do not fulfill the conditions for gaining the status of a beneficiary pursuant to the provisions of Article 17 of this Law, or if they do not exercise the rights of the compulsory health insurance as the beneficiaries' family members. This category includes persons of Roma nationality who because of their traditional lifestyle do not have permanent residence i.e. residence in the territory of the Republic of Serbia.

532. Persons of Roma nationality exercise their rights in the domain of compulsory health insurance in accordance with the content, scope, manner and procedures laid down by the Law on Health Insurance and other regulations adopted to govern the implementation of this Law. The rights in the domain of compulsory health insurance which are defined under this Law shall also be guaranteed to the members of immediate family of the beneficiary. Funds for the compulsory health insurance contributions shall be provided from the Budget of the Republic of Serbia. Thus, the persons of Roma nationality gain the status of the beneficiaries of compulsory insurance, and accordingly, realize their right to health care in the same way (scope and content) as other insured persons in the Republic of Serbia.

533. Within the programme *Improvement of Health for Specific Population Groups* that was launched by the Ministry of Health in 2006, a number of specific projects have been realized, prominent among them being *Implementation of the Plan for Health Care of Roma*. The Implementation of the Plan for Health Care of Roma Project is fully harmonized with the Action Plan for Improvement of Roma Health (adopted within the Decade of Roma Inclusion) and its implementation is financed by specifically for that purpose allocated funds. This Project includes: engagement of Roma health mediators; analysis of hygienic and epidemic conditions in Roma settlements; implementation of the Project *Improvement of the Health Status of Roma* (in cooperation with health-service institutions and various Roma associations); implementation of the Project *Health Protection and Training in Health Protection for Collectors of Secondary Raw Materials*; establishment of systems for monitoring and evaluation of the projects implementation; capacity strengthening in health-service institutions and non-governmental organizations, particularly with regard to production, implementation and evaluation of projects; support to projects for collection of data required for medical-care cards; support to the project *Improvement of the Nutritional Status of Infants and Young Children* (in cooperation with UNICEF and WHO).

534. By virtue of a Decision on the Establishment of the Office for Roma Inclusion enacted by the Assembly of AP Vojvodina in 2006, the Office for Roma Inclusion was officially set up to facilitate the improvement of Roma status in the fields of education, employment, health care, housing, human and other rights, and to expedite the creation of conditions required for the inclusion of Roma into all spheres of social, public and political life in AP Vojvodina. This Office had, however, started its operation as early as 2005 as a Project initiated by the Provincial Secretariat for Labour, Employment and Gender Equality. In March 2008, the Government of the Republic of Serbia set up a Council for the Advancement of the Roma Minority Position.

Concluding remarks and recommendations - 25

Protection of Roma from discrimination

535. Ministry of Interior gives special consideration to the improvement of its cooperation with the Roma population. The efforts of the Ministry are primarily focused on: seeking to increase the representation of Roma officers in police forces; participating of police officers in seminars, meetings and round tables organized with the aim to improve the communication between the Police and representatives of the Roma national minority; training of police officers, particularly in the field of ethnic diversity and combating discrimination; and, integrating the Roma representatives into the work of various advisory bodies addressing the issues of security and safety.

536. According to the Ministry of Interior statistics, there were 253 interethnic incidents to the detriment of the persons belonging to the Roma national minority reported in the territory of the Republic of Serbia over the period 2004 – 2007. Persons of Roma nationality took part in 100 physical assaults and 23 fights (out of the total number of incidents stated above), in which 9 persons were heavily and 59 slightly injured. Other incidents belong to the category of so called 'verbal conflicts' (30 such cases), anonymous threats sent to persons belonging to the Roma national minority (4 such cases), damage inflicted to the property of Roma (37 such cases), anti-

Roma graffiti, graphic symbols and pamphlets (59 such cases). In January 2004, in Boljevci (administrative settlement within Surcin Municipality), an underage Roma was brutally killed by four juveniles of Serbian nationality. Although this brutal murder was not a hate-motivated crime – the murder was committed for material gains, it provoked particularly strong reaction from the public and universal condemnation across the Republic of Serbia.

537. Up to 2007 the statistics indicated a declining trend in display of all forms of intolerance against Roma. The decline was especially noticeable in 2006; namely, in 2006 there were 11 physical assaults against Roma, as compared to 22 in 2005, and 44 in 2004. As regards the fights in which persons belonging to the Roma national minority participated, the declining trend was also obvious: in 2006 there were 2 such fights, in 2005 - 5, and in 2004 as much as 10. The number of incidents related to inflicting damage to the property of Roma, which exclusively included hurling stones at the houses or huts of Roma, was also gradually decreasing: there were 4 such cases in 2006, as compared to 13 in 2005, and 16 in 2004.

538. However, in the course of 2007 the number of the referred-to incidents rose. In addition to the recorded increase in the number of physical assaults (from 11 in 2006 to 25 in 2007), there were also more cases of fights between Roma and Serbs (from 2 in 2006 to 6 in 2007). Besides, in 2007 the activity of the members of some unofficial social groups advocating violence against Roma on ethnic and racial grounds was also intensified (Skinheads and Nacionalni Stroj). With the aim of preventing and suppressing such incidents, law enforcement officers had orders to take intensified protective-security measures regarding Roma and their property.

539. Over the period 2004-2007, the cases for which it could be said, in the widest terms, to have had some elements of inter-ethnic incidents or excesses were charged criminally. Criminal charges were brought over 74 criminal offences committed to the detriment of Roma, out of which 23 were qualified as criminal offences of instigation of national, racial or religious hatred, conflict or intolerance.

540. Regional law-enforcement departments in the territory of the Republic of Serbia give particular consideration to the revelation and investigation of cases which show some elements typical of inter-ethnic excesses and provocations, as well as cases which might provoke a public disturbance. Whenever an excess or incident between the persons of different national affiliation occurs, a set of prescribed measures is immediately undertaken in order that such an excess or incident could be clarified as early and as thoroughly as possible. This process is carried out jointly by the members of criminal police and uniformed police of the Regional law-enforcement department concerned. In total, 61 criminal offences (or 82.4%) committed to the detriment of Roma have been clarified; over these criminal offences criminal charges were brought against 111 perpetrators (101 Serbs and 10 Roma). In addition, 60 petty offence procedures were initiated against 172 persons (121 Serbs, 48 Roma, 2 Montenegrins and 1 person of German nationality) over the breach of public order.

541. Within the *Policing Marginalized, Minority and Socially Vulnerable Groups* Project, on September 25/27, 2007, round tables entitled *Roma Community and Police* were held in the towns of Nis and Kragujevac. On these roundtable meetings, the representatives of the Roma community drew attention to the following security and safety issues which burden their

community in Serbia: a high level of deviant behaviour among the Roma youth, which is *inter alia* reflected in increasingly frequent occurrence of drug addiction; beggary, rife among the Roma youth and children; trafficking in Roma women and children; vulnerability of Roma and their exposure to attacks by unofficial social groups that advocate violence against Roma (Skinheads); a high fire risk in the unhygienic Roma settlements; widespread domestic violence; a large number of Roma who fail to observe their civic obligations, particularly in respect of registering their residence and possessing/obtaining personal identification and other documents.
